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CHAPTER 571

An act to amend Sections 3058.65 and 3058.8 of the Penal Code, and to amend Sections 6608 and 6609.1 of the Welfare and Institutions Code, relating to inmates.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 3058.65 of the Penal Code is amended to read:

3058.65. (a) (1) Whenever any person confined in the state prison is serving a term for the conviction of child abuse, pursuant to Section 273a, 273ab, 273d, any sex offense specified as being perpetrated against a minor, or an act of domestic violence, or as ordered by a court, the Board of Prison Terms, with respect to inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections, with respect to inmates sentenced pursuant to Section 1170, shall notify the following parties that the person is scheduled to be released on parole, or rereleased following a period of confinement pursuant to a parole revocation without a new commitment, as specified in subdivision (b):

(A) The immediate family of the parolee who requests notification and provides the department with a current address.

(B) A county child welfare services agency that requests notification pursuant to Section 16507 of the Welfare and Institutions Code.

(2) For the purposes of this paragraph, "immediate family of the parolee" means the parents, siblings, and spouse of the parolee.

(b) (1) The notification shall be made by mail at least 60 days prior to the scheduled release date, except as provided in paragraph (2). In all cases, the notification shall include the name of the person who is scheduled to be released, the terms of that person's parole, whether or not that person is required to register with local law enforcement, and the community in which that person will reside. The notification shall specify the office within the Department of Corrections that has the authority to make the final determination and adjustments regarding parole location decisions.

(2) When notification cannot be provided within the 60 days due to the unanticipated release date change of an inmate as a result of an order from the court, an action by the Board of Prison Terms, the granting of an administrative appeal, or a finding of not guilty or dismissal of a disciplinary action, that affects the sentence of the inmate, or due to a modification of the department's decision regarding the community into

which the person is scheduled to be released pursuant to paragraph (3), the department shall provide notification to the parties and agencies specified in subdivision (a) as soon as practicable, but in no case less than 24 hours after the final decision is made regarding the location where the parolee will be released.

(3) Those agencies receiving the notice referred to in this subdivision may provide written comment to the board or department regarding the impending release. Agencies that choose to provide written comments shall respond within 30 days prior to the inmate's scheduled release, unless an agency received less than 60 days' notice of the impending release, in which case the agency shall respond as soon as practicable prior to the scheduled release. Those comments shall be considered by the board or department which may, based on those comments, modify its decision regarding the community in which the person is scheduled to be released. The board or department shall respond in writing not less than 15 days prior to the scheduled release with a final determination as to whether to adjust the parole location and documenting the basis for its decision, unless the department received comments less than 30 days prior to the impending release, in which case the department shall respond as soon as practicable prior to the scheduled release. The comments shall become a part of the inmate's file.

(c) In no case shall the notice required by this section be later than the day the person is released on parole.

SEC. 2. Section 3058.8 of the Penal Code is amended to read:

3058.8. (a) At the time a notification is sent pursuant to subdivision (a) of Section 3058.6, the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the designated agency responsible for notification, as the case may be, shall also send a notice to persons described in Section 679.03 who have requested a notice informing those persons of the fact that the person who committed the violent offense is scheduled to be released from the Department of Corrections and Rehabilitation or from the State Department of Mental Health, including, but not limited to, conditional release, and specifying the proposed date of release. Notice of the community in which the person is scheduled to reside shall also be given if it is (1) in the county of residence of a witness, victim, or family member of a victim who has requested notification, or (2) within 100 miles of the actual residence of a witness, victim, or family member of a victim who has requested notification. If, after providing the witness, victim, or next of kin with the notice, there is any change in the release date or the community in which the person is to reside, the board or department shall provide the witness, victim, or next of kin with the revised information.

(b) In order to be entitled to receive the notice set forth in this section, the requesting party shall keep the department or board informed of his or her current mailing address.

(c) The board or department, when sending out notices regarding an offender's release on parole, shall use the information provided by the requesting party in the form completed pursuant to subdivision (b) of Section 679.03, unless that information is no longer current. If the information is no longer current, the department shall make a reasonable attempt to contact the person and to notify him or her of the impending release.

SEC. 3. Section 6608 of the Welfare and Institutions Code is amended to read:

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel. The person petitioning for conditional release or unconditional discharge shall serve a copy of the petition on the State Department of Mental Health at the time the petition is filed with the court.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 30 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 30 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

SEC. 4. Section 6609.1 of the Welfare and Institutions Code is amended to read:

6609.1. (a) (1) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, or when a person who is committed as a sexually violent predator pursuant to this article has petitioned a court pursuant to Section 6608 for conditional release under supervision and treatment in the community pursuant to a conditional release program, or has petitioned a court pursuant to Section 6608 for subsequent unconditional discharge, and the department is notified, or is aware, of the filing of the petition, and when a community placement location is recommended or proposed, the department shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

(A) The community in which the person may be released for community outpatient treatment.

(B) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The department shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The department shall also notify the Department of Justice.

(3) The notice shall be given when the department or its designee makes a recommendation under subdivision (e) of Section 6608 or

proposes a placement location without making a recommendation, or when any other person proposes a placement location to the court and the department or its designee is made aware of the proposal.

(4) The notice shall be given at least 30 days prior to the department's submission of its recommendation to the court in those cases in which the department recommended community outpatient treatment under Section 6607, or in which the department or its designee is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than the department or its designee, within 48 hours after becoming aware of the petition or placement proposal.

(5) The notice shall state that it is being made under this section and include all of the following information concerning each person committed as a sexually violent predator who is proposed or is petitioning to receive outpatient care in a conditional release program in that city or county:

(A) The name, proposed placement address, date of commitment, county from which committed, proposed date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3 ⅛ by 3 ⅛ inches in size, or clear copies of the fingerprints and photograph.

(B) The date, place, and time of the court hearing at which the location of placement is to be considered and a proof of service attesting to the notice's mailing in accordance with this subdivision.

(C) A list of agencies that are being provided this notice and the addresses to which the notices are being sent.

(b) Those agencies receiving the notice referred to in paragraphs (1) and (2) of subdivision (a) may provide written comment to the department and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. The written comment shall be filed with the court at the time that the comment is provided to the department. The written comment shall identify differences between the comment filed with the court and that provided to the department, if any. In addition, a single agency in the community of the specific proposed or recommended placement address may suggest appropriate, alternative locations for placement within that community. A copy of the suggested alternative placement location shall be filed with the court at the time that the suggested placement location is provided to the department. The State Department of Mental Health shall issue a written statement to the commenting agencies and to the court within 10 days of receiving the written comments with a determination as to whether to adjust the release location or general terms and conditions, and explaining the basis for its

decision. In lieu of responding to the individual community agencies or individuals, the department's statement responding to the community comment shall be in the form of a public statement.

(c) The agencies' comments and department's statements shall be considered by the court which shall, based on those comments and statements, approve, modify, or reject the department's recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that the department's recommendation or proposal is not appropriate.

(d) (1) When the State Department of Mental Health makes a recommendation to pursue recommitment, makes a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(B) The community in which the person will probably be released, if recommending not to pursue recommitment.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The State Department of Mental Health shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The State Department of Mental Health shall also notify the Department of Justice. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

(3) Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. At the time that the written comment is made to the department, a copy of the written comment shall be filed with the court by the agency or agencies making the comment. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(e) (1) If the court orders the release of a sexually violent predator, the court shall notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation. The Department of Corrections and Rehabilitation shall notify the Department of Justice,

the State Department of Mental Health, the sheriff or chief of police or both, and the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person is to be released.

(B) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

(2) The Department of Corrections and Rehabilitation shall make the notifications required by this subdivision regardless of whether the person released will be serving a term of parole after release by the court.

(f) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections and Rehabilitation to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, whichever is sooner. To facilitate timely parole arrangements, notification to the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

(g) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(h) The time limits imposed by this section are not applicable when the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable.

(i) In the case of any subsequent community placement or change of community placement of a conditionally released sexually violent predator, notice required by this section shall be given under the same terms and standards as apply to the initial placement, except in the case of an emergency where the sexually violent predator must be moved to protect the public safety or the safety of the sexually violent predator. In the case of an emergency, the notice shall be given as soon as practicable, and the affected communities may comment on the placement as described in subdivision (b).

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not

affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 572

An act to amend Section 12126 of the Penal Code, relating to firearms.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. This act shall be known, and may be cited as, the Crime Gun Identification Act of 2007.

SEC. 2. Section 12126 of the Penal Code is amended to read:

12126. As used in this chapter, "unsafe handgun" means any pistol, revolver, or other firearm capable of being concealed upon the person, as defined in subdivision (a) of Section 12001, for which any of the following is true:

(a) For a revolver:

(1) It does not have a safety device that, either automatically in the case of a double-action firing mechanism, or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge.

(2) It does not meet the firing requirement for handguns pursuant to Section 12127.

(3) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

(b) For a pistol:

(1) It does not have a positive manually operated safety device, as determined by standards relating to imported guns promulgated by the federal Bureau of Alcohol, Tobacco, and Firearms.

(2) It does not meet the firing requirement for handguns pursuant to Section 12127.

(3) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

(4) Commencing January 1, 2006, for a center fire semiautomatic pistol that is not already listed on the roster pursuant to Section 12131, it does not have either a chamber load indicator, or a magazine disconnect mechanism.

(5) Commencing January 1, 2007, for all center fire semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it does not have both a chamber load indicator and if it has a detachable magazine, a magazine disconnect mechanism.

(6) Commencing January 1, 2006, for all rimfire semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it does not have a magazine disconnect mechanism, if it has a detachable magazine.

(7) Commencing January 1, 2010, for all semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it is not designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired, provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions. The Attorney General may also approve a method of equal or greater reliability and effectiveness in identifying the specific serial number of a firearm from spent cartridge casings discharged by that firearm than that which is set forth in this paragraph, to be thereafter required as otherwise set forth by this paragraph where the Attorney General certifies that this new method is also unencumbered by any patent restrictions. Approval by the Attorney General shall include notice of that fact via regulations adopted by the Attorney General for purposes of implementing that method for purposes of this paragraph. The microscopic array of characters required by this section shall not be considered the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice, within the meaning of Sections 12090 and 12094.

(c) As used in this section, a "chamber load indicator" means a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.

(d) As used in this section, a "magazine disconnect mechanism" means a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.

(e) As used in this section, a "semiautomatic pistol" means a pistol, as defined in subdivision (a) of Section 12001, the operating mode of which uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger.

SEC. 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 573

An act to amend Section 3003 of the Penal Code, relating to sex offenders.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall

consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, and paragraph (16) of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement

of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of the victim.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law.

(k) (1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

CHAPTER 574

An act to add Section 66406.7 to the Education Code, relating to public postsecondary education.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 66406.7 is added to the Education Code, to read:

66406.7. (a) This section shall be known and may be cited as the College Textbook Transparency Act.

(b) As used in this section, the following terms have the following meanings:

(1) "Adopter" means any faculty member or academic department or other adopting entity at an institution of higher education responsible for considering and choosing course materials to be used in connection with the accredited courses taught at that institution.

(2) "Complimentary copies" or "review course materials" only includes books that in all appearances are the same as the regular student edition of the textbook, and contain no material other than that found in the regular student edition of the textbook.

(3) "Instructor copies" or "complimentary teacher editions" means books with information that is meant to be for the exclusive use of teachers and not for students. These books contain answers and solutions, test questions, and pedagogical techniques, and are often labeled instructor's edition or instructor's manuals.

(4) "New edition of textbook" means a subsequent version of an earlier standard textbook. A standard textbook is the primary, full, and unabridged edition of a textbook. An abridged, alternate format, or alternate version of a standard textbook shall not be considered a new edition.

(5) "Publisher" means any publishing house, publishing firm, or publishing company that publishes textbooks or other course materials, specifically designed for postsecondary instruction.

(6) "Textbook" means a book that contains printed material and is intended for use as a source of study material for a class or group of students, a copy of which is expected to be available for the use of each of the students in that class or group. "Textbook" does not include a novel.

(7) "Unsolicited complimentary copies" means all items described in paragraph (2) and that were not requested by faculty but are sent by the publisher unsolicited by a faculty or staff member.

(c) (1) Adopters are encouraged to consider cost in the adoption of textbooks.

(2) Publishers shall facilitate the work done by adopters by providing transparency in the adoption process and shall be responsive in a timely manner to requests for information on textbook cost and content, and the full range of options.

(d) (1) On or after January 1, 2010, the publisher of a textbook shall print on the outer cover of, or within, the standard textbook, both of the following items:

(A) For any new editions of textbooks initially published on or after January 1, 2010, a summary of the substantive content differences between the new edition and the prior edition.

(B) The copyright date of the previous edition of the textbook.

(2) For instructor copies or complimentary teacher editions, it shall be noted on the exterior of the book that the book is an instructor's copy and is not for resale.

(e) (1) A publisher, or agent or employee of a publisher, of textbooks intended for use at a postsecondary educational institution shall respond to a request from an adopter for any of the following:

(A) A list of the products offered for sale by that publisher that are relevant to the needs and interests of adopters.

(B) The price at which the new book is available from the publisher.

(C) The copyright date of any prior edition of a textbook, if available.

(D) A list of the substantial content differences or changes made between the current edition initially published on or after January 1, 2010, and the previous edition of the textbook, including, but not necessarily limited to, new chapters, additional eras of time, new themes, or new subject matter.

(2) The information described in this subdivision shall be available in print or electronically to the adopter.

(f) Each campus bookstore at any public postsecondary educational institution shall post in its store or on its Internet Web site a disclosure of its retail pricing policy on new and used textbooks.

(g) Each public postsecondary educational institution shall encourage adopters with course material selection responsibilities to place their orders with sufficient lead time, whenever possible, to enable the university-managed bookstore or contract-managed bookstore to confirm the availability of the requested materials.

(h) This section does not limit the authority of faculty over decisions relating to the selection of textbooks.

(i) An adopter at an institution of higher education shall not demand or receive anything of value, including the donation of equipment or goods, any payment, loan, advance, or deposit of money, present or promised, for adopting specific course materials required for coursework or instruction, except that an employee may receive any of the following:

(1) Complimentary copies, review course materials, or instructor copies. The adopters shall not sell instructor copies.

(2) Royalties or other compensation from sales of course materials that include the instructor's writing or other work. Receipt of these royalties or compensation is subject to the employer's standing policies or collective bargaining agreements relating to employee conflicts of interest.

(3) Honoraria for academic peer review of course materials. Receipt of honoraria is subject to the employer's standing policies relating to employee conflicts of interest.

(4) Training in the use of course materials and course technologies. Payment for travel and lodging and or meals shall be subject to the employer's standing polices relating to employee conflicts of interest and compensation.

(j) A publisher or campus bookstore shall not solicit faculty for the purpose of the sale of instructor copies or complimentary teachers editions of textbooks that have been provided by a publisher at no charge to a faculty member or other employee. This subdivision does not apply to unsolicited complimentary copies.

(k) A campus bookstore shall not engage in any trade of any course material marked, or otherwise identified, as instructor copies or complementary teachers editions of textbooks.

(*l*) Any self-published textbook by an instructor for use with that instructor's class shall be exempt from this section, if the instructor discloses the publishing and use of those materials to his or her employer institution.

SEC. 2. 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.

CHAPTER 575

An act to amend Sections 111070, 111115, 111130, and 111170 of, and to add Sections 111071 and 111198 to, the Health and Safety Code, relating to drinking water.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) According to a survey conducted in 2002 by the Public Policy Institute of California, 39 percent of all adults in California rely on bottled and vended water as their primary source of drinking water.

(b) Among low-income and immigrant communities, vended water is the alternative drinking water of choice, due to its lower cost.

(c) Many water vending machines fail to meet state health and consumer protection standards as a result of insufficient routine monitoring.

(d) Consumers of bottled and vended water should be afforded the same water quality "right to know" protections and regulatory oversight of bottled and vended water products as those established for tap water.

SEC. 2. Section 111070 of the Health and Safety Code is amended to read:

111070. (a) "Bottled water," means any water that is placed in a sealed container at a water-bottling plant to be used for drinking, culinary, or other purposes involving a likelihood of the water being ingested by

humans. Bottled water shall not include water packaged with the approval of the department for use in a public emergency.

(b) "Vended water" means any water that is dispensed by a water-vending machine, retail water facility, or water from a private water source, or other water as defined in Section 111170 that is not placed by a bottler in sealed containers, and that is dispensed by a water-vending machine, retail water facility, water hauler, or any other person or facility for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans. "Vended water," does not include water from a public water system that has not undergone additional treatment. Water sold without further treatment is not "vended water" and shall be labeled in accordance with Section 111170.

(c) "Water-bottling plant" means any facility in which bottled water is produced.

(d) A "water-vending machine" means a water-connected vending machine designed to dispense drinking water, or purified or other water products. The machines shall be designed to reduce or remove turbidity, off-tastes, and odors and to provide disinfection treatment. Processes for dissolved solids reduction or removal shall also be used.

(e) "Water hauler," means any person who hauls water in bulk by any means of transportation if the water is to be used for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans.

"In bulk," as used in this subdivision, means containers having capacities of 250 gallons or greater.

(f) "Retail water facility" means any commercial establishment where vended water is sold, and placed in customer's containers, or placed in containers sold or given to customers who come to the establishment to obtain water.

(g) "Private water source," means a privately owned source of water, other than a public water system, that is used for bottled or vended water and meets the requirements of an approved source for bottled water as defined in Section 129.3 of Title 21 of the Code of Federal Regulations.

(h) "Bottled water distributor" means any person, other than an employee or representative of a bottled water plant, who delivers bottled water directly to customers.

SEC. 3. Section 111071 is added to the Health and Safety Code, to read:

111071. (a) As a condition of licensure, each bottled water plant, as defined in subdivision (c) of Section 111070, shall annually prepare a bottled water report and shall, upon request, make that report available to each customer.

(b) The report shall be prepared in English, Spanish, and in the appropriate languages for each non-English-speaking group other than Spanish that exceeds 10 percent of the state's population.

(c) For purposes of complying with this section, when bottled water comes from a municipal source, the relevant information from the consumer confidence report or water quality report prepared for that year by the public water system pursuant to Section 116470, may be used.

(d) The bottled water report shall include, but not be limited to, all of the following:

(1) The source of the bottled water, consistent with applicable state and federal regulations.

(2) A brief and plainly worded definition of the terms "statement of quality," "maximum contaminant level," "primary drinking water standard," and "public health goal."

(3) A brief description of the treatment process.

(4) A reference to the United States Food and Drug Administration Web site that provides product recall information.

(5) The bottled water company's address and telephone number that enables customers to obtain further information concerning contaminants and potential health effects.

(6) Information on the levels of unregulated substances, if any, for which water bottlers are required to monitor pursuant to state or federal law or regulation.

(7) (A) The following statement:

> "Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the United States Food and Drug Administration, Food and Cosmetic Hotline (1-888-723-3366)."

(B) If the telephone number for the United States Food and Drug Administration, Food and Cosmetic Hotline changes, the statement shall be updated to reflect the new telephone number.

(8) The following statement:

> "Some persons may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons, including, but not limited to, persons with cancer who are undergoing chemotherapy, persons who have undergone organ

transplants, persons with HIV/AIDS or other immune system disorders, some elderly persons, and infants can be particularly at risk from infections. These persons should seek advice about drinking water from their health care providers. The United States Environmental Protection Agency and the Centers for Disease Control and Prevention guidelines on appropriate means to lessen the risk of infection by cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (1-800-426-4791)."

(9) The following statement:

"The sources of bottled water include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water naturally travels over the surface of the land or through the ground, it can pick up naturally occurring substances as well as substances that are present due to animal and human activity.

Substances that may be present in the source water include any of the following:

(1) Inorganic substances, including, but not limited to, salts and metals, that can be naturally occurring or result from farming, urban stormwater runoff, industrial or domestic wastewater discharges, or oil and gas production.

(2) Pesticides and herbicides that may come from a variety of sources, including, but not limited to, agriculture, urban stormwater runoff, and residential uses.

(3) Organic substances that are byproducts of industrial processes and petroleum production and can also come from gas stations, urban stormwater runoff, agricultural application, and septic systems.

(4) Microbial organisms that may come from wildlife, agricultural livestock operations, sewage treatment plants, and septic systems.

(5) Substances with radioactive properties that can be naturally occurring or be the result of oil and gas production and mining activities."

(10) The following statement:

"In order to ensure that bottled water is safe to drink, the United States Food and Drug Administration and the State Department of Public Health prescribe regulations that limit the amount of certain contaminants in water provided by bottled water companies."

(11) (A) The following statement, if nitrate (NO_3) levels above 23 ppm but below 45 ppm (the Maximum Contaminant Level for nitrate (NO_3)) are detected:

"Nitrate in drinking water at levels above 45 mg/L is a health risk for infants of less than six months of age. These nitrate levels in drinking water can interfere with the capacity of the infant's blood to carry oxygen, resulting in a serious illness. Symptoms include shortness of breath and blueness of the skin. Nitrate levels above 45 mg/L may also affect the ability of the blood to carry oxygen in other individuals, including, but not limited to, pregnant women and those with certain specific enzyme deficiencies. If you are caring for an infant, or you are pregnant, you should ask advice from your health care provider."

(B) If the nitrate disclosure requirements for municipal water suppliers are revised by the State Department of Public Health, this statement shall be updated to reflect the revision.

(12) (A) The following statement, if arsenic levels above 5 ppb, but below 10 ppb (the Maximum Contaminant Level for arsenic), are detected:

"Arsenic levels above 5 ppb and up to 10 ppb are present in your drinking water. While your drinking water meets the current EPA standard for arsenic, it does contain low levels of arsenic. The standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. The State Department of Public Health continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects, including, but not limited to, skin damage and circulatory problems."

(B) If the arsenic disclosure requirements for municipal water suppliers are revised by the State Department of Public Health, this statement shall be updated to reflect the revision.

(13) A full disclosure of any exemption or variance that have been granted to the bottler by the State Department of Public Health, including an explanation of reasons for each exemption or variance and the date of the exemption or variance.

SEC. 4. Section 111115 of the Health and Safety Code is amended to read:

111115. (a) Each water-vending machine, retail water treatment plant, water hauler vehicle and facility, and private water source shall be maintained in a clean and sanitary condition at all times.

(b) (1) The department shall require that water-vending machines be cleaned, serviced, and sanitized in accordance with the manufacturer's specifications, but at least once every 31 days.

(2) Inspection records shall be kept for every visit made by either the operator or the maintenance personnel pursuant to this subdivision. These records shall show the date and time of the visit, any tests performed, any maintenance performed, and the signature or electronic signature of the operator or maintenance personnel. The records shall be kept by the owner of the water-vending machine for a minimum of two years and shall be made available to the department upon request.

(c) A record of any consumer complaints shall be kept on file with the owner of the water-vending machine for a minimum of two years, and shall be made available to the department upon request.

(d) If the department determines that there is a violation of this article, the department may do either or both of the following:

(1) Embargo the machine pursuant to Section 111860.

(2) Impose a fine, as determined appropriate by the department.

(e) (1) The department shall, annually, conduct inspections of not less than 20 percent of the licensed water-vending machines in the state and shall include both rural and urban counties. The selection of these machines shall be dependent on the state of the machine and the quality of the water source, and any other factors as determined by the department.

(2) The department may perform, within 12 months of the initial violation, one or more reinspections of each water-vending machine or water retailer that is found to be in violation of this section as necessary to prevent repeated or continuing violations. The department shall charge a fee to the owner to cover the costs of performing the reinspections. The fee shall not exceed the full cost of performing the reinspections up to a maximum of one hundred dollars ($100) per hour.

(f) Subdivisions (b) to (e), inclusive, shall become operative January 1, 2009.

SEC. 5. Section 111130 of the Health and Safety Code is amended to read:

111130. (a) The department shall charge and collect a fee for each license application submitted in accordance with the fee schedule in Table 1, that shall be an amount reasonably necessary to produce sufficient revenue to enforce this article. The fees collected shall be adjusted annually as required by Section 100425. New applicants for a

water bottling plant license shall pay Category 2 fees for the first license year.

(b) The water-bottling plant and bottled water distributor categories shall be determined by dividing by 52 the number of gallons produced or shipped into California during the previous year. If the result is an average of 5,000 gallons or less per week, the firm is Category 1. If the average exceeds 5,000 gallons per week, the firm is Category 2.

Table 1
License Fees

License Class	Annual Fee
Water-Bottling Plant	
Category 1	$310
Category 2	875
Water-Vending Machine	40
Water Hauler	310
Retail Water Facility	310
Private Water Source Operator	310
Bottled Water Distributor	310

(c) The owners or operators of each water-bottling plant, retail water facility, private water source, each water hauler in California and bottlers or distributors of water bottled out-of-state shall make application for a license on forms provided by the department. Applications and license fees shall be submitted annually. Applicants shall provide to the department, in electronic format, the serial number of each machine, and the street address, city, ZIP Code, and county where the machine is located.

(d) Each water-vending machine owner or operator shall make application annually for a license for all machines on forms provided by the department. A decal or seal provided by the department indicating a license fee has been paid shall be affixed in a prominent place to each water-vending machine in service. The duty to display the decal or seal shall apply only on and after the decal has been received by the operator.

SEC. 6. Section 111170 of the Health and Safety Code is amended to read:

111170. (a) Labeling and advertising of bottled water and vended water shall conform with this section, Chapter 4 (commencing with Section 110290), and applicable portions of Part 101 of Title 21 of the Code of Federal Regulations.

(b) Each container of bottled water sold in this state, each water-vending machine, and each container provided by retail water facilities located in this state shall be clearly labeled in an easily readable

format. Retail water facilities that do not provide labeled containers shall post, in a location readily visible to consumers, a sign conveying required label information.

(c) Water-vending machines, retail water facilities, and private water sources that sell water at retail shall display in a position clearly visible to customers the following information:

(1) The name and address of the operator.

(2) The fact that the water is obtained from an approved public water supply or licensed private water source.

(3) A statement describing the treatment process used.

(4) If no treatment process is utilized, a statement to that effect.

(5) A toll-free telephone number or a local telephone number within the area code in which the machine is located that may be called for further information, service, or complaints, and the toll-free telephone number of the department's food and drug branch that may be called for complaints or questions.

(6) A sign or label indicating the date on which the water-vending machine was last sanitized and serviced by the operator or maintenance personnel as required pursuant to paragraph (1) of subdivision (b) of Section 111115.

(7) A notice to consumers listing the industry's recommendations for the type and condition of container suitable for use with the water-vending machine.

(8) A valid decal or seal received from the department indicating that a license fee has been paid and a license issued for the water-vending machine as set forth in subdivision (d) of Section 111130.

(d) The information required pursuant to subdivision (c) shall be displayed in both English and Spanish.

(e) Bottled water may be labeled "drinking water," notwithstanding the source or characteristics of the water, only if it is processed pursuant to the Food and Drug Administration Good Manufacturing Practices contained in Section 165.110 and Parts 110 and 129 of Title 21 of the Code of Federal Regulations, Sections 12235 to 12285, inclusive, of Title 17 of the California Code of Regulations, and any other requirements established by the department pursuant to Sections 111145, 111150, and 111155. Any vended water and any water from a retail water facility may be labeled "drinking water," notwithstanding the source or characteristics of the water, only if it is processed pursuant to Article 10 (commencing with Section 114200) of Chapter 4 of Part 7 and any other requirements established by the department pursuant to Sections 111145, 111150, and 111155.

(f) Each container of bottled water sold at retail or wholesale in this state in a beverage container shall include on its label, or on an additional

label affixed to the bottle, or on a package insert or attachment, all the following:

(1) The name and contact information for the bottler or brand owner.

(2) The source of the bottled water, in compliance with applicable state and federal regulations.

(3) A clear and conspicuous statement that informs consumers about how to access water quality information contained in the bottled water report required by Section 111071.

(A) The statement shall contain all of the following:

(i) It shall include the term "water quality and information" appropriately, while informing customers about methods of gaining access to the full bottled water report.

(ii) It shall provide a telephone number, where information can be requested from the bottled water company and one other means of contact for the bottled water company, including, but not limited to, a mailing address, e-mail address, or the bottled water company's Web site.

(B) The following statement may be used to fulfill the requirements of this paragraph:

> "For more information and to obtain additional consumer information relating to water quality, including a bottled water report, contact [name of bottled water company] at [telephone number or toll-free telephone number] and [at least one of the following: mailing address, e-mail address, or the bottled water company's Web site]."

(g) Bottlers that distribute bottled or vended water directly to consumers shall provide a statement on each billing statement that includes both of the following:

(1) A telephone number and mailing address of the bottler or brand owner.

(2) The means by which a consumer may obtain consumer information relating to water quality, including a bottled water report, as described in Section 111071.

(h) Amendments made to this section by SB 220 of the 2007–08 Regular Session shall only apply to bottled water that was bottled on or after January 1, 2009.

SEC. 7. Section 111198 is added to the Health and Safety Code, to read:

111198. In its annual budget report to the Legislature, the department shall provide, in connection to the entities it regulates under this article, all of the following information:

(a) The total number of licenses, by type and county, issued in the prior calendar year.

(b) The number of inspections performed by the department in the previous calendar year, broken down by county and license type.

(c) The number and type of major violations, and the actions taken to correct those violations.

(d) The number and dollar value of fines levied under subdivision (c).

SEC. 8. Section 6 shall become operative on January 1, 2009.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 576

An act to amend, repeal, and add Section 653o of the Penal Code, relating to crime.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 653o of the Penal Code is amended to read:

653o. (a) It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (Canis lupus), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (Delphinidae), Spanish lynx, or elephant.

(b) Commencing January 1, 2010, it shall be unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any crocodile or alligator.

(c) (1) This section shall not apply to kangaroos that may be harvested lawfully under Australian national and state law, the federal Endangered

Species Act of 1971 (16 U.S.C. Sec. 1531 et seq.), and applicable international conventions, provided that the Department of Fish and Game is annually informed by the Australian government that the commercial harvest of kangaroos in any future year will not exceed the official quota established for 2007 or the lawful take of kangaroos in each subsequent year, whichever is the lesser.

(2) If the department fails to receive the report described in paragraph (1), the department shall inform the Australian national government that future importation of kangaroos that otherwise may be harvested lawfully under Australian national and state law, the federal Endangered Species Act of 1971 (16 U.S.C. Sec. 1531 et seq.), and applicable international conventions shall be halted and their importation into this state for commercial purposes, possession with intent to sell, or sale within the state will be subject to the provisions of this section.

(d) Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars ($1,000) and not to exceed five thousand dollars ($5,000) or imprisonment in the county jail not to exceed six months, or both fine and imprisonment, for each violation.

(e) The prohibitions against importation for commercial purposes, possession with intent to sell, and sale of the species listed in this section are severable. A finding of the invalidity of any one or more prohibitions shall not affect the validity of any remaining prohibitions.

(f) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 2. Section 653o is added to the Penal Code, to read:

653o. (a) It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (Canis lupus), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (Delphinidae), Spanish lynx, or elephant.

(b) Commencing January 1, 2010, it shall be unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any crocodile or alligator.

(c) Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars ($1,000) and not to exceed five thousand dollars ($5,000) or imprisonment in the county jail not to exceed six months, or both the fine and imprisonment, for each violation.

(d) The prohibitions against importation for commercial purposes, possession with intent to sell, and sale of the species listed in this section are severable. A finding of the invalidity of any one or more prohibitions shall not affect the validity of any remaining prohibitions.

(e) This section shall become operative on January 1, 2011.

CHAPTER 577

An act to amend Sections 6254, 6254.14, 6276.30, 11126, and 12651 of the Government Code, to amend Sections 1341.4, 1342.5, 1343, 1347.15, 1352, 1367.07, 1389.4, and 124595 of, to amend and renumber Section 11834 of, and to repeal Section 1342.1 of, the Health and Safety Code, to amend Sections 106 and 10113.95 of, and to repeal Section 12693.365 of, the Insurance Code, and to amend Sections 16915, 16932, 16933, 16934.5, 16935, 16935.5, and 16952 of, and to add Section 14115.75 to, the Welfare and Institutions Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if 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. However, 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 reflects 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. However, 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 Division 14 of Title 3 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. However, 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, 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. If 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 and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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

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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(ac) 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 (29 U.S.C. Sec. 158).

SEC. 1.5. 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, if 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. However, 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 reflects 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, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9 or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 261,

261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(ac) 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 (29 U.S.C. Sec. 158).

SEC. 2. Section 6254.14 of the Government Code is amended to read:

6254.14. (a) Except as provided in Sections 6254 and 6254.7, nothing in this chapter shall be construed to require disclosure of records of the Department of Corrections and Rehabilitation that relate to health care services contract negotiations, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations, including, but not limited to, records related to those negotiations such as meeting minutes, research, work product, theories, or strategy of the department, or its staff, or members of the California Medical Assistance

Commission, or its staff, who act in consultation with, or on behalf of, the department.

Except for the portion of a contract that contains the rates of payment, contracts for health services entered into by the Department of Corrections and Rehabilitation or the California Medical Assistance Commission on or after July 1, 1993, shall be open to inspection one year after they are fully executed. In the event that a contract for health services that is entered into prior to July 1, 1993, is amended on or after July 1, 1993, the amendment, except for any portion containing rates of payment, shall be open to inspection one year after it is 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 Bureau of State Audits. The Joint Legislative Audit Committee and the Bureau of State Audits shall maintain the confidentiality of the contracts and amendments until the contract or amendment is fully open to inspection by the public.

It is the intent of the Legislature that confidentiality of health care provider contracts, and of the contracting process as provided in this subdivision, is intended to protect the competitive nature of the negotiation process, and shall not affect public access to other information relating to the delivery of health care services.

(b) The inspection authority and confidentiality requirements established in subdivisions (q), (v), and (y) of Section 6254 for the Legislative Audit Committee shall also apply to the Bureau of State Audits.

SEC. 3. Section 6276.30 of the Government Code is amended to read:

6276.30. Managed Risk Medical Insurance Board, negotiations with entities contracting or seeking to contract with the board, subdivisions (v) and (y) of Section 6254, Government Code.

Mandated blood testing and confidentiality to protect public health, prohibition against compelling identification of test subjects, Section 120975, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, unauthorized disclosures of identification of test subjects, Section 120980, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, disclosure to patient's spouse, sexual partner, needle sharer, or county health officer, Section 121015, Health and Safety Code.

Manufactured home, mobilehome, floating home, confidentiality of home address of registered owner, Section 18081, Health and Safety Code.

Marital confidential communications, Sections 980, 981, 982, 983, 984, 985, 986, and 987, Evidence Code.

Market reports, confidential, subdivision (e), Section 6254, Government Code.

Marketing of commodities, confidentiality of financial information, Section 58781, Food and Agricultural Code.

Marketing orders, confidentiality of processors or distributors' information, Section 59202, Food and Agricultural Code.

Marriage, confidential, certificate, Section 511, Family Code.

Medi-Cal Benefits Program, confidentiality of information, Section 14100.2, Welfare and Institutions Code.

Medi-Cal Benefits Program, Evaluation Committee, confidentiality of information, Section 14132.6, Welfare and Institutions Code.

Medi-Cal Benefits Program, Request of Department for Records of Information, Section 14124.89, Welfare and Institutions Code.

Medi-Cal Fraud Bureau, confidentiality of complaints, Section 12528, Government Code.

Medical information, disclosure by provider unless prohibited by patient in writing, Section 56.16, Civil Code.

Medical information, types of information not subject to patient prohibition of disclosure, Section 56.30, Civil Code.

Medical and other hospital committees and peer review bodies, confidentiality of records, Section 1157, Evidence Code.

Medical or dental licensee, action for revocation or suspension due to illness, report, confidentiality of, Section 828, Business and Professions Code.

Medical or dental licensee, disciplinary action, denial or termination of staff privileges, report, confidentiality of, Sections 805, 805.1, and 805.5, Business and Professions Code.

Meetings of state agencies, disclosure of agenda, Section 11125.1, Government Code.

Mental institution patient, notification to peace officers of escape, Section 7325.5, Welfare and Institutions Code.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620, Penal Code.

Mentally disordered persons, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Mentally disordered or mentally ill person, voluntarily or involuntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.01, 5328.02, 5328.05, 5328.1, 5328.15, 5328.2, 5328.3, 5328.4, 5328.5, 5328.7, 5328.8, 5328.9, and 5330, Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Milk marketing, confidentiality of records, Section 61443, Food and Agricultural Code.

Milk product certification, confidentiality of, Section 62121, Food and Agricultural Code.

Milk, market milk, confidential records and reports, Section 62243, Food and Agricultural Code.

Milk product registration, confidentiality of information, Section 38946, Food and Agricultural Code.

Milk equalization pool plan, confidentiality of producers' voting, Section 62716, Food and Agricultural Code.

Mining report, confidentiality of report containing information relating to mineral production, reserves, or rate of depletion of mining operation, Section 2207, Public Resources Code.

Minor, criminal proceeding testimony closed to public, Section 859.1, Penal Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5, Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5, Penal Code.

Monetary instrument transaction records, confidentiality of, Section 14167, Penal Code.

Missing persons' information, disclosure of, Sections 14201 and 14203, Penal Code.

Morbidity and mortality studies, confidentiality of records, Section 100330, Health and Safety Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014, Vehicle Code.

Motor vehicles, department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3, Insurance Code.

Motor vehicle liability insurer, data reported to Department of Insurance, confidentiality of, Section 11628, Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8, Government Code.

SEC. 4. Section 11126 of the Government Code is amended to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an

applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining

to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 9 (commencing with Section 60850) of, Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing of Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed

session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50), or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code.

SEC. 5. Section 12651 of the Government Code is amended to read:

12651. (a) Any person who commits any of the following acts shall be liable to the state or to the political subdivision for three times the amount of damages which the state or the political subdivision sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the state or political subdivision for a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) for each false claim:

(1) Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment or approval.

(2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision.

(3) Conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision.

(4) Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt.

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property used or to be used.

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property.

(7) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or to any political subdivision.

(8) Is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.

(b) Notwithstanding subdivision (a), the court may assess not less than two times and not more than three times the amount of damages which the state or the political subdivision sustains because of the act of the person described in that subdivision, and no civil penalty, if the court finds all of the following:

(1) The person committing the violation furnished officials of the state or of the political subdivision responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.

(2) The person fully cooperated with any investigation by the state or a political subdivision of the violation.

(3) At the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability under this section shall be joint and several for any act committed by two or more persons.

(d) This section does not apply to any controversy involving an amount of less than five hundred dollars ($500) in value. For purposes of this subdivision, "controversy" means any one or more false claims submitted by the same person in violation of this article.

(e) This section does not apply to claims, records, or statements made pursuant to Division 3.6 (commencing with Section 810) of Title 1 or to workers' compensation claims filed pursuant to Division 4 (commencing with Section 3200) of the Labor Code.

(f) This section does not apply to claims, records, or statements made under the Revenue and Taxation Code.

SEC. 6. Section 1341.4 of the Health and Safety Code is amended to read:

1341.4. (a) In order to effectively support the Department of Managed Health Care in the administration of this law, there is hereby established in the State Treasury, the Managed Care Fund. The administration of the Department of Managed Health Care shall be supported from the Managed Care Fund.

(b) In any fiscal year, the Managed Care Fund shall maintain not more than a prudent 5 percent reserve unless otherwise determined by the Department of Finance.

SEC. 7. Section 1342.1 of the Health and Safety Code is repealed.

SEC. 8. Section 1342.5 of the Health and Safety Code is amended to read:

1342.5. The director shall consult with the Insurance Commissioner prior to adopting any regulations applicable to health care service plans subject to this chapter and other entities governed by the Insurance Code for the specific purpose of ensuring, to the extent practical, that there is consistency of regulations applicable to these plans and entities by the Insurance Commissioner and the Director of the Department of Managed Health Care.

SEC. 9. Section 1343 of the Health and Safety Code is amended to read:

1343. (a) This chapter shall apply to health care service plans and specialized health care service plan contracts as defined in subdivisions (f) and (o) of Section 1345.

(b) The director may by the adoption of rules or the issuance of orders deemed necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this chapter any class of persons or plan contracts if the director finds the action to be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under this chapter, and that the regulation of the persons or plan contracts is not essential to the purposes of this chapter.

(c) The director, upon request of the Director of Health Care Services, shall exempt from this chapter any county-operated pilot program contracting with the State Department of Health Care Services pursuant to Article 7 (commencing with Section 14490) of Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions Code. The director may exempt noncounty-operated pilot programs upon request of the Director of Health Care Services. Those exemptions may be subject to conditions the Director of Health Care Services deems appropriate.

(d) Upon the request of the Director of Mental Health, the director may exempt from this chapter any mental health plan contractor or any capitated rate contract under Part 2.5 (commencing with Section 5775) of Division 5 of the Welfare and Institutions Code. Those exemptions may be subject to conditions the Director of Mental Health deems appropriate.

(e) This chapter shall not apply to:

(1) A person organized and operating pursuant to a certificate issued by the Insurance Commissioner unless the entity is directly providing the health care service through those entity-owned or contracting health facilities and providers, in which case this chapter shall apply to the insurer's plan and to the insurer.

(2) A plan directly operated by a bona fide public or private institution of higher learning which directly provides health care services only to its students, faculty, staff, administration, and their respective dependents.

(3) A person who does all of the following:

(A) Promises to provide care for life or for more than one year in return for a transfer of consideration from, or on behalf of, a person 60 years of age or older.

(B) Has obtained a written license pursuant to Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(C) Has obtained a certificate of authority from the State Department of Social Services.

(4) The Major Risk Medical Insurance Board when engaging in activities under Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, Part 6.3 (commencing with Section 12695) of Division 2 of the Insurance Code, and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code.

(5) The California Small Group Reinsurance Fund.

SEC. 10. Section 1347.15 of the Health and Safety Code is amended to read:

1347.15. (a) There is hereby established in the Department of Managed Health Care the Financial Solvency Standards Board composed of eight members. The members shall consist of the director, or the director's designee, and seven members appointed by the director. The

seven members appointed by the director may be, but are not necessarily limited to, individuals with training and experience in the following subject areas or fields: medical and health care economics; accountancy, with experience in integrated or affiliated health care delivery systems; excess loss insurance underwriting in the medical, hospital, and health plan business; actuarial studies in the area of health care delivery systems; management and administration in integrated or affiliated health care delivery systems; investment banking; and information technology in integrated or affiliated health care delivery systems. The members appointed by the director shall be appointed for a term of three years, but may be removed or reappointed by the director before the expiration of the term.

(b) The purpose of the board is to do all of the following:

(1) Advise the director on matters of financial solvency affecting the delivery of health care services.

(2) Develop and recommend to the director financial solvency requirements and standards relating to plan operations, plan-affiliate operations and transactions, plan-provider contractual relationships, and provider-affiliate operations and transactions.

(3) Periodically monitor and report on the implementation and results of the financial solvency requirements and standards.

(c) Financial solvency requirements and standards recommended to the director by the board may, after a period of review and comment not to exceed 45 days, be noticed for adoption as regulations as proposed or modified under 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). During the director's 45-day review and comment period, the director, in consultation with the board, may postpone the adoption of the requirements and standards pending further review and comment. Nothing in this subdivision prohibits the director from adopting regulations, including emergency regulations, under the rulemaking provisions of the Administrative Procedure Act.

(d) The board shall meet at least quarterly and at the call of the chair. In order to preserve the independence of the board, the director shall not serve as chair. The members of the board may establish their own rules and procedures. All members shall serve without compensation, but shall be reimbursed from department funds for expenses actually and necessarily incurred in the performance of their duties.

(e) For purposes of this section, "board" means the Financial Solvency Standards Board.

SEC. 11. Section 1352 of the Health and Safety Code is amended to read:

1352. (a) A licensed plan shall, within 30 days after any change in the information contained in its application, other than financial or statistical information, file an amendment thereto in the manner the director may by rule prescribe setting forth the changed information. However, the addition of any association, partnership, or corporation in a controlling, controlled, or affiliated status relative to the plan shall necessitate filing, within a 30-day period of an authorization for disclosure to the director of financial records of the person pursuant to Section 7473 of the Government Code.

(b) Prior to a material modification of its plan or operations, a plan shall give notice thereof to the director, who shall, within 20 business days or such additional time as the plan may specify, by order approve, disapprove, suspend, or postpone the effectiveness of the change, subject to Section 1354.

(c) A plan shall, within five days, give written notice to the director in the form as by rule may be prescribed, of a change in the officers, directors, partners, controlling shareholders, principal creditors, or persons occupying similar positions or performing similar functions, of the plan and of a management company of the plan, and of a parent company of the plan or management company. The director may by rule define the positions, duties, and relationships which are referred to in this subdivision.

(d) The fee for filing a notice of material modification pursuant to subdivision (b) shall be the actual cost to the director of processing the notice, including overhead, but shall not exceed seven hundred fifty dollars ($750).

SEC. 12. Section 1367.07 of the Health and Safety Code is amended to read:

1367.07. Within one year after a health care service plan's assessment pursuant to subdivision (b) of Section 1367.04, the health care service plan shall report to the department, in a format specified by the department, regarding internal policies and procedures related to cultural appropriateness in each of the following contexts:

(a) Collection of data regarding the enrollee population pursuant to the health care service plan's assessment conducted in accordance with subdivision (b) of Section 1367.04.

(b) Education of health care service plan staff who have routine contact with enrollees regarding the diverse needs of the enrollee population.

(c) Recruitment and retention efforts that encourage workforce diversity.

(d) Evaluation of the health care service plan's programs and services with respect to the plan's enrollee population, using processes such as an analysis of complaints and satisfaction survey results.

(e) The periodic provision of information regarding the ethnic diversity of the plan's enrollee population and any related strategies to plan providers. Plans may use existing means of communication.

(f) The periodic provision of educational information to plan enrollees on the plan's services and programs. Plans may use existing means of communications.

SEC. 13. Section 1389.4 of the Health and Safety Code is amended to read:

1389.4. (a) A full service health care service plan that issues, renews, or amends individual health plan contracts shall be subject to this section.

(b) A health care service plan subject to this section shall have written policies, procedures, or underwriting guidelines establishing the criteria and process whereby the plan makes its decision to provide or to deny coverage to individuals applying for coverage and sets the rate for that coverage. These guidelines, policies, or procedures shall assure that the plan rating and underwriting criteria comply with Sections 1365.5 and 1389.1 and all other applicable provisions of state and federal law.

(c) On or before June 1, 2006, and annually thereafter, every health care service plan shall file with the department a general description of the criteria, policies, procedures, or guidelines the plan uses for rating and underwriting decisions related to individual health plan contracts, which means automatic declinable health conditions, health conditions that may lead to a coverage decline, height and weight standards, health history, health care utilization, lifestyle, or behavior that might result in a decline for coverage or severely limit the plan products for which they would be eligible. A plan may comply with this section by submitting to the department underwriting materials or resource guides provided to plan solicitors or solicitor firms, provided that those materials include the information required to be submitted by this section.

(d) Commencing September 1, 2006, the director shall post on the department's Web site, in a manner accessible and understandable to consumers, general, noncompany specific information about rating and underwriting criteria and practices in the individual market and information about the Major Risk Medical Insurance Program. The director shall develop the information for the Web site in consultation with the Department of Insurance to enhance the consistency of information provided to consumers. Information about individual health coverage shall also include the following notification:

"Please examine your options carefully before declining group coverage or continuation coverage, such as COBRA, that may be available to you. You should be aware that companies selling individual health insurance typically require a review of your medical history that

could result in a higher premium or you could be denied coverage entirely."

(e) Nothing in this section shall authorize public disclosure of company specific rating and underwriting criteria and practices submitted to the director.

(f) This section shall not apply to a closed block of business, as defined in Section 1367.15.

SEC. 14. Section 11834 of the Health and Safety Code is amended and renumbered to read:

11832.1. The department shall encourage the development of educational courses that provide core knowledge concerning alcohol and drug abuse problems and programs to personnel working within alcohol and drug abuse programs.

SEC. 15. Section 124595 of the Health and Safety Code is amended to read:

124595. (a) The Indian Health Policy Panel, established by the director pursuant to Section 1520 of Title 17 of the California Administrative Code, is continued in existence and shall be renamed the American Indian Health Policy Panel. The policy panel shall advise the State Department of Health Care Services and the State Department of Public Health on the level of resources, priorities, criteria, and guidelines necessary to implement this chapter. The policy panel shall be composed of 10 members, appointed by the director. Four members shall be appointed from a list of persons submitted by the California Rural Indian Health Board, four members shall be appointed from a list of persons submitted by the California Consortium for Urban Indian Health, and two members shall represent the public. The persons appointed by the director to represent the public may be consumers, consumer advocates, health service providers, representatives of state or county health agencies, health professionals, or private citizens. The terms of the members shall be established pursuant to bylaws adopted by the policy panel.

(b) The director may also seek advice from individuals and groups, other than the policy panel, on program issues.

(c) Those persons who are members of the policy panel on December 31, 1983, shall continue to be members for the remainder of their terms and, upon expiration of their terms, shall be eligible for reappointment by the director.

SEC. 16. Section 106 of the Insurance Code is amended to read:

106. (a) Disability insurance includes insurance appertaining to injury, disablement or death resulting to the insured from accidents, and appertaining to disablements resulting to the insured from sickness.

(b) In statutes that become effective on or after January 1, 2002, the term "health insurance" for purposes of this code shall mean an individual or group disability insurance policy that provides coverage for hospital, medical, or surgical benefits. The term "health insurance" shall not include any of the following kinds of insurance:

(1) Accidental death and accidental death and dismemberment.

(2) Disability insurance, including hospital indemnity, accident only, and specified disease insurance that pays benefits on a fixed benefit, cash payment only basis.

(3) Credit disability, as defined in subdivision (2) of Section 779.2.

(4) Coverage issued as a supplement to liability insurance.

(5) Disability income, as defined in subdivision (i) of Section 799.01.

(6) Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(7) Insurance arising out of a workers' compensation or similar law.

(8) Long-term care.

(c) In a statute that becomes effective on or after January 1, 2008, the term "specialized health insurance policy" as used in this code shall mean a policy of health insurance for covered benefits in a single specialized area of health care, including dental-only, vision-only, and behavioral health-only policies.

SEC. 17. Section 10113.95 of the Insurance Code is amended to read:

10113.95. (a) A health insurer that issues, renews, or amends individual health insurance policies shall be subject to this section.

(b) An insurer subject to this section shall have written policies, procedures, or underwriting guidelines establishing the criteria and process whereby the insurer makes its decision to provide or to deny coverage to individuals applying for coverage and sets the rate for that coverage. These guidelines, policies, or procedures shall assure that the plan rating and underwriting criteria comply with Sections 10140 and 10291.5 and all other applicable provisions.

(c) On or before June 1, 2006, and annually thereafter, every insurer shall file with the commissioner a general description of the criteria, policies, procedures, or guidelines that the insurer uses for rating and underwriting decisions related to individual health insurance policies, which means automatic declinable health conditions, health conditions that may lead to a coverage decline, height and weight standards, health history, health care utilization, lifestyle, or behavior that might result in a decline for coverage or severely limit the health insurance products for which they would be eligible. An insurer may comply with this section by submitting to the department underwriting materials or

resource guides provided to agents and brokers, provided that those materials include the information required to be submitted by this section.

(d) Commencing September 1, 2006, the commissioner shall post on the department's Web site, in a manner accessible and understandable to consumers, general, noncompany specific information about rating and underwriting criteria and practices in the individual market and information about the Major Risk Medical Insurance Program. The commissioner shall develop the information for the Web site in consultation with the Department of Managed Health Care to enhance the consistency of information provided to consumers. Information about individual health insurance shall also include the following notification:

"Please examine your options carefully before declining group coverage or continuation coverage, such as COBRA, that may be available to you. You should be aware that companies selling individual health insurance typically require a review of your medical history that could result in a higher premium or you could be denied coverage entirely."

(e) Nothing in this section shall authorize public disclosure of company-specific rating and underwriting criteria and practices submitted to the commissioner.

(f) This section shall not apply to a closed block of business, as defined in Section 10176.10.

SEC. 18. Section 12693.365 of the Insurance Code is repealed.

SEC. 19. Section 14115.75 is added to the Welfare and Institutions Code, to read:

14115.75. (a) As a condition of payment for goods, supplies, and merchandise provided to Medi-Cal beneficiaries by a provider that receives or makes annual payments of at least five million dollars ($5,000,000) under the Medi-Cal program, the provider shall comply with the federal False Claims Act employee training and policy requirements contained in Section 1902(a) of the federal Social Security Act (42 U.S.C. Sec. 1396a(a)(68)), and with any requirements that the United States Secretary of Health and Human Services may specify. The calculation of the five million dollar ($5,000,000) threshold shall be based on federal law and regulations and guidance from the United States Secretary of Health and Human Services.

(b) For purposes of this section, "provider" has the same meaning as that term is defined in Section 14043.1, and also includes any Medi-Cal managed care plan authorized under this chapter, Chapter 8 (commencing with Section 14200) or Chapter 8.75 (commencing with Section 14590).

SEC. 20. Section 16915 of the Welfare and Institutions Code is amended to read:

16915. (a) Any county receiving an allocation pursuant to this part shall, at a minimum, report to the department all indigent health care program demographic, expenditure, and utilization data, in a manner that will provide an unduplicated count of users, as follows:

(1) The following patient demographic data:

(A) Age.

(B) Sex.

(C) Ethnicity.

(D) Family size.

(E) Monthly income.

(F) Source of income, according to the following categories:

(i) Disability income.

(ii) Employment.

(iii) Retirement.

(iv) General assistance.

(v) Other.

(G) Type of employment, according to the following categories:

(i) Agriculture.

(ii) Labor and production.

(iii) Professional and technical.

(iv) Service.

(v) Nonemployed.

(H) Payer source, according to the following categories:

(i) Private insurance.

(ii) County program.

(iii) Self-pay.

(iv) Other.

(I) ZIP Code of residence.

(2) Indigent health care expenditure data, including all of the following:

(A) Inpatient hospital services, according to the following categories:

(i) County hospital.

(ii) Contract hospital.

(iii) University teaching hospital.

(iv) Other, noncontract hospital.

(v) Diagnostic category, as defined by the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM).

(B) Outpatient services, according to the following categories:

(i) Hospital outpatient.

(ii) Freestanding community clinic.

(iii) Primary care physician.

(iv) Nonemergency services rendered in an emergency room environment.

(v) Type of service.

(C) Emergency room services, according to the following categories:

(i) Emergency services.

(ii) Emergency services which result in a hospital admission.

(iii) Emergency services, which are rendered in a noncounty, noncontract hospital and result in a transfer of the patient to a county or contract hospital.

(3) Indigent health care utilization data.

(A) Inpatient hospital services, according to the following categories:

(i) County hospital days and discharges.

(ii) Contract hospital days and discharges.

(iii) University teaching hospital days and discharges.

(iv) Other, noncontract hospital days and discharges.

(B) Outpatient services, according to the following categories:

(i) Hospital outpatient visits.

(ii) Freestanding community clinic visits.

(iii) Primary care physician visits.

(iv) Visits to a hospital emergency room for nonemergency services.

(C) Emergency room services, according to the following categories:

(i) Visits for emergency services in a county hospital.

(ii) Visits for emergency services in a contract hospital.

(iii) Visits for emergency services in a noncounty, noncontract hospital.

(iv) Visits for emergency services which result in an admission in a county hospital.

(v) Visits for emergency services which result in an admission to a contract hospital.

(vi) Visits for emergency services which result in an admission to a noncounty, noncontract hospital.

(D) Visits for emergency services which are rendered in a noncounty, noncontract hospital and result in a transfer of the patient to a county or contract hospital.

(4) Geographic location of rendered services.

(A) Inpatient hospital services, according to the following categories:

(i) County hospital.

(ii) Contract hospital.

(iii) University teaching hospital.

(iv) Other, noncontract hospital.

(B) Outpatient services, according to the following categories:

(i) Hospital outpatient.

(ii) Freestanding community clinic.

(iii) Primary care physician.

(iv) Nonemergency services rendered in an emergency room environment.

(C) Emergency room services.

(5) Expenditure and utilization data for persons with acquired immunodeficiency syndrome (AIDS) and AIDS-related complex.

(A) Total number of patients.

(B) Number of inpatient users.

(C) Number of discharges.

(D) Total inpatient days.

(E) Total inpatient expenditures.

(F) Number of outpatient users.

(G) Number of outpatient visits.

(H) Total outpatient expenditures.

(I) Number of emergency room users.

(J) Number of emergency room visits.

(K) Total emergency room expenditures.

(b) Counties shall report demographic, cost and utilization data on indigent health care to the department as follows:

(1) An actual annual report no later than 360 days after the last day of the year to be reported.

(2) Counties shall maintain all patient-specific data collected through the medically indigent care reporting system for a period of 24 months after the last day of the fiscal year for which the data was collected.

(3) Reports shall be submitted on machine readable media, on 5 ¼ inch or 3 ½ inch diskette, in the format specified by the department.

(c) Counties that are eligible to participate in the CMSP pursuant to Section 16809 that do not operate a county hospital and that elect to enter into a contract with the department to administer the noncounty hospital portion of the Hospital Services Account, pursuant to Section 16934.7, and the Physician Services Account, pursuant to subdivision (c) of Section 16952, are not required to report indigent health care program demographic, cost, and utilization data pursuant to this section.

(d) The department shall collect the data specified in subdivision (a) for services paid for through the hospital contract-back and physician services contract-back programs specified in Section 16934.7 and subdivision (c) of Section 16952.

(e) The data specified in subparagraphs (D), (E), (F), and (G) of paragraph (1) of subdivision (a) for services paid for with funds specified under subparagraph (A) of paragraph (1) of subdivision (b) of Section 16946 and funds administered pursuant to Article 3.5 (commencing with Section 16951) of Chapter 5 are not required to be reported to the department pursuant to this section.

SEC. 21. Section 16932 of the Welfare and Institutions Code is amended to read:

16932. The department shall allocate money derived from the Hospital Services Account in the fund to each county that is eligible to participate in the CMSP pursuant to Section 16809 in the following manner:

(a) The combined total of hospital uncompensated care costs for all county and noncounty hospitals in each county that is eligible to participate in the CMSP pursuant to Section 16809 shall be calculated by using the definitions, procedures, and data elements specified in Section 16945.

(b) (1) The office shall determine each county's 1989–90 fiscal year share by using the 1988 calendar year data, as adjusted by the office, existing on the statewide file on September 1, 1989.

(2) The office shall determine each county's share for the fiscal years after the 1989–90 fiscal year by using the data from the quarterly reports for the calendar year preceding the fiscal year, as adjusted by the office and existing on the statewide file on April 15 immediately preceding the fiscal year.

(3) The office shall determine each county's share based on that county's total hospital uncompensated care costs, divided by the total hospital uncompensated care costs for all counties that are eligible to participate in the CMSP pursuant to Section 16809, and by multiplying that product by the amount appropriated from the Hospital Services Account in the fund for purposes of this chapter.

(4) The amounts calculated pursuant to paragraphs (2) and (3) shall be each county's allocation from the total amount available for allocation to the counties under this chapter.

(c) The amounts calculated pursuant to paragraph (4) of subdivision (b) shall be divided and allocated in accordance with Section 16946. Sections 16946, 16947, 16948, and 16949 shall be applicable to counties and hospitals receiving these funds.

SEC. 22. Section 16933 of the Welfare and Institutions Code is amended to read:

16933. (a) The department shall distribute those moneys appropriated from the Physician Services Account and the Unallocated Account in the fund to counties that are eligible to participate in the CMSP pursuant to Section 16809 on the basis of the percentages obtained by dividing the population of each county that is eligible to participate in the CMSP pursuant to Section 16809 by the total population of all counties that are eligible to participate in the CMSP pursuant to Section 16809, as reported in the most recent annual Department of Finance Research Unit report E-1.

(b) Each county shall use moneys allocated from the Unallocated Account in the fund pursuant to, and for the purposes specified in, Article 4 (commencing with Section 16960) of Chapter 5, and to expand emergency medical transportation services.

(c) Counties shall use moneys allocated from the Physician Services Account in the fund the following ways to provide medically necessary emergency, obstetric, or pediatric services, or all of them, to patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government:

(1) Establishment and administration of a Physician Services Account in the county emergency medical services fund in accordance with Article 3.5 (commencing with Section 16951) of Chapter 5.

(2) Contracting with the department for the administration of all Physician Services Account moneys specified in this subdivision pursuant to subdivision (c) of Section 16952.

(3) The reimbursement or support of services, either directly or by contract, which are provided by physicians or groups of physicians.

(d) Moneys allocated from the Physician Services Account in the fund shall be used to provide reimbursement for services provided on or after July 1, 1989.

SEC. 23. Section 16934.5 of the Welfare and Institutions Code is amended to read:

16934.5. (a) For the 1990–91 fiscal year and subsequent fiscal years, each county that is eligible to participate in the CMSP pursuant to Section 16809 may enter into a contract with the department in which the department agrees to assume the responsibility to pay for the cost of treatment service provided on or after July 1, 1990, to children pursuant to Section 16934. If a county that is eligible to participate in the CMSP pursuant to Section 16809 does not apply for or rescinds its application for funds under this chapter, the department may use all or part of that county's allocation, as calculated pursuant to paragraph (3), to pay for the costs of treatment services to children pursuant to Section 16934.

(1) Each county intending to contract with the department shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than June 1, 1990. For each fiscal year thereafter a notice adopted by the board of supervisors shall be submitted no later than April 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect, in accordance with procedures established by the department. As a condition of contracting with the department, the department may establish uniform standards, forms, and procedures for the processing and payment of claims for treatment services.

(2) (A) Each county contracting with the department pursuant to this subdivision for the 1991–92 fiscal year that has previously contracted with the department pursuant to this section shall agree that the department shall retain 10 percent of the allocation it would otherwise have received under this chapter. The department shall transfer amounts retained on a monthly basis to the CHDP Treatment Account established in subdivision (b).

(B) Any county that contracts with the department pursuant to this subdivision during the 1991–92 fiscal year that has not previously contracted with the department pursuant to this section shall agree that the department shall retain 20 percent of the allocation the county would otherwise have received under this chapter for that portion of the year for which it contracts under this section.

(3) In future fiscal years the percentage retained by the department may be adjusted to reflect actual payments, projected expenditures, funds appropriated by the Legislature for treatment services, and the overall status of the account established in subdivision (b).

(b) Beginning with the 1990–91 fiscal year, the department shall establish a separate Child Health and Disability Prevention Treatment Account. For purposes of this chapter "CHDP Treatment Account" means the account established pursuant to this subdivision.

(1) The following funds shall be deposited into the CHDP Treatment Account:

(A) Funds appropriated by the Legislature to fund the reinsurance account established in subdivision (b) of Section 16934.2 which are not expended or encumbered for that purpose.

(B) Any funds recouped from those counties electing to establish a 15 percent reserve pursuant to subdivision (a) of Section 16934.2.

(C) Funds retained by the department pursuant to subdivision (a).

(D) Interest earnings on funds.

(E) Any additional funds appropriated by the Legislature.

(2) Funds deposited in the CHDP Treatment Account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this chapter, shall not be transferred to any other fund or account except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(3) Moneys deposited into the account shall constitute a risk pool which shall be used for any or all of the following purposes:

(A) Payment for services provided pursuant to Section 16934 in counties which have contracted with the department pursuant to subdivision (a).

(B) State administrative costs, including any costs associated with a contract for processing claims.

(C) If the projected expenditure of funds from the CHDP Treatment Account for any fiscal year exceeds available revenues, the department may adjust payments for the remainder of the fiscal year to providers on a pro rata basis in order to ensure that expenditures do not exceed available revenues.

SEC. 24. Section 16935 of the Welfare and Institutions Code is amended to read:

16935. (a) A county that is eligible to participate in the CMSP pursuant to Section 16809 may elect to have the state administer its physician services account. Each county that is eligible to participate in the CMSP pursuant to Section 16809 and that elects to have the state administer its physician services account shall do all of the following:

(1) Enter into a contract with the department to administer its county physician services account.

(2) Authorize the department to act on its behalf and to assume all responsibilities for the distribution and monitoring of funds in its physician services account pursuant to subdivision (c) of Section 16952.

(3) Agree to comply with uniform policies, procedures, and program standards, including, but not limited to, eligibility levels established mutually by the department and the participating counties.

(4) Transfer funds allocated to the county for purposes of the county physician services account, less any funds retained pursuant to subdivision (a) of Section 16934.5 to the department under such conditions as the department may require.

(b) The department may use funds retained or transferred to it by the county pursuant to this subdivision for purposes of administering the county's physician services account in accordance with Sections 16952 to 16958, inclusive.

(c) For the 1989–90 fiscal year, any county which intends to contract with the department for the administration of moneys allocated from the Physician Services Account in the fund pursuant to subdivision (c) of Section 16952 shall submit, to the department, a notice of intent to contract which has been adopted by the county board of supervisors, not later than November 15, 1989.

(d) For the 1990–91 fiscal year and subsequent fiscal years, any county which intends to contract with the department for the administration of moneys allocated from the Physician Services Account in the fund shall submit to the department a notice of intent to contract, which has been adopted by the county board of supervisors, not later than April 1 of the fiscal year preceding the fiscal year for which the contract will be in effect and in accordance with procedures established by the department.

SEC. 25. Section 16935.5 of the Welfare and Institutions Code is amended to read:

16935.5. The department may administer the distribution and monitoring of funds allocated from the Hospital Services Account pursuant to subdivision (b) of Section 16946 and from the Physician Services Account pursuant to subdivision (c) of Section 16952, less funds retained by the department for the administration of the children's treatment program pursuant to Section 16934, for any county that is eligible to participate in the CMSP pursuant to Section 16809 that does not apply for, or rescinds its application for, funds under this chapter. Allocations for a particular county shall generally be utilized for payments to eligible providers in that county.

SEC. 26. Section 16952 of the Welfare and Institutions Code is amended to read:

16952. (a) (1) Each county shall establish within its emergency medical services fund a Physician Services Account. Each county shall deposit in the Physician Services Account those funds appropriated by the Legislature for the purposes of the Physician Services Account of the fund.

(2) (A) Each county may encumber sufficient funds to reimburse physician losses incurred during the fiscal year for which bills will not be received until after the fiscal year.

(B) Each county shall provide a reasonable basis for its estimate of the necessary amount encumbered.

(C) All funds that are encumbered for a fiscal year shall be expended or disencumbered prior to the submission of the report of actual expenditures required by Sections 16938 and 16980.

(b) (1) Funds deposited in the Physician Services Account in the county emergency medical services fund shall be exempt from the percentage allocations set forth in subdivision (a) of Section 1797.98. However, funds in the county Physician Services Account shall not be used to reimburse for physician services provided by physicians employed by county hospitals.

(2) No physician who provides physician services in a primary care clinic which receives funds from this act shall be eligible for reimbursement from the Physician Services Account for any losses incurred in the provision of those services.

(c) The county physician services account shall be administered by each county, except that a county that is eligible to participate in the CMSP pursuant to Section 16809, may elect to have its county physician services account administered by the state.

(d) Costs of administering the account, whether by the county or by the department through the emergency medical services contract-back

program, shall be reimbursed by the account based on actual administrative costs, not to exceed 10 percent of the amount of the account.

(e) For purposes of this article "administering agency" means the agency designated by the board of supervisors to administer this article, or the department, in the case of those counties that are eligible to participate in the CMSP pursuant to Section 16809, and that elect to have the state administer this article on their behalf.

(f) The county Physician Services Account shall be used to reimburse physicians for losses incurred for services provided during the fiscal year of allocation due to patients who do not have health insurance coverage for emergency services and care, who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government with the exception of claims submitted for reimbursement through Section 1011 of the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(g) Physicians shall be eligible to receive payment for patient care services provided by, or in conjunction with, a properly credentialed nurse practitioner or physician's assistant for care rendered under the direct supervision of a physician and surgeon who is present in the facility where the patient is being treated and who is available for immediate consultation. Payment shall be limited to those claims that are substantiated by a medical record and that have been reviewed and countersigned by the supervising physician and surgeon in accordance with regulations established for the supervision of nurse practitioners and physician assistants in California.

(h) (1) Reimbursement for losses shall be limited to emergency services as defined in Section 16953, obstetric, and pediatric services as defined in Sections 16905.5 and 16907.5, respectively.

(2) It is the intent of this subdivision to allow reimbursement for all of the following:

(A) All inpatient and outpatient obstetric services which are medically necessary, as determined by the attending physician.

(B) All inpatient and outpatient pediatric services which are medically necessary, as determined by the attending physician.

(i) Any physician may be reimbursed for up to 50 percent of the amount claimed pursuant to Section 16955 for the initial cycle of reimbursements made by the administering agency in a given year. All funds remaining at the end of the fiscal year shall be distributed proportionally, based on the dollar amount of claims submitted and paid to all physicians who submitted qualifying claims during that year. The

administering agency shall not disburse funds in excess of the total amount of a qualified claim.

SEC. 27. The Legislature finds and declares that Section 1 of this act, which amends Section 6254 of the Government Code, and Section 5 of this act, which amends Section 11126 of the Government Code, impose limitations on the public's right of access to the meetings of public bodies and the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by these limitations and the need for protecting that interest:

In order to clarify existing law and to ensure that the Managed Risk Medical Insurance Board is not constrained in exercising its fiduciary powers and obligations to negotiate on behalf of the public as it provides or funds health care coverage for low-income persons and populations for whom this coverage is difficult to secure, the limitations on the public's right of access imposed by Sections 1 and 5 of this act are necessary.

SEC. 28. Section 1.5 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and SB 449. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, but this bill becomes operative first, (2) each bill amends Section 6254 of the Government Code, and (3) this bill is enacted after SB 449, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 449, at which time Section 1.5 of this bill shall become operative.

SEC. 29. 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 adequately protect the public health and safety, it is necessary that this act take effect immediately.

CHAPTER 578

An act to amend Section 6254 of the Government Code, and to amend Section 293 of the Penal Code, relating to records of crime.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if 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. However, 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 reflects 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, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2,

288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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. However, 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. If 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 and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(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) If 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 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(ac) 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 (29 U.S.C. Sec. 158).

SEC. 1.5. 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, if 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. However, 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 reflects 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, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9 or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State

Department of Health Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information.

This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(ac) 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 (29 U.S.C. Sec. 158).

SEC. 2. Section 293 of the Penal Code is amended to read:

293. (a) Any employee of a law enforcement agency who personally receives a report from any person, alleging that the person making the report has been the victim of a sex offense, shall inform that person that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record, pursuant to Section 6254 of the Government Code.

(b) Any written report of an alleged sex offense shall indicate that the alleged victim has been properly informed pursuant to subdivision (a) and shall memorialize his or her response.

(c) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the address of a person who alleges to be the victim of a sex offense.

(d) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation offices of county probation departments, or other persons or public agencies where authorized or required by law, the name of a person who alleges to be the victim of a sex offense, if that person has elected to exercise his or her right pursuant to this section and Section 6254 of the Government Code.

(e) For purposes of this section, sex offense means any crime listed in paragraph (2) of subdivision (f) of Section 6254 of the Government Code.

(f) Parole officers of the Department of Corrections and Rehabilitation and hearing officers of the parole authority, and probation officers of county probation departments, shall be entitled to receive information

pursuant to subdivisions (c) and (d) only if the person to whom the information pertains alleges that he or she is the victim of a sex offense, the alleged perpetrator of which is a parolee who is alleged to have committed the sex offense while on parole, or in the case of a county probation officer, the person who is alleged to have committed the sex offense is a probationer or is under investigation by a county probation department pursuant to Section 1203.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 6254 of the Government Code proposed by this bill and AB 1750. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 6254 of the Government Code, and (3) this bill is enacted after AB 1750, in which case Section 6254 of the Government Code, as amended by AB 1750, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 579

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code, and to amend Sections 289.5, 290.01, 290.04, 290.05, 290.3, 290.46, 296.2, 311.11, 646.9, 801.1, 803, 1202.7, 1417.8, 3000, 3000.07, 3004, 3060.6, 5054.1, and 5054.2 of, to amend and renumber Sections 288.3 and 3005 of, to add Sections 290.001, 290.002, 290.003, 290.004, 290.005, 290.006, 290.007, 290.008, 290.009, 290.010, 290.011, 290.012, 290.013, 290.014, 290.015, 290.016, 290.017, 290.018, 290.019, 290.020, 290.021, 290.022, and 290.023 to, and to repeal and add Section 290 to, the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family

agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social

Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall

not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and

family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of

Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in

consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall

submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent

violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to

comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of

subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state

or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department-delegated licensing authority a fee for each time

a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 1.5. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant

or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender

record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall

provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not

apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the

Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is

determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of

Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The

department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a

deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction

following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2),

(7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department, a county office with department-delegated licensing authority, or county child welfare agency with criminal record clearance and exemption authority, a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(5) (A) A county child welfare agency with authority to secure clearances pursuant to Section 16504.5 of the Welfare and Institutions Code and to grant exemptions pursuant to Section 361.4 of the Welfare and Institutions Code may accept a clearance or exemption from another county with criminal record and exemption authority pursuant to these sections.

(B) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by a county child welfare agency with criminal record clearance and exemption authority, the Department of Justice shall process a request from a county

child welfare agency with criminal record and exemption authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the State Department of Social Services and the Department of Justice.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 2. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the electronic fingerprint images of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

It is the intent of the Legislature, in enacting this section, to require the electronic fingerprint images of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a residential care facility for persons with chronic, life-threatening illnesses.

(a) (1) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from

an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by this subdivision. If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines

that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to subdivision (a) of Section 1568.082. The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.082.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with chronic, life-threatening illness. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for persons with chronic, life-threatening illness pursuant to Section 1568.092.

(4) (A) Any staff person, volunteer, or employee who has contact with the residents.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend, or family member and provides direct care and supervision to that resident only at the request of the resident. The department may define in regulations persons similar to those described in this subparagraph who may be exempt from the requirements of this subdivision.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development

of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility.

(B) These fingerprint images and related information shall be electronically submitted to the Department of Justice in a manner approved by the State Department of Social Services and the Department of Justice, for the purpose of obtaining a permanent set of fingerprints. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The State Department of Social Services may assess civil penalties for continued violations as allowed in Section 1568.0822. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. The licensee shall maintain and make available for inspection documentation of the individual's clearance or exemption.

(2) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The department may assess civil penalties for continued violations as permitted by Section 1568.0822.

(3) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social

Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprint images were illegible. The Department of Justice shall notify the department, as required by Section 1522.04, and shall notify the licensee by mail within 14 days of electronic transmission of the fingerprint images to the Department of Justice, if the person has no criminal history record.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and

frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) The Department of Justice shall charge a fee sufficient to cover its cost in providing services to comply with the 14-day requirement contained in subdivision (c) for provision to the department of criminal record information.

(2) Paragraph (1) shall cease to be implemented when the department adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when permanent regulations are adopted under that section.

(j) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

SEC. 3. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a residential care facility for the elderly.

(a) (1) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in

subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1569.50. The

department may also suspend the license pending an administrative hearing pursuant to Sections 1569.50 and 1569.51.

(b) In addition to the applicant, the provisions of this section shall apply to criminal convictions of the following persons:

(1) (A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.

(F) Additional officers of the governing body of the applicant or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from requirements applicable under paragraph (1):

(A) A spouse, relative, significant other, or close friend of a client shall be exempt if this person is visiting the client or provides direct care and supervision to that client only.

(B) A volunteer to whom all of the following apply:

(i) The volunteer is at the facility during normal waking hours.

(ii) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(iii) The volunteer spends no more than 16 hours per week at the facility.

(iv) The volunteer does not provide clients with assistance in dressing, grooming, bathing, or personal hygiene.

(v) The volunteer is not left alone with clients in care.

(C) A third-party contractor retained by the facility if the contractor is not left alone with clients in care.

(D) A third-party contractor or other business professional retained by a client and at the facility at the request or by permission of that client. These individuals may not be left alone with other clients.

(E) Licensed or certified medical professionals are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(F) Employees of licensed home health agencies and members of licensed hospice interdisciplinary teams who have contact with a resident of a residential care facility at the request of the resident or resident's legal decisionmaker are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(G) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual resident at the request of, or with permission of, the resident, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(H) Any person similar to those described in this subdivision, as defined by the department in regulations.

(I) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(c) (1) (A) Subsequent to initial licensure, any person required to be fingerprinted pursuant to subdivision (b) shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for

a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (g) prior to the person's employment, residence, or initial presence in the residential care facility for the elderly.

(B) These fingerprint images and related information shall be electronically transmitted in a manner approved by the State Department of Social Services and the Department of Justice. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1569.50. The State Department of Social Services may assess civil penalties for continued violations as permitted by Section 1569.49. The licensee shall then submit these fingerprint images to the State Department of Social Services for processing. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. The Department of Justice shall notify the department, as required by Section 1522.04, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1569.50. The department may assess civil penalties for continued violations as permitted by Section 1569.49.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days

from the date of receipt of the fingerprint images, notify the licensee that the fingerprint images were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If the State Department of Social Services determines, on the basis of the fingerprint images submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's

employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice or documents admissible in a criminal action pursuant to Section 969b of the Penal Code shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person

convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(3) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be submitted in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred under this section.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the department that the employee has a prior criminal conviction

or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

SEC. 4. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a child day care facility.

(a) (1) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, neither the Department of Justice nor the department may charge a fee for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a child, residing in the facility.

(C) Any person who provides care and supervision to the children.

(D) Any staff person, volunteer, or employee who has contact with the children.

(i) A volunteer providing time-limited specialized services shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the facility, and the volunteer is not left alone with children in care.

(ii) A student enrolled or participating at an accredited educational institution shall be exempt from the requirements of this subdivision if the student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the facility has an agreement with the educational institution concerning the placement of the student, the student spends no more than 16 hours per week at the facility, and the student is not left alone with children in care.

(iii) A volunteer who is a relative, legal guardian, or foster parent of a client in the facility shall be exempt from the requirements of this subdivision.

(iv) A contracted repair person retained by the facility, if not left alone with children in care, shall be exempt from the requirements of this subdivision.

(v) Any person similar to those described in this subdivision, as defined by the department in regulations.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(H) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal record clearance as part of

an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(I) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal record clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(2) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(B) These fingerprint images for the purpose of obtaining a permanent set of fingerprints shall be electronically submitted to the Department of Justice in a manner approved by the State Department of Social Services and to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886. The State Department of Social Services may assess civil penalties for continued violations permitted by Sections 1596.99 and 1597.62. The fingerprint images and

related information shall then be submitted to the department for processing. Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprints were illegible.

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. Any violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886. The department may assess civil penalties for continued violations, as permitted by Sections 1596.99 and 1597.62.

(2) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an

exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(3) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(4) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence

of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a child day care facility as specified in paragraphs (3), (4), and (5) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) or (b) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprint images.

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice, only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department-delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

SEC. 5. Section 288.3 of the Penal Code, as added by Section 7 of Chapter 337 of the Statutes of 2006, is amended and renumbered to read:

288.4. (a) (1) Every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding five thousand dollars ($5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(2) Every person who violates this subdivision after a prior conviction for an offense listed in subdivision (c) of Section 290 shall be punished by imprisonment in the state prison.

(b) Every person described in paragraph (1) of subdivision (a) who goes to the arranged meeting place at or about the arranged time, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Nothing in this section shall preclude or prohibit prosecution under any other provision of law.

SEC. 6. Section 289.5 of the Penal Code is amended to read:

289.5. (a) Every person who flees to this state with the intent to avoid prosecution for an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, and who has been charged with that offense under the laws of the jurisdiction from which the person fled, is guilty of a misdemeanor.

(b) Every person who flees to this state with the intent to avoid custody or confinement imposed for conviction of an offense under the laws of the jurisdiction from which the person fled, which offense, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, is guilty of a misdemeanor.

(c) No person shall be charged and prosecuted for an offense under this section unless the prosecutor has requested the other jurisdiction to extradite the person and the other jurisdiction has refused to do so.

(d) Any person who is convicted of any felony sex offense described in subdivision (c) of Section 290, that is committed after fleeing to this state under the circumstances described in subdivision (a) or (b) of this section, shall, in addition and consecutive to the punishment for that conviction, receive an additional term of two years' imprisonment.

SEC. 7. Section 290 of the Penal Code is repealed.

SEC. 8. Section 290 is added to the Penal Code, to read:

290. (a) Sections 290 to 290.023, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, 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, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

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 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, 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, 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, 288.3, 288.4, 288.5, 288.7, 289, or 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; 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 or conspiracy to commit any of the above-mentioned offenses.

SEC. 9. Section 290.001 is added to the Penal Code, to read:

290.001. Every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall register in accordance with the Act.

SEC. 10. Section 290.002 is added to the Penal Code, to read:

290.002. 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 the Act. Persons described in the Act 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 the Act. 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 section shall, in addition to the information required pursuant to Section 290.015, 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 section 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.

SEC. 11. Section 290.003 is added to the Penal Code, to read:

290.003. 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 subdivision (c) of Section 290, shall register in accordance with the Act.

SEC. 12. Section 290.004 is added to the Penal Code, to read:

290.004. 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 shall register in accordance with the Act.

SEC. 13. Section 290.005 is added to the Penal Code, to read:

290.005. The following persons shall register in accordance with the Act:

(a) 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 subdivision (c) of Section 290, including offenses in which the person was a principal, as defined in Section 31.

(b) 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.

(c) Except as provided in subdivision (d), any person who would be required to register while residing in the state of conviction for a sex offense committed in that state.

(d) Notwithstanding subdivision (c), a person convicted in another state of an offense similar to one of the following offenses who is required to register in the state of conviction shall not be required to register in California unless the out-of-state offense contains all of the elements of a registerable California offense described in subdivision (c) of Section 290:

(1) Indecent exposure, pursuant to Section 314.

(2) Unlawful sexual intercourse, pursuant to Section 261.5.

(3) Incest, pursuant to Section 285.

(4) 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 Section 290.019, and the department is able, upon the exercise of reasonable diligence, to verify that fact.

(5) Pimping, pursuant to Section 266h, or pandering, pursuant to Section 266i.

SEC. 14. Section 290.006 is added to the Penal Code, to read:

290.006. Any person ordered by any court to register pursuant to the Act for any offense not included specifically in subdivision (c) of Section 290, shall so register, 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.

SEC. 15. Section 290.007 is added to the Penal Code, to read:

290.007. Any person required to register pursuant to any provision of the Act shall register in accordance with the Act, regardless of whether the person's conviction has been dismissed pursuant to Section 1203.4, unless the person obtains a certificate of rehabilitation and is entitled to relief from registration pursuant to Section 290.5.

SEC. 16. Section 290.008 is added to the Penal Code, to read:

290.008. (a) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of Corrections and Rehabilitation 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 subdivision (c) shall register in accordance with the Act.

(b) Any person who is discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Justice, 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 subdivision (c) shall register in accordance with the Act.

(c) Any person described in this section who committed an offense in violation of any of the following provisions shall be required to register pursuant to the Act:

(1) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(2) 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.

(3) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(d) Prior to discharge or parole from the Department of Corrections and Rehabilitation, any person who is subject to registration under this section shall be informed of the duty to register under the procedures set forth in the Act. Department officials shall transmit the required forms and information to the Department of Justice.

(e) 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 section 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.

SEC. 17. Section 290.009 is added to the Penal Code, to read:

290.009. Any person required to register under the Act who is enrolled as a student or is an employee or carries on a vocation, with or without compensation, at an institution of higher learning in this state, shall register pursuant to the provisions of the Act.

SEC. 18. Section 290.010 is added to the Penal Code, to read:

290.010. 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 the Act in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

SEC. 19. Section 290.011 is added to the Penal Code, to read:

290.011. Every person who is required to register pursuant to the Act who is living as a transient shall be required to register for the rest of his or her life as follows:

(a) He or she shall 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 subdivision (b) of Section 290, except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a

transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to subdivision (b) of Section 290. Beginning on or before the 30th day following initial registration upon release, a transient shall 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 shall 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.

(b) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subdivision (b) of Section 290. A person registered at a residence address in accordance with that provision who becomes transient shall have five working days within which to reregister as a transient in accordance with subdivision (a).

(c) 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 subdivision (a). 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 paragraphs (1) to (3), inclusive of subdivision (a) of Section 290.015, and the information specified in subdivision (d).

(d) 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.

(e) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to subdivision (a) shall be

punished in accordance with subdivision (g) of Section 290.018. Failure to comply with any other requirement of this section shall be punished in accordance with either subdivision (a) or (b) of Section 290.018.

(f) A transient who moves out of state shall inform, in person, the chief of police in the city in which he or she is physically present, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, within five working days, of his or her move out of state. The transient shall inform that registering agency of his or her planned destination, residence or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(g) For purposes of this section, "transient" means a person who has no residence. "Residence" means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, 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.

(h) 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 section became effective.

SEC. 20. Section 290.012 is added to the Penal Code, to read:

290.012. (a) 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 subdivision (b) of Section 290. 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 paragraphs (1) to (3), inclusive of subdivision (a) of Section 290.015. The registering agency shall give the registrant a copy of the registration requirements from the Department of Justice form.

(b) 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. Every person who, as a sexually violent predator, 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 to the penalties prescribed in subdivision (f) of Section 290.018.

(c) In addition, every person subject to the Act, while living as a transient in California shall update his or her registration at least every 30 days, in accordance with Section 290.011.

(d) 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).

SEC. 21. Section 290.013 is added to the Penal Code, to read:

290.013. (a) Any person who was last registered at a residence address pursuant to the Act who 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, shall, in person, within five working days of the move, inform the law enforcement agency or agencies with which he or she last registered of the move, the new address or transient location, if known, and any plans he or she has to return to California.

(b) If the person does not know the new residence address or location at the time of the move, the registrant shall, in person, within five working days of the move, inform the last registering agency or agencies that he or she is moving. The person shall later notify the last registering agency or agencies, in writing, sent by certified or registered mail, of the new address or location within five working days of moving into the new residence address or location, whether temporary or permanent.

(c) 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.

(d) If the person's new address is in a Department of Corrections and Rehabilitation facility 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 subdivision shall apply to persons received in a department facility 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.

SEC. 22. Section 290.014 is added to the Penal Code, to read:

290.014. If any person who is required to register pursuant to the Act 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.

SEC. 23. Section 290.015 is added to the Penal Code, to read:

290.015. (a) A person who is subject to the Act shall register, or reregister if the person has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to subdivision (b) of Section 290. This section shall not apply to a person who is incarcerated for less than 30 days if he or she has registered as required by the Act, he or she returns after incarceration to the last registered address, and the annual update of registration that is required to occur within five working days of his or her birthday, pursuant to subdivision (a) of Section 290.012, did not fall within that incarceration period. The registration shall consist of all of the following:

(1) 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.

(2) The fingerprints and a current photograph of the person taken by the registering official.

(3) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(4) Notice to the person that, in addition to the requirements of the Act, he or she may have a duty to register in any other state where he or she may relocate.

(5) 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.

(b) Within three days thereafter, 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.

SEC. 24. Section 290.016 is added to the Penal Code, to read:

290.016. (a) 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 the Act 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:

(1) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(2) The fingerprints and a current photograph of the person.

(3) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(b) Within three days thereafter, the preregistering official shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

SEC. 25. Section 290.017 is added to the Penal Code, to read:

290.017. (a) 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, who is required to register pursuant to the Act, shall, prior to discharge, parole, or release, be informed of his or her duty to register under the Act 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 the Act 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.

(b) 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 the Act 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) Any person who is required to register pursuant to the Act and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under the Act 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 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.

(d) Any person who is required to register pursuant to the Act 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 the Act 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 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 the Act. 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.

SEC. 26. Section 290.018 is added to the Penal Code, to read:

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

(b) Except as provided in subdivisions (f), (h), and (j), any person who is required to register under the Act based on a felony conviction

or juvenile adjudication who willfully violates any requirement of the Act or who has a prior conviction or juvenile adjudication for the offense of failing to register under the Act and who subsequently and willfully violates any requirement of the Act is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(c) 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 subdivision (b) or this subdivision shall apply whether or not the person has been released on parole or has been discharged from parole.

(d) 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 the Act, 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 pursuant to Section 290.008, but who has been found not guilty by reason of insanity, who willfully violates any requirement of the Act 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 the Act, 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.

(e) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this act, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this section. A person convicted of a felony as specified in this section may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this act, 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.

(f) 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 subdivision (b) of Section 290.012, shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(g) Except as otherwise provided in subdivision (f), any person who is required to register or reregister pursuant to Section 290.011 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 for 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 Section 290.011 that he or she reregister no less than every 30 days shall be punished in accordance with either subdivision (a) or (b).

(h) Any person who fails to provide proof of residence as required by paragraph (5) of subdivision (a) of Section 290.015, 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.

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

(j) In addition to any other penalty imposed under this section, 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.

(k) Whenever any person is released on parole or probation and is required to register under the Act but fails to do so within the time prescribed, the parole authority 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.

SEC. 27. Section 290.019 is added to the Penal Code, to read:

290.019. (a) Notwithstanding any other section in the Act, 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 the Act 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 either of the following procedures:

(1) 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.

(2) 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.

(b) 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 the Act, 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 the Act. 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 the Act. Any person whose claim has been denied by the department pursuant to this subdivision may petition the court to appeal the department's denial of the person's claim.

SEC. 28. Section 290.020 is added to the Penal Code, to read:

290.020. In any case in which a person who would be required to register pursuant to the Act 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 section shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

SEC. 29. Section 290.021 is added to the Penal Code, to read:

290.021. Except as otherwise provided by law, the statements, photographs, and fingerprints required by the Act 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.

SEC. 30. Section 290.022 is added to the Penal Code, to read:

290.022. On or before July 1, 2010, the Department of Justice shall renovate the VCIN to do the following:

(1) Correct all software deficiencies affecting data integrity and include designated data fields for all mandated sex offender data.

(2) Consolidate and simplify program logic, thereby increasing system performance and reducing system maintenance costs.

(3) Provide all necessary data storage, processing, and search capabilities.

(4) Provide law enforcement agencies with full Internet access to all sex offender data and photos.

(5) Incorporate a flexible design structure to readily meet future demands for enhanced system functionality, including public Internet access to sex offender information pursuant to Section 290.46.

SEC. 31. Section 290.023 is added to the Penal Code, to read:

290.023. The registration provisions of the Act are applicable to every person described in the Act, without regard to when his or her crime or crimes were committed or his or her duty to register pursuant to the Act arose, and to every offense described in the Act, regardless of when it was committed.

SEC. 32. Section 290.01 of the Penal Code is amended to read:

290.01. (a) (1) Commencing October 28, 2002, every person required to register pursuant to Sections 290 to 290.009, inclusive, of the Sex Offender Registration Act who is enrolled as a student of any university, college, community college, or other institution of higher learning, or is, with or without compensation, a full-time or part-time employee of that university, college, community college, or other institution of higher learning, or is carrying on a vocation at the university, college, community college, or other institution of higher learning, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall, in addition to the registration required by the Sex Offender Registration Act, register with the campus police department within five working days of commencing enrollment or employment at that university, college, community college, or other institution of higher learning, on a form as may be required by the Department of Justice. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit. The registrant shall also notify the campus police department within five working days of ceasing to be enrolled or employed, or ceasing to carry on a vocation, at the university, college, community college, or other institution of higher learning.

(2) For purposes of this section, a campus police department is a police department of the University of California, California State

University, or California Community College, established pursuant to Section 72330, 89560, or 92600 of the Education Code, or is a police department staffed with deputized or appointed personnel with peace officer status as provided in Section 830.6 of the Penal Code and is the law enforcement agency with the primary responsibility for investigating crimes occurring on the college or university campus on which it is located.

(b) If the university, college, community college, or other institution of higher learning has no campus police department, the registrant shall instead register pursuant to subdivision (a) with the police of the city in which the campus is located or the sheriff of the county in which the campus is located if the campus is located in an unincorporated area or in a city that has no police department, on a form as may be required by the Department of Justice. The requirements of subdivisions (a) and (b) are in addition to the requirements of the Sex Offender Registration Act.

(c) A first violation of this section is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000). A second violation of this section is a misdemeanor punishable by imprisonment in a county jail for not more than six months, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. A third or subsequent violation of this section is a misdemeanor punishable by imprisonment in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) (1) (A) The following information regarding a registered sex offender on campus as to whom information shall not be made available to the public via the Internet Web site as provided in Section 290.46 may be released to members of the campus community by any campus police department or, if the university, college, community college, or other institution of higher learning has no police department, the police department or sheriff's department with jurisdiction over the campus, and any employees of those agencies, as required by Section 1092(f)(1)(I) of Title 20 of the United States Code:

(i) The offender's full name.

(ii) The offender's known aliases.

(iii) The offender's gender.

(iv) The offender's race.

(v) The offender's physical description.

(vi) The offender's photograph.

(vii) The offender's date of birth.

(viii) Crimes resulting in registration under Section 290.

(ix) The date of last registration or reregistration.

(B) The authority provided in this subdivision is in addition to the authority of a peace officer or law enforcement agency to provide information about a registered sex offender pursuant to Section 290.45, and exists notwithstanding Section 290.021 or any other provision of law.

(2) Any law enforcement entity and employees of any law enforcement entity listed in paragraph (1) shall be immune from civil or criminal liability for good faith conduct under this subdivision.

(3) Nothing in this subdivision shall be construed to authorize campus police departments or, if the university, college, community college, or other institution has no police department, the police department or sheriff's department with jurisdiction over the campus, to make disclosures about registrants intended to reach persons beyond the campus community.

(4) (A) Before being provided any information by an agency pursuant to this subdivision, a member of the campus community who requests that information shall sign a statement, on a form provided by the Department of Justice, stating that he or she is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the campus community to protect themselves and their children from sex offenders, and that he or she understands it is unlawful to use information obtained pursuant to this subdivision to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the agency's office for a minimum of five years.

(B) An agency disseminating printed information pursuant to this subdivision shall maintain records of the means and dates of dissemination for a minimum of five years.

(5) For purposes of this subdivision, "campus community" means those persons present at, and those persons regularly frequenting, any place associated with an institution of higher education, including campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the institution for educational instruction, business, or institutional events; and public areas contiguous to any campus or facility that are regularly frequented by students, employees, or volunteers of the campus.

SEC. 33. Section 290.04 of the Penal Code is amended to read:

290.04. (a) (1) The sex offender risk assessment tools authorized by this section for use with selected populations shall be known, with respect to each population, as the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO). If a SARATSO has not been selected for a given population pursuant to this section, no duty to

administer the SARATSO elsewhere in this code shall apply with respect to that population. Every person required to register as a sex offender shall be subject to assessment with the SARATSO as set forth in this section and elsewhere in this code.

(2) A representative of the State Department of Mental Health, in consultation with a representative of the Department of Corrections and Rehabilitation and a representative of the Attorney General's office, shall comprise the SARATSO Review Committee. The purpose of the committee, which shall be staffed by the State Department of Mental Health, shall be to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated and cross validated, and is, or is reasonably likely to be, widely accepted by the courts. The committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate.

(b) (1) Commencing January 1, 2007, the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale.

(2) On or before January 1, 2008, the SARATSO Review Committee shall determine whether the STATIC-99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether the STATIC-99 should be replaced as the SARATSO with a different risk assessment tool. If the committee unanimously agrees on changes to be made to the SARATSO, it shall advise the Governor and the Legislature of the changes, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for adult males.

(c) On or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for adult females required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for adult females.

(d) On or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for male juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State

Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for male juveniles.

(e) On or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for female juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for female juveniles.

(f) The committee shall periodically evaluate the SARATSO for each specified population. If the committee unanimously agrees on a change to the SARATSO for any population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for that population.

(g) The committee shall perform other functions consistent with the provisions of this act or as may be otherwise required by law, including, but not limited to, defining tiers of risk based on the SARATSO. The committee shall be immune from liability for good faith conduct under this act.

SEC. 34. Section 290.05 of the Penal Code is amended to read:

290.05. (a) The SARATSO Training Committee shall be comprised of a representative of the State Department of Mental Health, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General's Office, and a representative of the Chief Probation Officers of California.

(b) On or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.

(c) (1) The Department of Corrections and Rehabilitation shall be responsible for overseeing the training of persons who will administer the SARATSO pursuant to paragraph (1) or (2) of subdivision (a) of Section 290.06.

(2) The State Department of Mental Health shall be responsible for overseeing the training of persons who will administer the SARATSO pursuant to paragraph (3) of subdivision (a) of Section 290.06.

(3) The Correction Standards Authority shall be responsible for developing standards for the training of persons who will administer the

SARATSO pursuant to paragraph (4) or (5) of subdivision (a) of Section 290.06.

(4) The Commission on Peace Officer Standards and Training shall be responsible for developing standards for the training of persons who will administer the SARATSO pursuant to subdivision (c) of Section 290.06.

(d) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years.

(e) The SARATSO may be performed for purposes authorized by statute only by persons trained pursuant to this section.

SEC. 35. Section 290.3 of the Penal Code is amended to read:

290.3. (a) Every person who is convicted of any offense specified in subdivision (c) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for commission of the underlying offense, be punished by a fine of three hundred dollars ($300) upon the first conviction or a fine of five hundred dollars ($500) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

An amount equal to all fines collected pursuant to this subdivision during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense specified in subdivision (c) of Section 290, shall be transferred once a month by the county treasurer to the Controller for deposit in the General Fund. Moneys deposited in the General Fund pursuant to this subdivision shall be transferred by the Controller as provided in subdivision (b).

(b) Except as provided in subdivision (d), out of the moneys deposited pursuant to subdivision (a) as a result of second and subsequent convictions of Section 290, one-third shall first be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1) of this subdivision. Out of the remainder of all moneys deposited pursuant to subdivision (a), 50 percent shall be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1), 25 percent shall be transferred to the Department of Justice DNA Testing Fund, as provided in paragraph (2), and 25 percent

shall be allocated equally to counties that maintain a local DNA testing laboratory, as provided in paragraph (3).

(1) Those moneys so designated shall be transferred to the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

(2) Those moneys so designated shall be directed to the Department of Justice and transferred to the Department of Justice DNA Testing Fund, which is hereby created, for the exclusive purpose of testing deoxyribonucleic acid (DNA) samples for law enforcement purposes. The moneys in that fund shall be available for expenditure upon appropriation by the Legislature.

(3) Those moneys so designated shall be allocated equally and distributed quarterly to counties that maintain a local DNA testing laboratory. Before making any allocations under this paragraph, the Controller shall deduct the estimated costs that will be incurred to set up and administer the payment of these funds to the counties. Any funds allocated to a county pursuant to this paragraph shall be used by that county for the exclusive purpose of testing DNA samples for law enforcement purposes.

(c) Notwithstanding any other provision of this section, the Department of Corrections and Rehabilitation may collect a fine imposed pursuant to this section from a person convicted of a violation of any offense listed in subdivision (c) of Section 290, that results in incarceration in a facility under the jurisdiction of the Department of Corrections and Rehabilitation. All moneys collected by the Department of Corrections and Rehabilitation under this subdivision shall be transferred, once a month, to the Controller for deposit in the General Fund, as provided in subdivision (a), for transfer by the Controller, as provided in subdivision (b).

(d) An amount equal to one hundred dollars ($100) for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars ($100) shall be transferred to the Department of Corrections and Rehabilitation to defray the cost of the global positioning system used to monitor sex offender parolees.

SEC. 36. Section 290.46 of the Penal Code is amended to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall

update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivisions (b), (c), or (d), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The State Department of Mental Health shall provide to the Department of Justice Sex Offender Tracking Program the names of all persons committed to its custody pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(B) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Paragraph (2) or (6) of subdivision (a) of Section 261.

(D) Section 264.1.

(E) Section 269.

(F) Subdivision (c) or (d) of Section 286.

(G) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(H) Subdivision (c) or (d) of Section 288a.

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.4, provided that the offense is a felony.

(K) Section 288.5.

(L) Subdivision (a) or (j) of Section 289.

(M) Section 288.7.

(N) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in subdivision (c) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in subdivision (c) of Section 290, subject to this subdivision.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(B) Section 266, provided that the offense is a felony.

(C) Section 266c, provided that the offense is a felony.

(D) Section 266j.

(E) Section 267.

(F) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 288.4, provided that the offense is a misdemeanor.

(I) Section 626.81.

(J) Section 647.6.

(K) Section 653c.

(L) Any person required to register pursuant to Section 290 based upon an out-of-state conviction, unless that person is excluded from the Internet Web site pursuant to subdivision (e). However, if the Department of Justice has determined that the out-of-state crime, if committed or attempted in this state, would have been punishable in this state as a crime described in subdivision (c) of Section 290, the person shall be placed on the Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.

(B) Section 647.6, if the offense is a misdemeanor.

(C) (i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly

demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(iii) If, subsequent to his or her application, the offender commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion, from the Internet Web site shall be terminated.

(iv) For the purposes of this subparagraph, "successfully completed probation" means that during the period of probation the offender neither received additional county jail or state prison time for a violation of probation nor was convicted of another offense resulting in a sentence to county jail or state prison.

(3) If the department determines that a person who was granted an exclusion under a former version of this subdivision would not qualify for an exclusion under the current version of this subdivision, the department shall rescind the exclusion, make a reasonable effort to provide notification to the person that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the offender available to the public on the Internet Web site as provided in this section.

(4) Effective January 1, 2012, no person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of low or moderate-low.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about specified sex offenders available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that some offenders are eligible to apply for exclusion from the Internet Web site.

(g) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2).

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) of Section 290.

(i) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(j) (1) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars ($10,000) and not more than fifty thousand dollars ($50,000).

(2) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(k) Any person who is required to register pursuant to Section 290 who enters an Internet Web site established pursuant to this section shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(*l*) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.
(C) Loans.
(D) Credit.
(E) Employment.
(F) Education, scholarships, or fellowships.
(G) Housing or accommodations.
(H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(m) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(n) On or before July 1, 2006, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(o) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(p) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available information about registered sex offenders to further public safety. These strategies may include, but are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Web site, and any other resource that promotes public education about these offenders.

SEC. 37. Section 296.2 of the Penal Code is amended to read:

296.2. (a) Whenever the DNA Laboratory of the Department of Justice notifies the Department of Corrections and Rehabilitation or any law enforcement agency that a biological specimen or sample, or print impression is not usable for any reason, the person who provided the original specimen, sample, or print impression shall submit to collection of additional specimens, samples, or print impressions. The Department of Corrections and Rehabilitation or other responsible law enforcement agency shall collect additional specimens, samples, and print impressions from these persons as necessary to fulfill the requirements of this chapter, and transmit these specimens, samples, and print impressions to the appropriate agencies of the Department of Justice.

(b) If a person, including any juvenile, is convicted of, pleads guilty or no contest to, is found not guilty by reason of insanity of, or is adjudged a ward of the court under Section 602 of the Welfare and Institutions Code for committing, any of the offenses described in subdivision (a) of Section 296, and has given a blood specimen or other biological sample or samples to law enforcement for any purpose, the DNA Laboratory of the Department of Justice is authorized to analyze the blood specimen and other biological sample or samples for forensic identification markers, including DNA markers, and to include the DNA and forensic identification profiles from these specimens and samples in the state's DNA and forensic identification databank and databases.

This subdivision applies whether or not the blood specimen or other biological sample originally was collected from the sexual or violent offender pursuant to the databank and database program, and whether or not the crime committed predated the enactment of the state's DNA and forensic identification databank program, or any amendments thereto. This subdivision does not relieve a person convicted of a crime described in subdivision (a) of Section 296, or otherwise subject to this chapter, from the requirement to give blood specimens, saliva samples, and thumb and palm print impressions for the DNA and forensic identification databank and database program as described in this chapter.

(c) Any person who is required to register under the Sex Offender Registration Act who has not provided the specimens, samples, and print impressions described in this chapter for any reason including the release of the person prior to the enactment of the state's DNA and forensic identification database and databank program, an oversight or error, or because of the transfer of the person from another state, the person, as an additional requirement of registration or of updating his or her annual registration pursuant to the Sex Offender Registration Act shall give specimens, samples, and print impressions as described in this chapter for inclusion in the state's DNA and forensic identification database and databank.

At the time the person registers or updates his or her registration, he or she shall receive an appointment designating a time and place for the collection of the specimens, samples, and print impressions described in this chapter, if he or she has not already complied with the provisions of this chapter.

As specified in the appointment, the person shall report to a county jail facility in the county where he or she resides or is temporarily located to have specimens, samples, and print impressions collected pursuant to this chapter or other facility approved by the Department of Justice for this collection. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

If, prior to the time of the annual registration update, a person is notified by the Department of Justice, a probation or parole officer, other law enforcement officer, or officer of the court, that he or she is subject to this chapter, then the person shall provide the specimens, samples, and print impressions required by this chapter within 10 calendar days of the notification at a county jail facility or other facility approved by the department for this collection.

SEC. 38. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison, or a county jail for up to

one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) Every person who commits a violation of subdivision (a), and who has been previously convicted of a violation of this section, an offense requiring registration under the Sex Offender Registration Act, or an attempt to commit any of the above-mentioned offenses, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 39. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that

seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(*l*) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 39.5. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic

communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(*l*) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and

transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 40. Section 801.1 of the Penal Code is amended to read:

801.1. (a) Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in Section 261, 286, 288, 288.5, 288a, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object, that is alleged to have been committed when the victim was under the age of 18 years, may be commenced any time prior to the victim's 28th birthday.

(b) Notwithstanding any other limitation of time described in this chapter, if subdivision (a) does not apply, prosecution for a felony offense described in subdivision (c) of Section 290 shall be commenced within 10 years after commission of the offense.

SEC. 41. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the

time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subdivision (c) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in People v. Superior Court (Laff) (2001) 25 Cal.4th 703, People v. Superior Court (Bauman & Rose) (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

SEC. 42. Section 1202.7 of the Penal Code is amended to read:

1202.7. The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. It is the intent

of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment.

SEC. 43. Section 1417.8 of the Penal Code is amended to read:

1417.8. (a) Notwithstanding any other provision of this chapter, the court shall direct that any photograph of any minor that has been found by the court to be harmful matter, as defined in Section 313, and introduced or filed as an exhibit in any criminal proceeding specified in subdivision (b) be handled as follows:

(1) Prior to the final determination of the action or proceeding, the photograph shall be available only to the parties or to a person named in a court order to receive the photograph.

(2) After the final determination of the action or proceeding, the photograph shall be preserved with the permanent record maintained by the clerk of the court. The photograph may be disposed of or destroyed after preservation through any appropriate photographic or electronic medium. If the photograph is disposed of, it shall be rendered unidentifiable before the disposal. No person shall have access to the photograph unless that person has been named in a court order to receive the photograph. Any copy, negative, reprint, or other duplication of the photograph in the possession of the state, a state agency, the defendant, or an agent of the defendant, shall be delivered to the clerk of the court for disposal whether or not the defendant was convicted of the offense.

(b) The procedure provided by subdivision (a) shall apply to actions listed under subdivision (c) of Section 290, and to acts under the following provisions:

(1) Section 261.5.

(2) Section 272.

(3) Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1.

(4) Chapter 7.6 (commencing with Section 313) of Title 9 of Part 1.

(c) For the purposes of this section, "photograph" means any photographic image contained in a digital format or on any chemical, mechanical, magnetic, or electronic medium.

SEC. 44. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections and Rehabilitation for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Parole Hearings to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be 10 years.

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the

inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, the period of parole is subject to the following:

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections and Rehabilitation or the Board of Parole Hearings may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Parole Hearings shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Parole Hearings, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on parole to engage them in treatment.

SEC. 45. Section 3000.07 of the Penal Code is amended to read:

3000.07. (a) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subdivision (c) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

(b) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 46. Section 3004 of the Penal Code is amended to read:

3004. (a) Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subdivision (c) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for life.

(c) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring.

SEC. 47. Section 3005 of the Penal Code is amended and renumbered to read:

3008. (a) The Department of Corrections and Rehabilitation shall ensure that all parolees under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized parole supervision and are required to report frequently to designated parole officers. The department may place any other parolee convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 who is on active supervision on intensive and specialized supervision and require him or her to report frequently to designated parole officers.

(b) The department shall develop and, at the discretion of the secretary, and subject to an appropriation of the necessary funds, may implement a plan for the implementation of relapse prevention treatment programs, and the provision of other services deemed necessary by the department, in conjunction with intensive and specialized parole supervision, to reduce the recidivism of sex offenders.

(c) The department shall develop control and containment programming for sex offenders who have been deemed to pose a high risk to the public of committing a sex crime, as determined by the SARATSO, and shall require participation in appropriate programming as a condition of parole.

SEC. 48. Section 3060.6 of the Penal Code is amended to read:

3060.6. Notwithstanding any other provision of law, on or after January 1, 2001, whenever any paroled person is returned to custody or has his or her parole revoked for conduct described in subdivision (c) of Section 290, the parole authority shall report the circumstances that were the basis for the return to custody or revocation of parole to the law enforcement agency and the district attorney that has primary jurisdiction over the community in which the circumstances occurred and to the Department of Corrections and Rehabilitation. Upon the release of the paroled person, the Department of Corrections and Rehabilitation shall inform the law enforcement agency and the district attorney that has primary jurisdiction over the community in which the circumstances occurred and, if different, the county in which the person is paroled or discharged, of the circumstances that were the basis for the return to custody or revocation of parole.

SEC. 49. Section 5054.1 of the Penal Code is amended to read:

5054.1. The Secretary of the Department of Corrections and Rehabilitation has full power to order returned to custody any person under the secretary's jurisdiction. The written order of the secretary shall be sufficient warrant for any peace officer to return to actual custody any escaped state prisoner or any state prisoner released prior to his or

her scheduled release date who should be returned to custody. All peace officers shall execute an order as otherwise provided by law.

SEC. 50. Section 5054.2 of the Penal Code is amended to read:

5054.2. Whenever a person is incarcerated in a state prison for violating Section 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289, and the victim of one or more of those offenses is a child under the age of 18 years, the Secretary of the Department of Corrections and Rehabilitation shall protect the interest of that child victim by prohibiting visitation between the incarcerated person and the child victim pursuant to Section 1202.05. The secretary shall allow visitation only when the juvenile court, pursuant to Section 362.6 of the Welfare and Institutions Code, finds that visitation between the incarcerated person and his or her child victim is in the best interests of the child victim.

SEC. 51. (a) Section 1.5 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by both this bill and SB 776. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1522 of the Health and Safety Code, and (3) this bill is enacted after SB 776, in which case Section 1522 of the Health and Safety Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 776, at which time Section 1.5 of this bill shall become operative.

(b) Section 39.5 of this bill incorporates amendments to Section 646.9 of the Penal Code proposed by both this bill and AB 289. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 646.9 of the Penal Code, and (3) this bill is enacted after AB 289, in which case Section 646.9 of the Penal Code, as amended by Section 39 of this bill, shall remain operative only until the operative date of AB 289, at which time Section 39.5 of this bill shall become operative.

SEC. 52. It is the intent of the Legislature that any reference to Section 290 of the Penal Code that appears in any other provision of a bill enacted during the 2007–08 Regular Session be construed to refer to a corresponding provision of Section 290 of the Penal Code as renumbered by this act.

SEC. 53. 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 conforming changes are made to laws relating to sex offenders, it is necessary that this act take effect immediately.

CHAPTER 580

An act to amend Section 1522 of the Health and Safety Code, and to amend Section 16504.5 of the Welfare and Institutions Code, relating to community care facilities.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be

revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing.

This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a

maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or

bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this

subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department

of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For

purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing

authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department, a county office with department-delegated licensing authority, or a county child welfare agency with criminal record clearance and exemption authority, a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(5) (A) A county child welfare agency with authority to secure clearances pursuant to Section 16504.5 of the Welfare and Institutions Code and to grant exemptions pursuant to Section 361.4 of the Welfare and Institutions Code may accept a clearance or exemption from another county with criminal record and exemption authority pursuant to these sections.

(B) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by a county child welfare agency with criminal record clearance and exemption authority, the Department of Justice shall process a request from a county child welfare agency with criminal record and exemption authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the State Department of Social Services and the Department of Justice.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 1.5. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime

specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the

applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy

of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with

a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the

citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is

awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot

grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of

Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a

conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided

in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department, a county office with department-delegated licensing authority, or county child welfare agency with criminal record clearance and exemption authority, a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(5) (A) A county child welfare agency with authority to secure clearances pursuant to Section 16504.5 of the Welfare and Institutions Code and to grant exemptions pursuant to Section 361.4 of the Welfare and Institutions Code may accept a clearance or exemption from another county with criminal record and exemption authority pursuant to these sections.

(B) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by a county child welfare agency with criminal record clearance and exemption authority, the Department of Justice shall process a request from a county child welfare agency with criminal record and exemption authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the State Department of Social Services and the Department of Justice.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 2. Section 16504.5 of the Welfare and Institutions Code is amended to read:

16504.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (b) of Section 11105 of the Penal Code, a child welfare agency may secure from an appropriate governmental criminal justice agency the state summary criminal history information, as defined in subdivision (a) of Section 11105 of the Penal Code, through the California Law Enforcement Telecommunications System pursuant to subdivision (d) of Section 309, and subdivision (a) of Section 1522 of the Health and Safety Code for the following purposes:

(A) To conduct an investigation pursuant to Section 11166.3 of the Penal Code or an investigation involving a child in which the child is alleged to come within the jurisdiction of the juvenile court under Section 300.

(B) (i) To assess the appropriateness and safety of placing a child who has been detained or is a dependent of the court, in the home of a relative assessed pursuant to Section 309 or 361.4, or in the home of a

nonrelative extended family member assessed as described in Section 362.7 during an emergency situation.

(ii) When a relative or nonrelative family member who has been assessed pursuant to clause (i) and approved as a caregiver moves to a different county and continued placement of the child with that person is intended, the move shall be considered an emergency situation for purposes of this subparagraph.

(C) To attempt to locate a parent or guardian pursuant to Section 311 of a child who is the subject of dependency court proceedings.

(2) Any time that a child welfare agency initiates a criminal background check through the California Law Enforcement Telecommunications System for the purpose described in subparagraph (B) of paragraph (1), the agency shall ensure that a state-level fingerprint check is initiated within 10 calendar days of the check, unless the whereabouts of the subject of the check are unknown or the subject of the check refuses to submit to the fingerprint check. The Department of Justice shall provide the requesting agency a copy of all criminal history information regarding an individual that it maintains pursuant to subdivision (b) of Section 11105 of the Penal Code.

(b) Criminal justice personnel shall cooperate with requests for criminal history information authorized pursuant to this section and shall provide the information to the requesting entity in a timely manner.

(c) Any law enforcement officer or person authorized by this section to receive the information who obtains the information in the record and knowingly provides the information to a person not authorized by law to receive the information is guilty of a misdemeanor as specified in Section 11142 of the Penal Code.

(d) Information obtained pursuant to this section shall not be used for any purposes other than those described in subdivision (a).

(e) Nothing in this section shall preclude a relative or other person living in a relative's home from refuting any of the information obtained by law enforcement if the individual believes the state- or federal-level criminal records check revealed erroneous information.

(f) (1) A state or county welfare agency may submit to the Department of Justice fingerprint images and related information required by the Department of Justice of parents or legal guardians when determining their suitability for reunification with a dependent child subject to the jurisdiction of the juvenile court, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests, as well as information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal. Of the information

received by the Department of Justice pursuant to this subdivision, only the parent's or legal guardian's criminal history for the time period following the removal of the child from the parent or legal guardian shall be considered.

(2) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this subdivision. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and respond to the state or county welfare agency.

(3) The Department of Justice shall provide a response to the state or county welfare agency pursuant to subdivision (p) of Section 11105 of the Penal Code.

(4) The state or county welfare agency shall not request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for individuals described in this subdivision.

(5) The Department of Justice shall charge a fee sufficient to cover the costs of processing the request described in this subdivision.

(6) This subdivision shall become operative on July 1, 2007.

(g) A fee, determined by the Federal Bureau of Investigation and collected by the Department of Justice, shall be charged for each federal-level criminal offender record information request submitted pursuant to this section and Section 361.4.

SEC. 3. Nothing in this act authorizes the disclosure of information pertaining to arrests that may not be disclosed to the State Department of Social Services under the injunctions listed in Central Valley v. Younger and the related case of Gresher v. Deukmejian (Alameda Superior Court Nos. 497394-6 and 524298-6).

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by this bill and SB 172. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1522 of the Health and Safety Code, and (3) this bill is enacted after SB 172, in which case Section 1522 of the Health and Safety Code, as amended by SB 172, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 581

An act to amend Section 11105 of the Penal Code, relating to criminal information.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

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

SECTION 1. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to 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.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or parole revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4.

(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(20) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(21) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer, as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(10) (A) Any public utility, as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal

history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(11) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the

Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing

with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101 of the Penal Code, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated,

successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding

any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 777.5 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 777.5 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 777.5 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

CHAPTER 582

An act to amend Sections 273.5 and 646.9 of the Penal Code, relating to protective orders.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 273.5 of the Penal Code is amended to read:

273.5. (a) Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000) or by both that fine and imprisonment.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, "traumatic condition" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

(d) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(e) (1) Any person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars ($10,000).

(2) Any person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars ($10,000), or by both that imprisonment and fine.

(f) If probation is granted to any person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted under subdivision (a) who has been convicted of any prior offense specified in subdivision (e), the court shall impose one of the following conditions of probation:

(1) If the defendant has suffered one prior conviction within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition thereof, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with

the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(i) Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

SEC. 2. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting

the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to subparagraph (E) of paragraph (2) of subdivision (a) of Section 290.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(*l*) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 2.5. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as

designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(*l*) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 646.9 of the Penal Code proposed by both this bill and SB 172. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 646.9 of the Penal Code, and (3) this bill is enacted after SB 172, in which case Section 2 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 583

An act to amend Sections 8521, 8533, and 8900 of, and to add Sections 7901.1, 7906.5, 8900.5, 8921, 8923, 8924, and 8925 to, the Family Code,

to amend Sections 1502, 1503.5, 1522, 1522.05, and 1522.1 of the Health and Safety Code, to amend Sections 11079, 11105, 11167.5, and 11170 of the Penal Code, and to amend Sections 291, 293, 294, 295, 361.4, 361.5, 366.21, 366.22, 366.26, 16500.1, and 16501.1 of the Welfare and Institutions Code, relating to children.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 7901.1 is added to the Family Code, to read:

7901.1. (a) Within 60 days of receipt of a request from another state to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, a county child welfare agency shall, directly or by contract, do both of the following:

(1) Conduct and complete the study.

(2) Return a report to the requesting state on the results of the study. The report shall address the extent to which placement in the home would meet the needs of the child.

(b) Except as provided in subdivision (c), in the case of a home study commenced on or before September 30, 2008, if the agency fails to comply with subdivision (a) within the 60-day period as a result of circumstances beyond the control of the agency, the agency shall have 75 days to comply with subdivision (a). The agency shall document the circumstances involved and certify that completing the home study is in the best interests of the child. For purposes of this subdivision, "circumstances beyond the control of the agency" include, but are not limited to, the failure of a federal agency to provide the results of a background check or the failure of any entity to provide completed medical forms, if the background check or records were requested by the agency at least 45 days before the end of the 60-day period.

(c) Subdivision (b) shall not be construed to require the agency to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents.

(d) The agency shall treat any report described in subdivision (a) that is received from another state, an Indian tribe, or a private agency under contract with another state, as meeting any requirements imposed by the state for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the agency determines, based on grounds that are specific to the content of the report,

that making a decision in reliance on the report would be contrary to the welfare of the child.

(e) A county is not restricted from contracting with a private agency for the conduct of a home study described in subdivision (a).

(f) The department shall work with counties to identify barriers to meeting the timeframes specified in this section and to develop recommendations to reduce or eliminate those barriers.

SEC. 2. Section 7906.5 is added to the Family Code, to read:

7906.5. (a) Within 60 days after an officer or agency of this state, or its political subdivision, receives a request from another state to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child, who is in the custody of the requesting state, in the home, the county child welfare agency shall, directly or indirectly, do both of the following:

(1) Conduct and complete the home study.

(2) Return to the requesting state a report on the results of the home study, which shall address the extent to which placement in the home would meet the needs of the child.

(b) A licensed private adoption agency may agree to provide the services listed in subdivision (a), and upon that agreement, shall comply with the requirements of paragraphs (1) and (2) of subdivision (a).

(c) Notwithstanding subdivision (a), in the case of a home study commenced on or before September 30, 2008, if the county fails to comply with subdivision (a) within the 60-day period as a result of circumstances beyond the control of the state, including, but not limited to, failure by a federal agency to provide the results of a background check or failure of any entity to provide completed medical forms requested by the state at least 45 days before the end of the 60-day period, the county shall have 75 days to comply with subdivision (a) if the county documents the circumstances involved and certifies that completing the home study is in the best interest of the child.

(d) Nothing in this section shall be construed to require the county to have completed, within the applicable period, those portions of the home study concerning the education and training of the prospective foster parent or adoptive parent.

(e) The county shall treat any report described in subdivision (a) that is received from another state, an Indian tribe, or a private agency under contract with another state, as meeting any requirements imposed by the state for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the county determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child.

(f) A county is not restricted from contracting with a private agency for the conduct of a home study described in subdivision (a).

SEC. 3. Section 8521 of the Family Code is amended to read:

8521. (a) "Full-service adoption agency" means a licensed entity engaged in the business of providing adoption services, that does all of the following:

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

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

(3) Places children for adoption.

(4) Supervises adoptive placements.

(b) Private full-service adoption agencies shall be organized and operated on a nonprofit basis. As a condition of licensure to provide intercountry adoption services, a private full-service adoption agency shall be accredited by the Council on Accreditation, or supervised by an accredited primary provider, or acting as an exempted provider, in compliance with Subpart F (commencing with Section 96.29) of Part 96 of Title 22 of the Code of Federal Regulations.

SEC. 4. Section 8533 of the Family Code is amended to read:

8533. (a) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, which does all of the following:

(1) Assesses the prospective adoptive parents.

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

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

(b) Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis. As a condition of licensure to provide intercountry adoption services, a noncustodial adoption agency shall be accredited by the Council on Accreditation, or supervised by an accredited primary provider, or acting as an exempted provider, in compliance with Subpart F (commencing with Section 96.29) of Part 96 of Title 22 of the Code of Federal Regulations.

SEC. 5. Section 8900 of the Family Code is amended to read:

8900. (a) Intercountry adoption services described in this chapter shall be exclusively provided by private adoption agencies licensed by the department specifically to provide these services. As a condition of licensure to provide intercountry adoption services, any private full-service adoption agency and any noncustodial adoption agency shall

be accredited by the Council on Accreditation, or supervised by an accredited primary provider, or acting as an exempted provider, in compliance with Subpart F (commencing with Section 96.29) of Part 96 of Title 22 of the Code of Federal Regulations.

(b) A private full-service adoption agency or a noncustodial adoption agency, when acting as the primary provider and using a supervised provider, shall ensure that each supervised provider operates under a written agreement with the primary provider pursuant to subdivision (b) of Section 96.45 of Title 22 of the Code of Federal Regulations.

(c) The primary provider shall provide to the department a copy of the written agreement with each supervised provider containing all provisions required pursuant to subdivision (b) of Section 96.45 of Title 22 of the Code of Federal Regulations.

SEC. 6. Section 8900.5 is added to the Family Code, to read:

8900.5. As used in this chapter:

(a) "Accredited agency" means an agency that has been accredited by an accrediting entity, in accordance with the standards in Subpart F (commencing with Section 96.29) of Part 96 of Title 22 of the Code of Federal Regulations, to provide adoption services in the United States in cases subject to the convention. Accredited agency does not include a temporarily accredited agency.

(b) "Adoption service" means any of the following services:

(1) Identifying a child for adoption and arranging an adoption.

(2) Securing the necessary consent to termination of parental rights and to adoption.

(3) Performing a background study on a child or a home study on any prospective adoptive parent, and reporting on the study.

(4) Making nonjudicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child.

(5) Monitoring a case after a child has been placed with any prospective adoptive parent until final adoption.

(6) If necessary because of a disruption before final adoption, assuming custody and providing or facilitating child care or any other social service pending an alternative placement.

(c) "Central authority" means the entity designated under paragraph (1) of Article 6 of the convention by a convention country. The United States Department of State is designated as the United States Central Authority pursuant to the federal Intercountry Adoption Act of 2000 (42 U.S.C. Sec. 14911).

(d) "Convention" means the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993.

(e) "Convention adoption" means the adoption of a child resident in a convention country by a United States citizen, or an adoption of a child resident in the United States by an individual or individuals residing in a convention country, if, in connection with the adoption, the child has moved or will move between the United States and the convention country.

(f) "Convention country" means a country that is party to the convention and with which the convention is in force for the United States.

(g) "Exempted provider" means a social work professional or organization that performs a home study on any prospective adoptive parent, or a child background study, or both, in the United States in connection with a convention adoption, and who is not currently providing and has not previously provided any other adoption service in the case.

(h) "Hague adoption certificate" means a certificate issued by the secretary in an outgoing case (where the child is emigrating from the United States to another convention country) certifying that a child has been adopted in the United States in accordance with the convention and, except as provided in subdivision (b) of Section 97.4 of Title 22 of the Code of Federal Regulations, the Intercountry Adoption Act of 2000 (42 U.S.C. Sec. 14901 et seq.; the IAA).

(i) "Hague custody declaration" means a declaration issued by the secretary in an outgoing case (where the child is emigrating from the United States to another convention country) declaring that custody of a child for purposes of adoption has been granted in the United States in accordance with the convention and, except as provided in subdivision (b) of Section 97.4 of Title 22 of the Code of Federal Regulations, the IAA.

(j) "Legal service" means any service, other than those defined in this section as an adoption service, that relates to the provision of legal advice and information or to the drafting of legal instruments. Legal service includes, but is not limited to, any of the following services:

(1) Drafting contracts, powers of attorney, and other legal instruments.

(2) Providing advice and counsel to an adoptive parent on completing forms for the State Department of Health Care Services or the United States Department of State.

(3) Providing advice and counsel to accredited agencies, temporarily accredited agencies, approved persons, or prospective adoptive parents on how to comply with the convention, the IAA, and any regulations implementing the IAA.

(k) "Primary provider" means the accredited agency that is identified pursuant to Section 96.14 of Title 22 of the Code of Federal Regulations

as responsible for ensuring that all adoption services are provided and responsible for supervising any supervised providers when used.

(*l*) "Public domestic authority" means an authority operated by a state, local, or tribal government.

(m) "Secretary" means the United States Secretary of State, and includes any official of the United States Department of State exercising the authority of the Secretary of State under the convention, the IAA, or any regulations implementing the IAA, pursuant to a delegation of authority.

(n) "Supervised provider" means any agency, person, or other nongovernmental entity that is providing any adoption service in a convention adoption under the supervision and responsibility of an accredited agency that is acting as the primary provider in the case.

SEC. 7. Section 8921 is added to the Family Code, to read:

8921. An adoption facilitator shall not offer, provide, or facilitate any adoption service, as described in this chapter, in connection with a convention adoption unless it is registered and posts a bond pursuant to Section 8632.5, and is approved by the accrediting entity pursuant to Subpart F (commencing with Section 96.29) of Part 96 of Title 22 of the Code of Federal Regulations.

SEC. 8. Section 8923 is added to the Family Code, to read:

8923. (a) A complaint against an accredited agency or approved person in connection with a convention adoption shall be filed according to the procedures set forth in Subpart J (commencing with Section 96.68) of Part 96 of Title 22 of the Code of Federal Regulations.

(b) Each private full-service adoption agency and noncustodial adoption agency licensed by the department under this chapter shall notify the department of any complaint filed against it pursuant to Subpart J (commencing with Section 96.68) of Part 96 of Title 22 of the Code of Federal Regulations.

(c) The department may revoke the license of any agency that fails to comply with the provisions of this chapter and Part 96 of Title 22 of the Code of Federal Regulations.

SEC. 9. Section 8924 is added to the Family Code, to read:

8924. (a) For cases in which a child is emigrating from California to a convention country, an accredited agency or approved person providing any adoption service described in this chapter, shall perform all of the following:

(1) A background study on the child prepared in accordance with all requirements set forth in subdivisions (a) and (b) of Section 96.53 of Title 22 of the Code of Federal Regulations, Section 8706, and applicable state law.

(2) Consents are obtained in accordance with subdivision (c) of Section 96.53 of Title 22 of the Code of Federal Regulations and applicable state law.

(3) If the child is 12 years of age or older, the agency or person has given due consideration to the child's wishes or opinions before determining that an intercountry adoption is in the child's best interests and in accordance with applicable state law.

(4) Transmission to the United States Department of State or other competent authority, or accredited bodies of the convention country, of the child background study, proof that the necessary consents have been obtained, and the reasons for the determination that the placement is in the child's best interests.

(b) The accredited agency shall comply with all placement standards set forth in Section 96.54 of Title 22 of the Code of Federal Regulations for children emigrating from California to a convention country.

(c) The accredited agency shall keep the central authority of the convention country and the Secretary informed as necessary about the adoption process and the measures taken to complete it for children emigrating from California to a convention country, in accordance with all communication and coordination functions set forth in Section 96.55 of Title 22 of the Code of Federal Regulations.

(d) For all convention and nonconvention adoption cases involving children emigrating from California to a convention country, the agency, person, or public domestic authority providing adoption services shall report information to the Secretary in accordance with Part 99 of Title 22 of the Code of Federal Regulations.

SEC. 10. Section 8925 is added to the Family Code, to read:

8925. A Hague adoption certificate or, in outgoing cases, a Hague custody declaration, obtained pursuant to Part 97 of Title 22 of the Code of Federal Regulations shall be recognized as a final valid adoption for purposes of all state and local laws.

SEC. 11. Section 1502 of the Health and Safety Code is amended to read:

1502. As used in this chapter:

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

(1) "Residential facility" means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance

essential for sustaining the activities of daily living or for the protection of the individual.

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

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

(4) "Foster family agency" means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

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

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

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

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

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

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

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

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

(C) Places children for adoption.

(D) Supervises adoptive placements.

Private full-service adoption agencies shall be organized and operated on a nonprofit basis. As a condition of licensure to provide intercountry adoption services, a full-service adoption agency shall be accredited and in good standing according to Part 96 of Title 22 of the Code of Federal Regulations, or supervised by an accredited primary provider, or acting as an exempted provider, in compliance with Subpart F (commencing with Section 96.29) of Part 96 of Title 22 of the Code of Federal Regulations.

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

(A) Assesses the prospective adoptive parents.

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

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

Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis. As a condition of licensure to provide intercountry adoption services, a noncustodial adoption agency shall be accredited and in good standing according to Part 96 of Title 22 of the Code of Federal Regulations, or supervised by an accredited primary provider,

or acting as an exempted provider, in compliance with Subpart F (commencing with Section 96.29) of Part 96 of Title 22 of the Code of Federal Regulations.

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

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

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

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

SEC. 12. Section 1503.5 of the Health and Safety Code is amended to read:

1503.5. (a) A facility shall be deemed to be an "unlicensed community care facility" and "maintained and operated to provide nonmedical care" if it is unlicensed and not exempt from licensure and any one of the following conditions is satisfied:

(1) The facility is providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(2) The facility is held out as or represented as providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(3) The facility accepts or retains residents who demonstrate the need for care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(4) The facility represents itself as a licensed community care facility.

(5) The facility is performing any of the functions of a foster family agency or holding itself out as a foster family agency.

(6) The facility is performing any of the functions of an adoption agency or holding itself out as performing any of the functions of an adoption agency as specified in paragraph (9) of subdivision (a) of Section 1502 or subdivision (b) of Section 8900.5 of the Family Code.

(b) No unlicensed community care facility, as defined in subdivision (a), shall operate in this state.

(c) Upon discovery of an unlicensed community care facility, the department shall refer residents to the appropriate local or state ombudsman, or placement, adult protective services, or child protective services agency if either of the following conditions exist:

(1) There is an immediate threat to the clients' health and safety.

(2) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

SEC. 13. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, neither the Department of Justice nor the State

Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation

based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined

necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprint images and related information to the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil

penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption

pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) To the extent required by federal law, an applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a).

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation, per day for a

maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director

grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit,

or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of

Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department-delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 13.1. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State

Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons

described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A

certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of

that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the

Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is

determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of

Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) To the extent required by federal law, an applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a).

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice.

A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified

by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department-delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 13.2. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the

Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by

the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the

fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) To the extent required by federal law, an applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for

a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a).

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a

deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction

following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2),

(7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department, a county office with department-delegated licensing authority, or a county child welfare agency with criminal record clearance and exemption authority, a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(5) (A) A county child welfare agency with authority to secure clearances pursuant to Section 16504.5 of the Welfare and Institutions Code and to grant exemptions pursuant to Section 361.4 of the Welfare and Institutions Code may accept a clearance or exemption from another county with criminal record and exemption authority pursuant to these sections.

(B) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by a county child welfare agency with criminal record clearance and exemption authority, the Department of Justice shall process a request from a county

child welfare agency with criminal record and exemption authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the State Department of Social Services and the Department of Justice.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 13.3. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record

clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed

24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or

to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and

shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State

Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) To the extent required by federal law, an applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a).

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and

shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt

of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her

plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter

3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department, a county office with department-delegated licensing authority, or a county child welfare agency with criminal record clearance and exemption authority, a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(5) (A) A county child welfare agency with authority to secure clearances pursuant to Section 16504.5 of the Welfare and Institutions Code and to grant exemptions pursuant to Section 361.4 of the Welfare and Institutions Code may accept a clearance or exemption from another county with criminal record and exemption authority pursuant to these sections.

(B) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by a county child welfare agency with criminal record clearance and exemption authority, the Department of Justice shall process a request from a county child welfare agency with criminal record and exemption authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the State Department of Social Services and the Department of Justice.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 14. Section 1522.05 of the Health and Safety Code is amended to read:

1522.05. (a) A foster family agency shall not place a child in a certified family home until the foster family agency has received both a criminal record clearance and a child abuse and neglect registry clearance, as specified in Section 1522.1, from the department, except as provided in subdivisions (b) and (c).

(b) Any peace officer, or other category of person approved by the department subject to criminal record clearance as a condition of employment, and who has submitted fingerprints and executed a declaration regarding criminal convictions, may receive a child in placement pending the receipt of a criminal record clearance when the certified family home has met all other licensing requirements.

(c) Any person currently licensed pursuant to this chapter by the department or a county, when the certified family home has met all other licensing requirements, and who has submitted fingerprints and executed a declaration regarding criminal convictions, may receive, or continue, a child in placement pending the receipt of a criminal record clearance.

SEC. 15. Section 1522.1 of the Health and Safety Code is amended to read:

1522.1. (a) Prior to granting a license to, or otherwise approving, any individual to care for children, the department shall check the Child

Abuse Central Index pursuant to paragraph (4) of subdivision (b) of Section 11170 of the Penal Code. The Department of Justice shall maintain and continually update an index of reports of child abuse by providers and shall inform the department of subsequent reports received from the Child Abuse Central Index pursuant to Section 11170 of the Penal Code and the criminal history. The department shall investigate any reports received from the Child Abuse Central Index. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency which investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Central Index unless child abuse is substantiated.

(b) For any application received on or after January 1, 2008, if any prospective licensed or certified foster parent, or adoptive parent, or any person over the age of 18 residing in their household, has lived in another state in the preceding five years, the licensing agency or licensed adoption agency shall check that state's child abuse and neglect registry. The department, in consultation with the County Welfare Directors Association, shall develop and promulgate the process and criteria to be used to review and consider other states' findings of child abuse or neglect.

(c) If any person in the household is 18 years of age or older and has lived in another state in the preceding five years, the department or its designated representative shall check the other state's child abuse and neglect registry to the extent required by federal law prior to granting a license to, or otherwise approving, any foster family home, certified family home, or person for whom an adoption home study is conducted or who has filed to adopt.

SEC. 16. Section 11079 of the Penal Code is amended to read:

11079. (a) The Attorney General may conduct inquiries and investigations as he or she finds appropriate to carry out functions under this article. The Attorney General may for this purpose direct any agency, including a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, that maintains, or has received, or that is eligible to maintain or receive criminal offender records to produce for inspection statistical data, reports, and other information concerning the storage and dissemination of criminal offender record information. Each agency is authorized and directed to provide that data, reports, and other information.

(b) Notwithstanding any other law, any entity described in subdivision (a) that fails to comply with the requirements of this section shall lose access to criminal offender record information maintained by the

Department of Justice until correction of the noncompliance is demonstrated.

SEC. 17. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to 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.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case, or parole revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of

the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(10) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, or city and county, or district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(12) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(16) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the

parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(17) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(18) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

(19) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states, or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(9) (A) Any public utility as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or

promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall

include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of

fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101 of the Penal Code, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction,

provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the State Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 777.5 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 777.5 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 777.5 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined

in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

SEC. 17.1. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to 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.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their

duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or parole revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, or city

and county, or district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only

for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary

criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states, or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(9) (A) Any public utility as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to

fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph

(1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101 of the Penal Code, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or

the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 777.5 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 777.5 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 777.5 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice

for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

SEC. 17.2. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to 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.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or parole revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, or city and county, or district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on

the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(10) (A) Any public utility as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in

employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(11) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to

Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization

as defined in Section 13101 of the Penal Code, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not

disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 777.5 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph

(1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 777.5 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 777.5 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

SEC. 17.3. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to

the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to 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.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or parole revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the

Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary

criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or

licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states, or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(9) (A) Any public utility, as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the

possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be

fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of

fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101 of the Penal Code, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction,

provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 777.5 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 777.5 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 777.5 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined

in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

SEC. 17.4. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to 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.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their

duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or parole revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county,

district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only

for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(10) (A) Any public utility, as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover

damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(11) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer

employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101 of the Penal Code, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871

of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the

exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 777.5 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 777.5 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 777.5 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

SEC. 18. Section 11167.5 of the Penal Code is amended to read:

11167.5. (a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, 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 post mortem examination of a child.

(9) The Board of Parole Hearings, 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, or as designated by the Department of Justice, identifying the suspected abuser or victim by name and date of birth or approximate age. 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) Out-of-state agencies responsible for approving prospective foster or adoptive parents or relative caregivers for placement of a child only when the agency makes the request for information in writing on official letterhead, transmitted by mail, fax, or electronic transmission, or as designated by the Department of Justice. The request shall identify the prospective foster or adoptive parent or relative caregiver, and any other adult living in the home, by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting agency. The request shall cite the out-of-state statute or interstate compact provision that requires that the information contained in the reports shall be disclosed and used for no purpose other than conducting background checks in foster or adoptive cases. The request shall also cite the criminal penalties for unlawful disclosure provided by the requesting state or the applicable interstate compact provision. In the absence of an out-of-state statute or interstate compact provision that requires that the information contained within the reports be disclosed and used for no purpose other than conducting background checks in foster or adoptive cases, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(14) 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. 19. 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 prosecutor 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, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized 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, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, 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) or (7), 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, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. 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) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent or relative caregiver for placement of a child, information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent or relative caregiver, and any other adult living in the home of the prospective foster or adoptive parent or relative caregiver. The department shall make that information available only when the out-of-state agency makes the request for information in writing on official letterhead, transmitted either by mail, fax, or electronic transmission or as designated by the department. The request shall identify the prospective foster or adoptive parent or relative caregiver, and any other adult living in the home, by name and date of birth or approximate age. The request shall cite the out-of-state statute or interstate compact provision that requires that the information received in response to the inquiry shall be disclosed and used for no purpose other than conducting background checks in foster

or adoptive cases. The request shall also cite the criminal penalties for unlawful disclosure of any information provided by the requesting state or the applicable interstate compact provision. In the absence of an out-of-state statute or interstate compact provision that requires that the information shall be used for no purpose other than conducting background checks in foster or adoptive cases and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency 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 its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents or relative caregivers.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state 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).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (9) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (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.

(g) 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. 19.5. 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 prosecutor 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, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the

matter, shall inform the person required or authorized 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, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, 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) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) 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.

(7) 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.

(8) 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.

(9) (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 a Court Appointed Special Advocate program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), 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, employment or volunteer positions with a CASA program, 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.

(10) (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), (5), or (8), 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 California 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, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. 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) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent or relative caregiver for placement of a child, information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent or relative caregiver, and any other adult living in the home of the prospective foster or adoptive parent or relative caregiver. The department shall make that information available only when the out-of-state agency makes the

request for information in writing on official letterhead, transmitted either by mail, fax, or electronic transmission or as designated by the department. The request shall identify the prospective foster or adoptive parent or relative caregiver, and any other adult living in the home, by name and date of birth or approximate age. The request shall cite the out-of-state statute or interstate compact provision that requires that the information received in response to the inquiry shall be disclosed and used for no purpose other than conducting background checks in foster or adoptive cases. The request shall also cite the criminal penalties for unlawful disclosure of any information provided by the requesting state or the applicable interstate compact provision. In the absence of an out-of-state statute or interstate compact provision that requires that the information shall be used for no purpose other than conducting background checks in foster or adoptive cases and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency 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 its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents or relative caregivers.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state 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).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (9) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (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.

(g) 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. 20. Section 291 of the Welfare and Institutions Code is amended to read:

291. After the initial petition hearing, the clerk of the court shall cause the notice to be served in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The father or fathers, presumed and alleged.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) Each attorney of record unless counsel of record is present in court when the hearing is scheduled, then no further notice need be given.

(7) If there is no parent or guardian residing in California, or if the residence is unknown, then to any adult relative residing within the county or if none, the adult relative residing nearest the court.

(8) If the hearing is a dispositional hearing that is also serving as a permanency hearing pursuant to subdivision (f) of Section 361.5, notice shall be given to the current caregiver for the child, including foster parents, relative caregivers, preadoptive parents, and nonrelative extended family members. Any person notified may attend all hearings and may submit any information he or she deems relevant to the court in writing.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) Notice shall be served as follows:

(1) If the child is detained, the notice shall be given to the persons required to be noticed as soon as possible, and at least five days before the hearing, unless the hearing is set less than five days and then at least 24 hours prior to the hearing.

(2) If the child is not detained, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing.

(d) The notice shall include all of the following:

(1) The name and address of the person notified.

(2) The nature of the hearing.

(3) Each section and subdivision under which the proceeding has been initiated.

(4) The date, time, and place of the hearing.

(5) The name of the child upon whose behalf the petition has been brought.

(6) A statement that:

(A) If they fail to appear, the court may proceed without them.

(B) The child, parent, guardian, Indian custodian, or adult relative to whom notice is required to be given pursuant to paragraph (1), (2), (3), (4), or (7) of subdivision (a) is entitled to have an attorney present at the hearing.

(C) If the parent, guardian, Indian custodian, or adult relative noticed pursuant to paragraph (1), (2), (3), or (7) of subdivision (a) is indigent and cannot afford an attorney, and desires to be represented by an attorney, the parent, guardian, Indian custodian, or adult relative shall promptly notify the clerk of the juvenile court.

(D) If an attorney is appointed to represent the parent, guardian, Indian custodian, or adult relative, the represented person shall be liable for all or a portion of the costs to the extent of his or her ability to pay.

(E) The parent, guardian, Indian custodian, or adult relative may be liable for the costs of support of the child in any out-of-home placement.

(7) A copy of the petition.

(e) Service of the notice of the hearing shall be given in the following manner:

(1) If the child is detained and the persons required to be noticed are not present at the initial petition hearing, they shall be noticed by personal service or by certified mail, return receipt requested.

(2) If the child is detained and the persons required to be noticed are present at the initial petition hearing, they shall be noticed by personal service or by first-class mail.

(3) If the child is not detained, the persons required to be noticed shall be noticed by personal service or by first-class mail, unless the person

to be served is known to reside outside the county, in which case service shall be by first-class mail.

(f) Any of the notices required to be given under this section or Sections 290.1 and 290.2 may be waived by a party in person or through his or her attorney, or by a signed written waiver filed on or before the date scheduled for the hearing.

(g) If the court knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.

SEC. 21. 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 current caregiver of the child, including the foster parents, relative caregivers, preadoptive parents, nonrelative extended family members, 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.

(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.

(d) 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.

(e) 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.

(f) Notice to the current caregiver of the child, including a foster parent, a relative caregiver, a preadoptive parent, or a nonrelative extended family member, or to 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.

(g) If the social worker or probation officer knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.

SEC. 22. Section 294 of the Welfare and Institutions Code is amended to read:

294. The social worker or probation officer shall give notice of a selection and implementation hearing held pursuant to Section 366.26 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The fathers, presumed and alleged.

(3) The child, if the child is 10 years of age or older.

(4) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(5) The grandparents of the child, if their address is known and if the parent's whereabouts are unknown.

(6) All counsel of record.

(7) To any unknown parent by publication, if ordered by the court pursuant to paragraph (2) of subdivision (g).

(8) The current caregiver of the child, including foster parents, relative caregivers, preadoptive parents, and nonrelative extended family members. Any person notified may attend all hearings and may submit any information he or she deems relevant to the court in writing.

(b) The following persons shall not be notified of the hearing:

(1) A parent who has relinquished the child to the State Department of Social Services or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(2) An alleged father who has denied paternity and has executed a waiver of the right to notice of further proceedings.

(3) A parent whose parental rights have been terminated.

(c) (1) Service of the notice shall be completed at least 45 days before the hearing date. Service is deemed complete at the time the notice is personally delivered to the person named in the notice or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication.

(2) Service of notice in cases where publication is ordered shall be completed at least 30 days before the date of the hearing.

(d) Regardless of the type of notice required, or the manner in which it is served, once the court has made the initial finding that notice has properly been given to the parent, or to any person entitled to receive notice pursuant to this section, subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address, by an order made pursuant to Section 296, or by any other means that the court determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing. However, if the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided to the parent, and to any person entitled to receive notice pursuant to this section, regarding that subsequent hearing.

(e) The notice shall contain the following information:

(1) The date, time, and place of the hearing.

(2) The right to appear.

(3) The parents' right to counsel.

(4) The nature of the proceedings.

(5) The recommendation of the supervising agency.

(6) A statement that, at the time of hearing, the court is required to select a permanent plan of adoption, legal guardianship, or long-term foster care for the child.

(f) Notice to the parents may be given in any one of the following manners:

(1) If the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, their right to counsel, the nature of the proceedings, and the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court shall direct the parent to appear for the proceedings and then direct that the parent be notified thereafter by first-class mail to the parent's usual place of residence or business only.

(2) Certified mail, return receipt requested, to the parent's last known mailing address. This notice shall be sufficient if the child welfare agency receives a return receipt signed by the parent.

(3) Personal service to the parent named in the notice.

(4) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

(5) If the residence of the parent is outside the state, service may be made as described in paragraph (1), (3), or (4) or by certified mail, return receipt requested.

(6) If the recommendation of the probation officer or social worker is legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of residence or business.

(7) If a parent's identity is known but his or her whereabouts are unknown and the parent cannot, with reasonable diligence, be served in any manner specified in paragraphs (1) to (6), inclusive, the petitioner shall file an affidavit with the court at least 75 days before the hearing date, stating the name of the parent and describing the efforts made to locate and serve the parent.

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends adoption, service shall be to that parent's attorney of record, if any, by certified mail, return receipt requested. If the parent does not have an attorney of record, the court shall order that service be made by publication of citation requiring the parent to appear at the date, time, and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the parent. Publication shall be made once a week for four consecutive weeks. Whether notice is to the attorney of record or by publication, the court shall also order that notice be given to the grandparents of the child, if their identities and addresses are known, by first-class mail.

(B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice is required to the parent, but the court shall order that notice be given to the grandparents of the child, if their identities and addresses are known, by first-class mail.

(C) In any case where the residence of the parent becomes known, notice shall immediately be served upon the parent as provided for in either paragraph (2), (3), (4), (5), or (6).

(g) (1) If the identity of one or both of the parents, or alleged parents, of the child is unknown, or if the name of one or both parents is uncertain, then that fact shall be set forth in the affidavit filed with the court at least 75 days before the hearing date and the court, consistent with the provisions of Sections 7665 and 7666 of the Family Code, shall issue an order dispensing with notice to a natural parent or possible natural parent under this section if, after inquiry and a determination that there has been due diligence in attempting to identify the unknown parent, the court is unable to identify the natural parent or possible natural parent and no person has appeared claiming to be the natural parent.

(2) After a determination that there has been due diligence in attempting to identify an unknown parent pursuant to paragraph (1) and the probation officer or social worker recommends adoption, the court shall consider whether publication notice would be likely to lead to actual notice to the unknown parent. The court may order publication notice if, on the basis of all information before the court, the court determines that notice by publication is likely to lead to actual notice to the parent. If publication notice to an unknown parent is ordered, the court shall order the published citation to be directed to either the father or mother, or both, of the child, and to all persons claiming to be the father or mother of the child, naming and otherwise describing the child. An order of publication pursuant to this paragraph shall be based on an affidavit describing efforts made to identify the unknown parent or parents. Service made by publication pursuant to this paragraph shall require the unknown parent or parents to appear at the date, time, and place stated in the citation. Publication shall be made once a week for four consecutive weeks.

(3) If the court determines that there has been due diligence in attempting to identify one or both of the parents, or alleged parents, of the child and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice to the parent shall be required.

(h) Notice to the child and all counsel of record shall be by first-class mail.

(i) If the court knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.

(j) Notwithstanding subdivision (a), if the attorney of record is present at the time the court schedules a hearing pursuant to Section 366.26, no further notice is required, except as required by subparagraph (A) of paragraph (7) of subdivision (f).

(k) This section shall also apply to children adjudged wards pursuant to Section 727.31.

(*l*) The court shall state the reasons on the record explaining why good cause exists for granting any continuance of a hearing held pursuant to Section 366.26 to fulfill the requirements of this section.

SEC. 23. Section 295 of the Welfare and Institutions Code is amended to read:

295. The social worker or probation officer shall give notice of review hearings held pursuant to Section 366.3 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) The current caregiver of the child, including foster parents, relative caregivers, preadoptive parents, nonrelative extended family members, community care facility, or foster family agency having physical custody of the child if a child is removed from the physical custody of the parents or legal guardian. The person notified may attend all hearings and may submit any information he or she deems relevant to the court in writing.

(7) The attorney of record if that attorney of record was not present at the time that the hearing was set by the court.

(8) The alleged father or fathers, but only if the recommendation is to set a new hearing pursuant to Section 366.26.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of the review hearing shall be served no earlier than 30 days, nor later than 15 days, before the hearing.

(d) The notice of the review hearing shall contain a statement regarding the nature of the hearing to be held, any recommended change in the custody or status of the child, and any recommendation that the court set a new hearing pursuant to Section 366.26 in order to select a more permanent plan.

(e) Service of notice shall be by first-class mail addressed to the last known address of the person to be provided notice. In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) If the child is ordered into a permanent plan of legal guardianship, and subsequently a petition to terminate or modify the guardianship is filed, the probation officer or social worker shall serve notice of the petition not less than 15 court days prior to the hearing on all persons listed in subdivision (a) and on the court that established legal guardianship if it is in another county.

(g) If the social worker or probation officer knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.

SEC. 24. Section 361.4 of the Welfare and Institutions Code is amended to read:

361.4. (a) Prior to placing a child in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall visit the home to ascertain the appropriateness of the placement.

(b) Whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the court or county social worker placing the child shall cause a state level criminal records check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System (CLETS) pursuant to Section 16504.5. The criminal records check shall be conducted with regard to all persons over the age of 18 years living in the home, and on any other person over the age of 18 years, other than professionals providing professional services to the child, known to the placing entity who may have significant contact with the child, including any person who has a familial or intimate relationship with any person living in the home. A criminal records check may be conducted pursuant to this section on any person over the age of 14 years living in the home who the county social worker believes may have a criminal record. Within 10 calendar days following the criminal records check conducted through the California Law Enforcement Telecommunications System, the social worker shall ensure that a fingerprint clearance check of the relative and any other person whose criminal record was obtained pursuant to this subdivision is initiated through the Department of Justice to ensure the accuracy of

the criminal records check conducted through the California Law Enforcement Telecommunications System and shall review the results of any criminal records check to assess the safety of the home. The Department of Justice shall forward fingerprint requests for federal level criminal history information to the Federal Bureau of Investigation pursuant to this section.

(c) Whenever a child may be placed in the home of a relative, or a prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall cause a check of the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 of the Penal Code to be requested from the Department of Justice. The Child Abuse Central Index check shall be conducted on all persons over the age of 18 years living in the home. For any application received on or after January 1, 2008, if any person in the household is 18 years of age or older and has lived in another state in the preceding five years, the county social worker shall check the other state's child abuse and neglect registry to the extent required by federal law.

(d) (1) If the criminal records check indicates that the person has no criminal record, the county social worker and court may consider the home of the relative, prospective guardian, or other person who is not a licensed or certified foster parent for placement of a child.

(2) If the criminal records check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child may not be placed in the home, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child pursuant to paragraph (3).

(3) (A) A county may issue a criminal records exemption only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions. The county may file a request with the Director of Social Services seeking permission for the county to establish a procedure to evaluate and grant appropriate individual criminal records exemptions for persons described in subdivision (b). The director shall grant or deny the county's request within 14 days of receipt. The county shall evaluate individual criminal records in accordance with the standards and limitations set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code, and in no event shall the county place a child in the home of a person who is ineligible for an exemption under that provision.

(B) The department shall monitor county implementation of the authority to grant an exemption under this paragraph to ensure that the

county evaluates individual criminal records and allows or disallows placements according to the standards set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code.

(4) The department shall conduct an evaluation of the implementation of paragraph (3) through random sampling of county exemption decisions.

(5) The State Department of Social Services shall not evaluate or grant criminal records exemption requests for persons described in subdivision (b), unless the exemption request is made by an Indian tribe pursuant to subdivision (f).

(6) If a county has not requested, or has not been granted, permission by the State Department of Social Services to establish a procedure to evaluate and grant criminal records exemptions, the county may not place a child into the home of a person described in subdivision (b) if any person residing in the home has been convicted of a crime other than a minor traffic violation, except as provided in subdivision (f).

(e) Nothing in this section shall preclude a county from conducting a criminal background check that the county is otherwise authorized to conduct using fingerprints.

(f) Upon request from an Indian tribe, the State Department of Social Services shall evaluate an exemption request, if needed, to allow placement into an Indian home that the tribe has designated for placement under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) that would otherwise be barred under this section. However, if the county with jurisdiction over the child that is the subject of the tribe's request has established an approved procedure pursuant to paragraph (3) of subdivision (d), the tribe may request that the county evaluate the exemption request. Once a tribe has elected to have the exemption request reviewed by either the State Department of Social Services or the county, the exemption decision may only be made by that entity. Nothing in this subdivision limits the duty of a county social worker to evaluate the home for placement or to gather information needed to evaluate an exemption request.

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

SEC. 25. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b), or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the

juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months from the date the child entered foster care, except as otherwise provided in paragraph (3).

(2) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months from the date the child entered foster care.

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, "a sibling group" shall mean two or more children who are related to each other as full or half-siblings.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1), (2), and (3), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends

the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in paragraph (3), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the child pursuant to paragraph (3), (5), or (6).

(8) That the child was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state that, if committed in this state, would

constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. For the purposes of this paragraph, "serious danger" means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger.

(10) That the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian.

(11) That the parental rights of a parent over any sibling or half-sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from the parent.

(12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(14) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or

her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(15) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling's or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs

or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections and Rehabilitation pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child, and shall consider in-state and out-of-state placement options. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed

guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 25.5. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b), or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months from the date the child entered foster care, except as otherwise provided in paragraph (3).

(2) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months from the date the child entered foster care.

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, "a sibling group" shall mean two or more children who are related to each other as full or half-siblings.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1), (2), and (3), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in

the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in paragraph (3), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent

or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half sibling of the child, or between the child or a sibling or half sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or

half sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half sibling of the child pursuant to paragraph (3), (5), or (6).

(8) That the child was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. For the purposes of this paragraph, "serious danger" means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger.

(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.

(11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.

(12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to

the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(14) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(15) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half sibling from his or her placement and refused to disclose the child's or child's sibling's or half sibling's whereabouts, refused to return physical custody of the child or child's sibling or half sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half sibling to the social worker.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively

attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections and Rehabilitation pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child, and shall consider in-state and out-of-state placement options. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g)(1) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents.

(B) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this subparagraph, "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.

(E) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 26. Section 366.21 of the Welfare and Institutions Code, as amended by Chapter 177 of the Statutes of 2007, 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 for six months or longer 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. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

(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, or a Judicial Council Caregiver Information Form (JV-290), 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. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, provided that he or she agreed to submit fingerprint images to obtain criminal history

information as part of the case plan. 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. At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, provided that he or she agreed to submit fingerprint images to obtain criminal history information as part of the case plan. 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. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state placement options. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(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, 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.

If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(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 within the state or out of the state.

(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 for 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.

(m) The implementation and operation of the amendments to subdivisions (c) and (g) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 26.5. Section 366.21 of the Welfare and Institutions Code, as amended by Chapter 177 of the Statutes of 2007, 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 for six months or longer 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. The social worker shall include a copy of the Judicial Council Caregiver Information Form

(JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

(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, or a Judicial Council Caregiver Information Form (JV-290), 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. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, provided that he or she agreed to submit fingerprint images to obtain criminal history information as part of the case plan. 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.

Regardless of whether 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. At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, provided that he or she agreed to submit fingerprint images to obtain criminal history information as part of the case plan. 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.

Regardless of whether 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. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state placement options. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(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, 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.

If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(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) (1) 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:

(A) Current search efforts for an absent parent or parents or legal guardians.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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.

(E) 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.

(F) 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 within the state or out of the state.

(G) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(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 for 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.

(m) The implementation and operation of the amendments to subdivisions (c) and (g) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 27. Section 366.22 of the Welfare and Institutions Code, as amended by Chapter 177 of the Statutes of 2007, 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. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, provided that he or she agreed to submit fingerprint images to obtain criminal history information as part of the case plan. 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 his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state

placement continues to be appropriate and in the best interests of the child.

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, 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 for 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.

(e) The implementation and operation of the amendments to subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 27.5. Section 366.22 of the Welfare and Institutions Code, as amended by Chapter 177 of the Statutes of 2007, 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. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, provided that he or she agreed to submit fingerprint images to obtain criminal history information as part of the case plan. 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 his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

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 (3) 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, 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) (1) 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:

(A) Current search efforts for an absent parent or parents.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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.

(E) 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.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(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 for 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.

(e) The implementation and operation of the amendments to subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 28. 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, which 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 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, foster parent, or Indian custodian 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, foster parent, or Indian custodian 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. For purposes of an Indian child, "relative" shall include an "extended family member" as defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(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.

(F) The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(i) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.

(ii) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), (E), or (F), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if:

(A) At each 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.

(B) In the case of an Indian child:

(i) At the hearing terminating parental rights, the court has found that active efforts were not made as required in Section 361.7.

(ii) The court does not make a determination at the hearing terminating parental rights, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Section 224.6, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(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 the state or out of the

state, 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, 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), (E), or (F) 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, 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 a period of time 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 exists:

(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) (1) 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 juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(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, except as specified in subdivision (n). 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 apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition 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.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive

parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 28.5. 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 (d) 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 8616.5 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 (d) 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, which 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) Appoint a relative or relatives with whom the child is currently residing as legal guardian or guardians for the child, and order that letters of guardianship issue.

(3) 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.

(4) Appoint a nonrelative legal guardian for the child and order that letters of guardianship issue.

(5) 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. Under these circumstances, the court shall terminate parental rights unless either of the following applies:

(A) The child is living with a relative who is unable or unwilling to adopt the child because of 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 through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, "relative" shall include an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(B) 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:

(i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(ii) A child 12 years of age or older objects to termination of parental rights.

(iii) 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.

(iv) The child is living with a foster parent or Indian custodian 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 foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child 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.

(v) 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.

(vi) The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(I) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.

(II) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

If the court finds that termination of parental rights would be detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v), or (vi), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if:

(A) At each 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.

(B) In the case of an Indian child:

(i) At the hearing terminating parental rights, the court has found that active efforts were not made as required in Section 361.7.

(ii) The court does not make a determination at the hearing terminating parental rights, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Section 224.6, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(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 the state or out of the state, 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, 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 (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 clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (B) 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, 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 a period of time 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 exists:

(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) (1) 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 juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its

findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(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, except as specified in subdivision (n). 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 apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition 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.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption home study.

(B) Cooperating with an adoption home study.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the

threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 29. Section 16500.1 of the Welfare and Institutions Code is amended to read:

16500.1. (a) It is the intent of the Legislature to use the strengths of families and communities to serve the needs of children who are alleged to be abused or neglected, as described in Section 300, to reduce the necessity for removing these children from their home, to encourage speedy reunification of families when it can be safely accomplished, to locate permanent homes and families for children who cannot return to their biological families, to reduce the number of placements experienced by these children, to ensure that children leaving the foster care system have support within their communities, to improve the quality and homelike nature of out-of-home care, and to foster the educational progress of children in out-of-home care.

(b) In order to achieve the goals specified in subdivision (a), the state shall encourage the development of approaches to child protection that do all of the following:

(1) Allow children to remain in their own schools, in close proximity to their families.

(2) Increase the number and quality of foster families available to serve these children.

(3) Use a team approach to foster care that permits the biological and foster family and the child to be part of that team.

(4) Use team decisionmaking in case planning.

(5) Provide support to foster children and foster families.

(6) Ensure that licensing requirements do not create barriers to recruitment of qualified, high-quality foster homes.

(7) Provide training for foster parents and professional staff on working effectively with families and communities.

(8) Encourage foster parents to serve as mentors and role models for biological parents.

(9) Use community resources, including community-based agencies and volunteer organizations, to assist in developing placements for children and to provide support for children and their families.

(10) Ensure an appropriate array of placement resources for children in need of out-of-home care.

(11) Ensure that no child leaves foster care without a lifelong connection to a committed adult.

(12) Ensure that children are actively involved in the case plan and permanency planning process.

(c) (1) Each county shall provide the department with a disaster response plan describing how county programs assisted under Part B (commencing with Section 620) and Part E (commencing with Section 670) of Subchapter IV of Chapter 7 of Title 42 of the United States Code (Titles IV-B and IV-E of the Social Security Act) would respond to a disaster. The plan shall set forth procedures describing how each county will perform the following services:

(A) Identify, locate, and continue availability of services for children under state care or supervision who are displaced or adversely affected by a disaster.

(B) Respond, as appropriate, to new child welfare cases in areas adversely affected by a disaster, and provide services in those cases.

(C) Remain in communication with caseworkers and other essential child welfare personnel who are displaced because of a disaster.

(D) Preserve essential program records.

(E) Coordinate services and share information with other counties.

(2) The department shall review its disaster plan with respect to subparagraphs (A) to (E), inclusive, of paragraph (1), and shall revise the plan to clarify the role and responsibilities of the state in the event of a disaster.

(3) The department shall consult with counties to identify opportunities for collaboration between counties, and between the county and the state, in the event of a disaster.

(d) In carrying out the requirements of subdivisions (b) and (c), the department shall do all of the following:

(1) Consider the existing array of program models provided in statute and in practice, including, but not limited to, wraparound services, as defined in Section 18251, children's systems of care, as provided for in Section 5852, the Oregon Family Unity or Santa Clara County Family Conference models, which include family conferences at key points in the casework process, such as when out-of-home placement or return home is considered, and the Annie E. Casey Foundation Family to Family initiative, which uses team decisionmaking in case planning, community-based placement practices requiring that children be placed in foster care in the communities where they resided prior to placement, and involve foster families as team members in family reunification efforts.

(2) Ensure that emergency response services, family maintenance services, family reunification services, and permanent placement services are coordinated with the implementation of the models described in paragraph (1).

(3) Ensure consistency between child welfare services program regulations and the program models described in paragraph (1).

(e) The department, in conjunction with stakeholders, including, but not limited to, county child welfare services agencies, foster parent and group home associations, the California Youth Connection, and other child advocacy groups, shall review the existing child welfare services program regulations to ensure that these regulations are consistent with the legislative intent specified in subdivision (a). This review shall also determine how to incorporate the best practice guidelines for assessment of children and families receiving child welfare and foster care services, as required by Section 16501.2.

(f) The department shall report to the Legislature on the results of the actions taken under this section on or before January 1, 2002.

SEC. 30. 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. The child

shall be involved in developing the case plan as age and developmentally appropriate.

(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 in-state and out-of-state placements, 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) A child shall be given a meaningful opportunity to participate in the development of the case plan and state his or her preference for foster care placement. A child who is 12 years of age or older and in a permanent placement shall also be given the opportunity to review the case plan, sign the case plan, and receive a copy of the case plan.

(13) 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.

(14) 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 a statement of the child's wishes regarding their permanent placement plan and an assessment of those stated wishes. The agency shall also 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.

(15) 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 and who has been in out-of-home placement for six months or longer, 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 and who has been in out-of-home placement for six months or longer 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) On or before June 30, 2008, the department, in consultation with the County Welfare Directors Association and other advocates, shall develop a comprehensive plan to ensure that 90 percent of foster children are visited by their caseworkers on a monthly basis by October 1, 2011, and that the majority of the visits occur in the residence of the child. The plan shall include any data reporting requirements necessary to comply

with the provisions of the federal Child and Family Services Improvement Act of 2006 (Public Law 109-288).

(*l*) The implementation and operation of the amendments to subdivision (i) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 31. (a) Section 13.1 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by both this bill and SB 172. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1522 of the Health and Safety Code, (3) SB 776 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 172, in which case Section 1522 of the Health and Safety Code, as amended by SB 172, shall remain operative only until the operative date of this bill, at which time Section 13.1 of this bill shall become operative, and Sections 13, 13.2, and 13.3 of this bill shall not become operative.

(b) Section 13.2 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by both this bill and SB 776. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1522 of the Health and Safety Code, (3) SB 172 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 776 in which case Sections 13, 13.1, and 13.3 of this bill shall not become operative.

(c) Section 13.3 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by this bill, SB 172, and SB 776. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2008, (2) all three bills amend Section 1522 of the Health and Safety Code, and (3) this bill is enacted after SB 172 and SB 776, in which case Section 1522 of the Health and Safety Code, as amended by SB 172, shall remain operative only until the operative date of this bill, at which time Section 13.3 of this bill shall become operative, and Sections 13, 13.1, and 13.2 of this bill shall not become operative.

SEC. 32. (a) Section 17.1 of this bill incorporates amendments to Section 11105 of the Penal Code proposed by both this bill and AB 104. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 11105 of the Penal Code, (3) AB 1048 and SB 340 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 104, in which case Sections 17, 17.2, 17.3, and 17.4 of this bill shall not become operative.

(b) Section 17.2 of this bill incorporates amendments to Section 11105 of the Penal Code proposed by this bill, AB 104, and AB 1048. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2008, (2) all three bills amend Section 11105 of the Penal Code, (3) SB 340 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 104 and AB 1048, in which case Sections 17, 17.1, 17.3, and 17.4 of this bill shall not become operative.

(c) Section 17.3 of this bill incorporates amendments to Section 11105 of the Penal Code proposed by this bill, AB 104, and SB 340. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2008, (2) all three bills amend Section 11105 of the Penal Code, (3) AB 1048 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 104 and SB 340, in which case Sections 17, 17.1, 17.2, and 17.4 of this bill shall not become operative.

(d) Section 17.4 of this bill incorporates amendments to Section 11105 of the Penal Code proposed by this bill, AB 104, AB 1048, and SB 340. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2008, (2) all four bills amend Section 11105 of the Penal Code, and (3) this bill is enacted after AB 104, AB 1048, and SB 340, in which case Sections 17, 17.1, 17.2, and 17.3 of this bill shall not become operative.

SEC. 33. Section 19.5 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by both this bill and AB 369. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 11170 of the Penal Code, and (3) this bill is enacted after AB 369, in which case Section 19 of this bill shall not become operative.

SEC. 34. Section 25.5 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 298. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 361.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 298, in which case Section 25 of this bill shall not become operative.

SEC. 35. Section 26.5 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 298. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 298, in which case Section 26 of this bill shall not become operative.

SEC. 36. Section 27.5 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by both this bill and AB 298. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 366.22 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 298, in which case Section 27 of this bill shall not become operative.

SEC. 37. Section 28.5 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 298. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 298, in which case Section 28 of this bill shall not become operative.

SEC. 38. 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.

CHAPTER 584

An act to amend Section 20133 of the Public Contract Code, relating to public contracts.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 20133 of the Public Contract Code is amended to read:

20133. (a) (1) This section provides for an alternative procedure on bidding on construction projects in excess of two million five hundred thousand dollars ($2,500,000) applicable only in the Counties of Alameda, Butte, Contra Costa, Del Norte, El Dorado, Fresno, Humboldt, Kings, Los Angeles, Madera, Mariposa, Mendocino, Merced, Monterey, Napa, Orange, Placer, Sacramento, San Diego, San Joaquin, San Luis Obispo, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Tulare, Yolo, and Yuba, upon approval of the appropriate board of supervisors.

(2) These counties may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable these counties to utilize design-build for buildings and county sanitation wastewater treatment facilities. It is not the intent of the Legislature to authorize this procedure for other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructures.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process.

(3) If the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the county or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, and county sanitation wastewater treatment facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The county shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the county's needs.

The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the county shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the county. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the county to inform interested parties of the contracting opportunity, to include the methodology that will be used by the county to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the county reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the county chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the county to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The county shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the county. In preparing the questionnaire, the county shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will

participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the county that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of

a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or other association, that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The county shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.

(v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five

years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(h) The county may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the county elects to award a project pursuant to this section, retention proceeds withheld by the county from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the county and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the design-build entity from any payment made by the design-build entity to the subcontractor.

(*l*) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2009, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2004, and before November 1, 2009. The report shall include, but shall not be limited to, all of the following information:

(1) The type of project.

(2) The gross square footage of the project.

(3) The design-build entity that was awarded the project.

(4) The estimated and actual length of time to complete the project.

(5) The estimated and actual project costs.

(6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(7) An assessment of the prequalification process and criteria.

(8) An assessment of the effect of retaining 5-percent retention on the project.

(9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.

(10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to

evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(11) An assessment of the project impact of "skilled labor force availability."

(12) An assessment of the design-build dollar limits on county projects. This assessment shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(m) Any county named in subdivision (a) that elects to not use the authority granted by this section may submit a report to the Legislative Analyst's Office explaining why the county elected to not use the design-build method.

(n) On or before January 1, 2010, the Legislative Analyst shall report to the Legislature on the use of the design-build method by counties pursuant to this section, including the information listed in subdivision (*l*). The report may include recommendations for modifying or extending this section.

(o) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

(p) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 1.5. Section 20133 of the Public Contract Code is amended to read:

20133. (a) A county, with approval of the board of supervisors, may utilize an alternative procedure for bidding on construction projects in the county in excess of two million five hundred thousand dollars ($2,500,000) and may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable counties to utilize design-build for buildings and county sanitation wastewater treatment facilities. It is not the intent of the Legislature to authorize this procedure for other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructures.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process.

(3) If the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce for design-build

projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the county or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, and county sanitation wastewater treatment facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The county shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the county's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the county shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the county. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the county to inform interested parties of the contracting opportunity, to

include the methodology that will be used by the county to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the county reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the county chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the county to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The county shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the county. In preparing the questionnaire, the county shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the county that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or other association, that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter

3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The county shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.

(v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party

to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(h) The county may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the county elects to award a project pursuant to this section, retention proceeds withheld by the county from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor

thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the county and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the design-build entity from any payment made by the design-build entity to the subcontractor.

(*l*) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2009, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2004, and before November 1, 2009. The report shall include, but shall not be limited to, all of the following information:

(1) The type of project.

(2) The gross square footage of the project.

(3) The design-build entity that was awarded the project.

(4) The estimated and actual length of time to complete the project.

(5) The estimated and actual project costs.

(6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(7) An assessment of the prequalification process and criteria.

(8) An assessment of the effect of retaining 5-percent retention on the project.

(9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.

(10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(11) An assessment of the project impact of "skilled labor force availability."

(12) An assessment of the design-build dollar limits on county projects. This assessment shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(m) Any county that elects to not use the authority granted by this section may submit a report to the Legislative Analyst's Office explaining why the county elected to not use the design-build method.

(n) On or before January 1, 2010, the Legislative Analyst shall report to the Legislature on the use of the design-build method by counties pursuant to this section, including the information listed in subdivision (*l*). The report may include recommendations for modifying or extending this section.

(o) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

(p) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 20133 of the Public Contract Code proposed by this bill and SB 416. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 20133 of the Public Contract Code, and (3) this bill is enacted after SB 416, in which case Section 20133 of the Public Contract Code, as amended by SB 416, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 585

An act to amend Section 20133 of the Public Contract Code, relating to public contracts.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 20133 of the Public Contract Code is amended to read:

20133. (a) A county, with approval of the board of supervisors, may utilize an alternative procedure for bidding on building construction projects in the county in excess of two million five hundred thousand dollars ($2,500,000) and may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable counties to utilize cost-effective options for building and modernizing public facilities. It

is not the intent of the Legislature to authorize this procedure for transportation facilities, including, but not limited to, roads and bridges.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process. The Legislature also finds that the cost-effective benefits to counties are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(3) It is the intent of the Legislature to provide an alternative and optional procedure for bidding and building construction projects for counties.

(4) The design-build approach may be used, but is not limited to, when it is anticipated that it will: reduce project cost, expedite project completion, or provide design features not achievable through the design-bid-build method.

(5) If the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the county or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The county shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the buildings and site,

performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the county's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the county shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the county. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the county to inform interested parties of the contracting opportunity, to include the methodology that will be used by the county to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the county reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the county chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the county to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The county shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the county. In preparing the questionnaire, the county shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the county that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or other association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The county shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.

(v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered

to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(h) The county may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the county elects to award a project pursuant to this section, retention proceeds withheld by the county from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the county and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the design-build entity from any payment made by the design-build entity to the subcontractor.

(*l*) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2009, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2004, and before November 1, 2009. The report shall include, but shall not be limited to, all of the following information:

(1) The type of project.

(2) The gross square footage of the project.

(3) The design-build entity that was awarded the project.

(4) The estimated and actual length of time to complete the project.

(5) The estimated and actual project costs.

(6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(7) An assessment of the prequalification process and criteria.

(8) An assessment of the effect of retaining 5-percent retention on the project.

(9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.

(10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(11) An assessment of the project impact of "skilled labor force availability."

(12) An assessment of the design-build dollar limits on county projects. This assessment shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(m) Any county that elects to not use the authority granted by this section may submit a report to the Legislative Analyst's Office explaining why the county elected to not use the design-build method.

(n) On or before January 1, 2010, the Legislative Analyst shall report to the Legislature on the use of the design-build method by counties pursuant to this section, including the information listed in subdivision (*l*). The report may include recommendations for modifying or extending this section.

(o) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

(p) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 1.5. Section 20133 of the Public Contract Code is amended to read:

20133. (a) A county, with approval of the board of supervisors, may utilize an alternative procedure for bidding on construction projects in the county in excess of two million five hundred thousand dollars ($2,500,000) and may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable counties to utilize design-build for buildings and county sanitation wastewater treatment facilities. It is not the intent of the Legislature to authorize this procedure for other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructures.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process.

(3) If the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the county or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, and county sanitation wastewater treatment facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The county shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the county's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the county shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the

county. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the county to inform interested parties of the contracting opportunity, to include the methodology that will be used by the county to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the county reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the county chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the county to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The county shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the county. In preparing the questionnaire, the county shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the county that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or other association, that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which

civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The county shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.

(v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable

statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(h) The county may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the county elects to award a project pursuant to this section, retention proceeds withheld by the county from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the county and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the design-build entity from any payment made by the design-build entity to the subcontractor.

(*l*) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2009, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2004, and before November 1, 2009. The report shall include, but shall not be limited to, all of the following information:

(1) The type of project.

(2) The gross square footage of the project.

(3) The design-build entity that was awarded the project.

(4) The estimated and actual length of time to complete the project.

(5) The estimated and actual project costs.

(6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(7) An assessment of the prequalification process and criteria.

(8) An assessment of the effect of retaining 5-percent retention on the project.

(9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.

(10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(11) An assessment of the project impact of "skilled labor force availability."

(12) An assessment of the design-build dollar limits on county projects. This assessment shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(m) Any county that elects to not use the authority granted by this section may submit a report to the Legislative Analyst's Office explaining why the county elected to not use the design-build method.

(n) On or before January 1, 2010, the Legislative Analyst shall report to the Legislature on the use of the design-build method by counties pursuant to this section, including the information listed in subdivision (*l*). The report may include recommendations for modifying or extending this section.

(o) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

(p) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 20133 of the Public Contract Code proposed by this bill and SB 233. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 20133 of the Public Contract Code, and (3) this bill is enacted after SB 233, in which case Section 20133 of the Public Contract Code, as amended by SB 233, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

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 586

An act to amend Sections 4980.03, 4980.43, 4980.45, 4980.90, 4989.20, 4989.34, and 4989.44 of the Business and Professions Code, relating to professions and vocations.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 4980.03 of the Business and Professions Code is amended to read:

4980.03. (a) "Board," as used in this chapter, means the Board of Behavioral Sciences.

(b) "Intern," as used in this chapter, means an unlicensed person who has earned his or her master's or doctor's degree qualifying him or her for licensure and is registered with the board.

(c) "Trainee," as used in this chapter, means an unlicensed person who is currently enrolled in a master's or doctor's degree program, as specified in Section 4980.40, that is designed to qualify him or her for licensure under this chapter, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program.

(d) "Applicant," as used in this chapter, means an unlicensed person who has completed a master's or doctoral degree program, as specified in Section 4980.40, and whose application for registration as an intern is pending, or an unlicensed person who has completed the requirements for licensure as specified in this chapter, is no longer registered with the board as an intern, and is currently in the examination process.

(e) "Advertise," as used in this chapter, includes, but is not limited to, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. It also includes business solicitations communicated by radio or television broadcasting. Signs within church buildings or notices in church bulletins mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

(f) "Experience," as used in this chapter, means experience in interpersonal relationships, psychotherapy, marriage and family therapy, and professional enrichment activities that satisfies the requirement for licensure as a marriage and family therapist pursuant to Section 4980.40.

(g) "Supervisor," as used in this chapter, means an individual who meets all of the following requirements:

(1) Has been licensed by a state regulatory agency for at least two years as a marriage and family therapist, licensed clinical social worker, licensed psychologist, or licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

(2) Has not provided therapeutic services to the trainee or intern.

(3) Has a current and valid license that is not under suspension or probation.

(4) Complies with supervision requirements established by this chapter and by board regulations.

SEC. 2. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.

(2) Not more than 40 hours in any seven consecutive days.

(3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctor's degree.

(4) Not more than 1,300 hours of experience obtained prior to completing a master's or doctor's degree. This experience shall be composed as follows:

(A) Not more than 750 hours of counseling and direct supervisor contact.

(B) Not more than 250 hours of professional enrichment activities, excluding personal psychotherapy as described in paragraph (2) of subdivision (*l*).

(C) Not more than 100 hours of personal psychotherapy as described in paragraph (2) of subdivision (*l*). The applicant shall be credited for three hours of experience for each hour of personal psychotherapy.

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

(6) No hours of experience gained more than six years prior to the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(7) Not more than a total of 1,000 hours of experience for direct supervisor contact and professional enrichment activities.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of postdegree experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes.

(10) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(11) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children.

(12) Not more than 125 hours of experience providing personal psychotherapy services via telemedicine in accordance with Section 2290.5.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) Each individual supervised after being granted a qualifying degree shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons.

(4) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation. The 5-to-1 and 10-to-1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers' businesses and shall not lease or rent space, pay for

furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

(*l*) For purposes of this chapter, "professional enrichment activities" includes the following:

(1) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor.

(2) Participation by the applicant in personal psychotherapy which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional.

SEC. 3. Section 4980.45 of the Business and Professions Code is amended to read:

4980.45. (a) A licensed professional in private practice who has satisfied the requirements of subdivision (g) of Section 4980.03 may supervise or employ, at any one time, no more than two unlicensed marriage and family therapist registered interns in that private practice.

(b) A marriage and family therapy corporation may employ, at any one time, no more than two registered interns for each employee or shareholder who has satisfied the requirements of subdivision (g) of Section 4980.03. In no event shall any corporation employ, at any one time, more than 10 registered interns. In no event shall any supervisor supervise, at any one time, more than two registered interns. Persons who supervise interns shall be employed full time by the professional corporation and shall be actively engaged in performing professional

services at and for the professional corporation. Employment and supervision within a marriage and family therapy corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

SEC. 4. Section 4980.90 of the Business and Professions Code is amended to read:

4980.90. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(b) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed all of the following:

(1) A two semester- or three quarter-unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25 and any regulations promulgated thereunder.

(4) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(5) (A) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other educational requirements for licensure or in a separate course.

(B) On and after January 1, 2004, a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(6) On and after January 1, 2003, a minimum of a two semester- or three quarter-unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(7) On and after January 1, 2003, a minimum of a two semester- or three quarter-unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(8) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection,

and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(c) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant has been granted a degree in a single integrated program primarily designed to train marriage, family, and child counselors and if the applicant's education meets the requirements of Sections 4980.37 and 4980.40. The degree title and number of units in the degree program need not be identical to those required by subdivision (a) of Section 4980.40. If the applicant's degree does not contain the number of units required by subdivision (a) of Section 4980.40, the board may, in its discretion, accept the applicant's education as substantially equivalent if the applicant's degree otherwise complies with this section and the applicant completes the units required by subdivision (a) of Section 4980.40.

SEC. 5. Section 4989.20 of the Business and Professions Code is amended to read:

4989.20. (a) The board may issue a license as an educational psychologist if the applicant satisfies, with proof satisfactory to the board, the following requirements:

(1) Possession of, at minimum, a master's degree in psychology, educational psychology, school psychology, counseling and guidance, or a degree deemed equivalent by the board. This degree shall be obtained from an educational institution approved by the board according to the regulations adopted under this chapter.

(2) Attainment of 18 years of age.

(3) No commission of an act or crime constituting grounds for denial of licensure under Section 480.

(4) Successful completion of 60 semester hours of postgraduate work in pupil personnel services.

(5) Two years of full-time, or the equivalent to full-time, experience as a credentialed school psychologist in the public schools. The applicant shall not be credited with experience obtained more than six years prior to filing the application for licensure.

(6) One of the following:

(A) One year of supervised professional experience in an accredited school psychology program.

(B) In addition to the requirements of paragraph (5), one year of full-time, or the equivalent to full-time, experience as a credentialed school psychologist in the public schools obtained under the direction of a licensed educational psychologist or a licensed psychologist.

(7) Passage of an examination specified by the board.

SEC. 6. Section 4989.34 of the Business and Professions Code is amended to read:

4989.34. (a) To renew his or her license, a licensee shall certify to the board, on a form prescribed by the board, completion in the preceding two years of not less than 36 hours of approved continuing education in, or relevant to, educational psychology.

(b) (1) The continuing education shall be obtained from either an accredited university or a continuing education provider approved by the board.

(2) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education shall comply with procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(c) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of educational psychology.

(2) Aspects of the discipline of educational psychology in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of educational psychology.

(d) The board may audit the records of a licensee to verify completion of the continuing education requirement. A licensee shall maintain records of the completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon its request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as determined by the board.

(f) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The amount of the fees shall be sufficient to meet, but shall not exceed, the costs of administering this section.

(g) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

SEC. 7. Section 4989.44 of the Business and Professions Code is amended to read:

4989.44. (a) A licensee may apply to the board to request that his or her license be placed on inactive status.

(b) A licensee on inactive status shall be subject to this chapter and shall not engage in the practice of educational psychology in this state.

(c) A licensee who holds an inactive license shall pay a biennial fee of one-half of the amount of the standard renewal fee.

(d) A licensee on inactive status who has not committed an act or crime constituting grounds for denial of licensure may, upon request, restore his or her license to practice educational psychology to active status. A licensee requesting that his or her license be placed on active status between renewal cycles shall pay the remaining one-half of his or her renewal fee. A licensee requesting to restore his or her license to active status, whose license will expire less than one year from the date of the request, shall complete 18 hours of continuing education as specified in Section 4989.34. A licensee requesting to restore his or her license to active status, whose license will expire more than one year from the date of the request, shall complete 36 hours of continuing education as specified in Section 4989.34.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 587

An act to amend Sections 1752.1, 1752.2, 1752.5, and 2607.5 of the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 1752.1 of the Business and Professions Code is amended to read:

1752.1. (a) The board shall license as a registered dental assistant a person who files an application prior to September 1, 2009, and submits written evidence, satisfactory to the board, of either one of the following requirements:

(1) Graduation from an educational program in dental assisting approved by the board, and satisfactory performance on written and practical examinations required by the board.

(2) Satisfactory work experience of more than 12 months as a dental assistant in California or another state and satisfactory performance on a written and practical examination required by the board. The board shall give credit toward the 12 months work experience referred to in this subdivision to persons who have graduated from a dental assisting program in a postsecondary institution approved by the Department of Education or in a secondary institution, regional occupational center, or regional occupational program, that are not, however, approved by the board pursuant to subdivision (a). The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis not to exceed 16 weeks. The board, in cooperation with the Superintendent of Public Instruction, shall establish the minimum criteria for the curriculum of nonboard-approved programs. Additionally, the board shall notify those programs only if the program's curriculum does not meet established minimum criteria, as established for board-approved registered dental assistant programs, except any requirement that the program be given in a postsecondary institution. Graduates of programs not meeting established minimum criteria shall not qualify for satisfactory work experience as defined by this section.

(b) In addition to the requirements specified in subdivision (a), each applicant for registered dental assistant licensure on or after July 1, 2002, shall provide evidence of having successfully completed board-approved courses in radiation safety and coronal polishing as a condition of licensure. The length and content of the courses shall be governed by applicable board regulations.

(c) An applicant who fails to pass the written and practical examinations required by this section on or before June 30, 2010, shall not be eligible for further reexamination and must apply for and meet the requirements for registered dental assistant licensure specified in Section 1752.5. Between September 1, 2009, and June 30, 2010, an applicant shall only be allowed to apply to take the written examination two times, and shall only be allowed to apply to take the practical examination two times.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 2. Section 1752.2 of the Business and Professions Code is amended to read:

1752.2. (a) A board-approved educational program in registered dental assisting, as provided in subdivisions (a) and (b) of Section 1752.5,

is a program that has met the requirements for approval pursuant to board regulations.

(b) An educational program in registered dental assisting that has been approved by the board prior to January 1, 2010, to teach the duties that a registered dental assistant was allowed to perform pursuant to board regulations prior to January 1, 2010, shall continue to be so approved on and after January 1, 2010, if it has certified no later than November 30, 2009, on a form specified by the board, that it shall provide instruction in all duties that registered dental assistants shall be allowed to perform on and after January 1, 2009, with the exception of adding drugs, medications, and fluids to intravenous lines using a syringe.

(c) The board may at any time conduct a thorough evaluation of an approved educational program's curriculum and facilities to determine whether the program meets the requirements for approval as specified in board regulations.

SEC. 3. Section 1752.5 of the Business and Professions Code is amended to read:

1752.5. On and after September 1, 2009, a person may apply for and be issued a license as a registered dental assistant upon providing evidence to the board of one of the following:

(a) Successful completion of an educational program in registered dental assisting approved by the board on or after January 1, 2008, to teach all of the functions specified in Section 1750.3.

(b) Successful completion of:

(1) An educational program in registered dental assisting approved by the board to teach the duties that registered dental assistants were allowed to perform pursuant to board regulations prior to January 1, 2010.

(2) A board-approved course or courses in the following duties:

(A) Selecting, prepositioning, curing in a position approved by the supervising dentist, and removal of orthodontic brackets.

(B) Monitoring of patients during the preoperative, intraoperative, and postoperative phases.

(i) For purposes of this subparagraph, patient monitoring includes the following:

(I) Selection and validation of monitoring sensors, selecting menus and default settings and analysis for electrocardiogram, pulse oximeter and capnograph, continuous blood pressure, pulse, and respiration rates.

(II) Interpretation of data from noninvasive patient monitors including readings from continuous blood pressure and information from the monitor display for electrocardiogram waveform, carbon dioxide and end tidal carbon dioxide concentration, respiratory cycle data, continuous noninvasive blood pressure data, and pulse arterial oxygen saturation

measurements, for the purpose of evaluating the condition of the patient during preoperative, intraoperative, and postoperative treatment.

(ii) For purposes of this subparagraph, patient monitoring does not include the following:

(I) Reading and transmitting information from the monitor display during the intraoperative phase of surgery for electrocardiogram waveform, carbon dioxide and end tidal carbon dioxide concentrations, respiratory cycle data, continuous noninvasive blood pressure data, or pulse arterial oxygen saturation measurements, for the purpose of interpretation and evaluation by a licensed dentist who shall be at chairside during this procedure.

(II) Placing of sensors.

(C) Adding drugs, medications, and fluids to intravenous lines using a syringe.

(D) Applying pit and fissure sealants.

(c) Successful completion of:

(1) Twelve months of satisfactory work experience as a dental assistant in California or another state. The board shall give credit toward the 12 months of work experience to persons who have graduated from a dental assisting program in a postsecondary institution, secondary institution, regional occupational center, or regional occupation program that are not approved by the board. The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis not to exceed 16 weeks.

(2) The three board-approved specialty registration courses, as defined in Section 1750.2, for registration as a registered orthodontic assistant, registered surgery assistant, and registered restorative assistant. Any specialty license issued pursuant to paragraph (2) of subdivision (a) of Section 1750.2 shall be deemed to have met the requirements of this subdivision for that specialty.

(3) A board-approved radiation safety program.

SEC. 4. Section 2607.5 of the Business and Professions Code is amended to read:

2607.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2014, 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. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure continuity in the ongoing operations of the Physical Therapy Board and to ensure the continuity of the existing registered dental assistant provisions, it is necessary that this act take effect immediately.

CHAPTER 588

An act to amend Sections 337, 1209, 1701.1, 1725, 1750, 1750.1, 1750.2, 1750.3, 1750.4, 1751, 1752, 1752.1, 1752.2, 1752.5, 1752.6, 1753, 1753.1, 1754, 1756, 1757, 1770, 2177, 2225, 2313, 2335, 2416, 2497.5, 2570.7, 2717, 2732.05, 3057, 3527, 3634, 4068, 4084, 4101, 4160, 4161, 4162, 4162.5, 4200, 4200.1, 4200.2, 4208, 4314, 4315, 4980.01, 4980.38, 4980.40, 4980.44, 4980.54, 4980.57, 4980.80, 4980.90, 4982, 4984.1, 4984.4, 4989.36, 4989.42, 4989.54, 4992.3, 4996.4, 4996.6, 4996.18, and 4996.22 of, to add Sections 1672, 2471, 2570.8, 4984.01, 4984.72, 4992.10, and 4996.28 to, and to repeal and add Sections 3530, 4984.7, 4984.8, 4996.3, 4996.14, and 4997 of, the Business and Professions Code, and to amend Sections 11372, 12529, and 12529.5 of the Government Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 337 of the Business and Professions Code is amended to read:

337. (a) The department shall prepare and disseminate an informational brochure for victims of psychotherapist-patient sexual contact and advocates for those victims. This brochure shall be developed by the department in consultation with members of the Sexual Assault Program of the Office of Criminal Justice Planning and the office of the Attorney General.

(b) The brochure shall include, but is not limited to, the following:

(1) A legal and an informal definition of psychotherapist-patient sexual contact.

(2) A brief description of common personal reactions and histories of victims and victim's families.

(3) A patient's bill of rights.

(4) Options for reporting psychotherapist-patient sexual relations and instructions for each reporting option.

(5) A full description of administrative, civil, and professional associations complaint procedures.

(6) A description of services available for support of victims.

(c) The brochure shall be provided to each individual contacting the Medical Board of California and affiliated health boards or the Board of Behavioral Sciences regarding a complaint involving psychotherapist-patient sexual relations.

SEC. 2. Section 1209 of the Business and Professions Code is amended to read:

1209. (a) As used in this chapter, "laboratory director" means any person who is a duly licensed physician and surgeon, or is licensed to direct a clinical laboratory under this chapter and who substantially meets the laboratory director qualifications under CLIA for the type and complexity of tests being offered by the laboratory. The laboratory director, if qualified under CLIA, may perform the duties of the technical consultant, technical supervisor, clinical consultant, general supervisor, and testing personnel, or delegate these responsibilities to persons qualified under CLIA. If the laboratory director reapportions performance of those responsibilities or duties, he or she shall remain responsible for ensuring that all those duties and responsibilities are properly performed.

(b) (1) The laboratory director is responsible for the overall operation and administration of the clinical laboratory, including administering the technical and scientific operation of a clinical laboratory, the selection and supervision of procedures, the reporting of results, and active participation in its operations to the extent necessary to ensure compliance with this act and CLIA. He or she shall be responsible for the proper performance of all laboratory work of all subordinates and shall employ a sufficient number of laboratory personnel with the appropriate education and either experience or training to provide appropriate consultation, properly supervise and accurately perform tests, and report test results in accordance with the personnel qualifications, duties, and responsibilities described in CLIA and this chapter.

(2) Where a point-of-care laboratory testing device is utilized and provides results for more than one analyte, the testing personnel may perform and report the results of all tests ordered for each analyte for which he or she has been found by the laboratory director to be competent to perform and report.

(c) As part of the overall operation and administration, the laboratory director of a registered laboratory shall document the adequacy of the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory test procedures and examinations. In determining the adequacy of qualifications, the laboratory director shall comply with any regulations adopted by the department that specify the minimum qualifications for personnel, in addition to any CLIA requirements relative to the education or training of personnel.

(d) As part of the overall operation and administration, the laboratory director of a licensed laboratory shall do all of the following:

(1) Ensure that all personnel, prior to testing biological specimens, have the appropriate education and experience, receive the appropriate training for the type and complexity of the services offered, and have demonstrated that they can perform all testing operations reliably to provide and report accurate results. In determining the adequacy of qualifications, the laboratory director shall comply with any regulations adopted by the department that specify the minimum qualifications for, and the type of procedures that may be performed by, personnel in addition to any CLIA requirements relative to the education or training of personnel. Any regulations adopted pursuant to this section that specify the type of procedure that may be performed by testing personnel shall be based on the skills, knowledge, and tasks required to perform the type of procedure in question.

(2) Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to ensure that they are competent and maintain their competency to process biological specimens, perform test procedures, and report test results promptly and proficiently, and, whenever necessary, identify needs for remedial training or continuing education to improve skills.

(3) Specify in writing the responsibilities and duties of each individual engaged in the performance of the preanalytic, analytic, and postanalytic phases of clinical laboratory tests or examinations, including which clinical laboratory tests or examinations the individual is authorized to perform, whether supervision is required for the individual to perform specimen processing, test performance, or results reporting, and whether consultant, supervisor, or director review is required prior to the individual reporting patient test results.

(e) The competency and performance of staff of a licensed laboratory shall be evaluated and documented by the laboratory director, or by a person who qualifies as a technical consultant or a technical supervisor

under CLIA depending on the type and complexity of tests being offered by the laboratory.

(1) The procedures for evaluating the competency of the staff shall include, but are not limited to, all of the following:

(A) Direct observations of routine patient test performance, including patient preparation, if applicable, and specimen handling, processing, and testing.

(B) Monitoring the recording and reporting of test results.

(C) Review of intermediate test results or worksheets, quality control records, proficiency testing results, and preventive maintenance records.

(D) Direct observation of performance of instrument maintenance and function checks.

(E) Assessment of test performance through testing previously analyzed specimens, internal blind testing samples, or external proficiency testing samples.

(F) Assessment of problem solving skills.

(2) Evaluation and documentation of staff competency and performance shall occur at least semiannually during the first year an individual tests biological specimens. Thereafter, evaluations shall be performed at least annually unless test methodology or instrumentation changes, in which case, prior to reporting patient test results, the individual's performance shall be reevaluated to include the use of the new test methodology or instrumentation.

(f) The laboratory director of each clinical laboratory of an acute care hospital shall be a physician and surgeon who is a qualified pathologist, except as follows:

(1) If a qualified pathologist is not available, a physician and surgeon or a clinical laboratory bioanalyst qualified as a laboratory director under subdivision (a) may direct the laboratory. However, a qualified pathologist shall be available for consultation at suitable intervals to ensure high quality service.

(2) If there are two or more clinical laboratories of an acute care hospital, those additional clinical laboratories that are limited to the performance of blood gas analysis, blood electrolyte analysis, or both may be directed by a physician and surgeon qualified as a laboratory director under subdivision (a), irrespective of whether a pathologist is available.

As used in this subdivision, a qualified pathologist is a physician and surgeon certified or eligible for certification in clinical or anatomical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology.

(g) Subdivision (f) does not apply to any director of a clinical laboratory of an acute care hospital acting in that capacity on or before January 1, 1988.

(h) A laboratory director may serve as the director of up to the maximum number of laboratories stipulated by CLIA, as defined under Section 1202.5.

SEC. 3. Section 1672 is added to the Business and Professions Code, to read:

1672. (a) When the board disciplines a licensee by placing him or her on probation, the board may, in addition to the terms and conditions described in Section 1671, require the licensee to pay the monetary costs associated with monitoring the licensee's probation.

(b) The board shall not renew the license of a licensee who fails to pay all of the costs he or she is ordered to pay pursuant to this section once the licensee has served his or her term of probation.

(c) The board shall not reinstate a license if the petitioner has failed to pay any costs he or she was ordered to pay pursuant to this section.

SEC. 4. Section 1701.1 of the Business and Professions Code is amended to read:

1701.1. (a) Notwithstanding Sections 1700 and 1701, a person who willfully, under circumstances or conditions that cause or create risk of bodily harm, serious physical or mental illness, or death, practices or attempts to practice, or advertises or holds himself or herself out as practicing dentistry without having at the time of so doing a valid, unrevoked, and unsuspended certificate, license, registration, or permit as provided in this chapter, or without being authorized to perform that act pursuant to a certificate, license, registration, or permit obtained in accordance with some other provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) A person who conspires with or aids and abets another to commit any act described in subdivision (a) is guilty of a public offense and subject to the punishment described in subdivision (a).

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

SEC. 5. Section 1725 of the Business and Professions Code is amended to read:

1725. The amount of the fees prescribed by this chapter that relate to the licensing of dental auxiliaries shall be established by board resolution and subject to the following limitations:

(a) The application fee for an original license shall not exceed twenty dollars ($20). On and after January 1, 2010, the application fee for an original license shall not exceed fifty dollars ($50).

(b) (1) The fee for examination for licensure as a registered dental assistant shall not exceed fifty dollars ($50) for the written examination and shall not exceed sixty dollars ($60) for the practical examination.

(2) On and after January 1, 2008, the following fees are established for registered orthodontic assistants, registered surgery assistants, registered restorative assistants, and registered dental assistants:

(A) The fee for application and for the issuance of a license shall not exceed fifty dollars ($50).

(B) The fee for the practical examination shall not exceed the actual cost of the examination.

(C) The fee for a written examination shall not exceed the actual cost of the examination.

(c) The fee for examination for licensure as a registered dental assistant in extended functions or a registered restorative assistant in extended functions shall not exceed the actual cost of the examination.

(d) The fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(e) For third- and fourth-year dental students, the fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(f) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed the actual cost of the examination.

(g) The board shall establish the fee at an amount not to exceed the actual cost for licensure as a registered dental hygienist in alternative practice.

(h) The biennial renewal fee for a dental auxiliary whose license expires on or after January 1, 1991, shall not exceed sixty dollars ($60). On or after January 1, 1992, the board may set the renewal fee in an amount not to exceed eighty dollars ($80).

(i) The delinquency fee shall not exceed twenty-five dollars ($25) or one-half of the renewal fee, whichever is greater. Any delinquent license may be restored only upon payment of all fees, including the delinquency fee.

(j) The fee for issuance of a duplicate registration, license, or certificate to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars ($25).

(k) The fee for each curriculum review and site evaluation for educational programs for registered dental assistants that are not accredited by a board-approved agency, the Council for Private

Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed one thousand four hundred dollars ($1,400).

(*l*) The fee for review of each approval application for a course that is not accredited by a board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed three hundred dollars ($300).

(m) No fees or charges other than those listed in subdivisions (a) through (k) above shall be levied by the board in connection with the licensure of dental auxiliaries, registered dental assistants educational program site evaluations and radiation safety course evaluations pursuant to this chapter.

(n) Fees fixed by the board pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(o) Fees collected pursuant to this section shall be deposited in the State Dental Auxiliary Fund.

SEC. 5.5. Section 1725 of the Business and Professions Code is amended to read:

1725. The amount of the fees prescribed by this chapter that relate to the licensing of dental auxiliaries shall be established by board resolution and subject to the following limitations:

(a) The application fee for an original license shall not exceed twenty dollars ($20). On and after January 1, 2010, the application fee for an original license shall not exceed fifty dollars ($50).

(b) (1) The fee for examination for licensure as a registered dental assistant shall not exceed fifty dollars ($50) for the written examination and shall not exceed sixty dollars ($60) for the practical examination.

(2) On and after January 1, 2008, the following fees are established for registered orthodontic assistants, registered surgery assistants, registered restorative assistants, and registered dental assistants:

(A) The fee for application and for the issuance of a license shall not exceed fifty dollars ($50).

(B) The fee for the practical examination shall not exceed the actual cost of the examination.

(C) The fee for a written examination shall not exceed the actual cost of the examination.

(c) The fee for examination for licensure as a registered dental assistant in extended functions or a registered restorative assistant in extended functions shall not exceed the actual cost of the examination.

(d) The biennial renewal fee for a dental assistant shall not exceed eighty dollars ($80).

(e) The delinquency fee shall not exceed twenty-five dollars ($25) or one-half of the renewal fee, whichever is greater. Any delinquent license may be restored only upon payment of all fees, including the delinquency fee.

(f) The fee for issuance of a duplicate registration, license, or certificate to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars ($25).

(g) The fee for each curriculum review and site evaluation for educational programs for registered dental assistants that are not accredited by a board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed one thousand four hundred dollars ($1,400).

(h) The fee for review of each approval application for a course that is not accredited by a board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed three hundred dollars ($300).

(i) No fees or charges other than those listed in subdivisions (a) through (h) above shall be levied by the board in connection with the licensure of dental assistants, dental assisting educational program site evaluations, and radiation safety course evaluations, pursuant to this chapter.

(j) Fees fixed by the board pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(k) Fees collected pursuant to this section shall be deposited in the State Dental Assistant Fund.

SEC. 6. Section 1750 of the Business and Professions Code, as amended by Section 3 of Chapter 621 of the Statutes of 2005, is amended to read:

1750. (a) A dental assistant is a person who may perform basic supportive dental procedures as authorized by this article under the supervision of a licensed dentist and who may perform basic supportive procedures as authorized pursuant to subdivision (b) of Section 1751 under the supervision of a registered dental hygienist in alternative practice.

(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. 7. Section 1750 of the Business and Professions Code, as amended by Section 4 of Chapter 621 of the Statutes of 2005, is amended to read:

1750. (a) A dental assistant is an individual who, without a license, may perform basic supportive dental procedures, as authorized by this article and by regulations adopted by the board, under the supervision of a licensed dentist. "Basic supportive dental procedures" are those procedures that have technically elementary characteristics, are completely reversible, and are unlikely to precipitate potentially hazardous conditions for the patient being treated. These basic supportive dental procedures may be performed under general supervision. These basic supportive dental procedures do not include those procedures authorized in Section 1750.3 or Section 1753.1, or by the board pursuant to Section 1751 for registered assistants.

(b) The supervising licensed dentist shall be responsible for determining the competency of the dental assistant to perform the basic supportive dental procedures authorized pursuant to subdivision (a).

(c) The supervising licensed dentist shall be responsible for assuring that each dental assistant, registered orthodontic assistant, registered surgery assistant, registered restorative assistant, registered restorative assistant in extended functions, registered dental assistant, and registered dental assistant in extended functions, who is in his or her continuous employ for 120 days or more, has completed both of the following within a year of the date of employment:

(1) Board-approved courses in infection control and California law.

(2) A course in basic life support offered by the American Red Cross, the American Heart Association, or any other course approved by the board as equivalent.

(d) Prior to operating radiographic equipment or applying for licensure as a registered dental assistant under Section 1752.5, an auxiliary described in subdivision (c) shall successfully complete a radiation safety course approved by the board.

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

SEC. 8. Section 1750.1 of the Business and Professions Code is amended to read:

1750.1. (a) The practice of dental assisting does not include any of the following procedures:

(1) Diagnosis and comprehensive treatment planning.

(2) Placing, finishing, or removing permanent restorations, except as provided in Section 1753.1.

(3) Surgery or cutting on hard and soft tissue including, but not limited to, the removal of teeth and the cutting and suturing of soft tissue.

(4) Prescribing medication.

(5) Starting or adjusting local or general anesthesia or oral or parenteral conscious sedation, except for the administration of nitrous

oxide and oxygen, whether administered alone or in combination with each other and except as otherwise provided in this article.

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

SEC. 9. Section 1750.2 of the Business and Professions Code is amended to read:

1750.2. (a) On and after January 1, 2010, the board shall license as a "registered orthodontic assistant," "registered surgery assistant," or "registered restorative assistant" any person who does either of the following:

(1) Submits written evidence of satisfactory completion of a course or courses approved by the board pursuant to subdivision (b) that qualifies him or her in one of these specialty areas of practice and obtains a passing score on both of the following:

(A) A written examination approved by the board and administered by the Committee on Dental Auxiliaries (COMDA) or by an entity recommended by COMDA. COMDA may enter into a written agreement with a public or private organization for the administration of the examination. All aspects of the examination shall comply with Section 139.

(B) A practical examination for the specialty category for which the person is seeking licensure that is approved by the board and administered by the Committee on Dental Auxiliaries (COMDA) or by an entity recommended by COMDA. COMDA may enter into a written agreement with a public or private organization for the administration of the examination. All aspects of the examination shall comply with Section 139.

(2) Completes a work experience pathway to licensure that meets the requirements set forth in Section 1750.4. This section permits the work experience pathway to licensure only for those assistants described in this subdivision and does not apply to dentists or dental hygienists.

(b) The board shall adopt regulations for the approval of specialty registration courses in the specialty areas specified in this section. The board shall also adopt regulations for the approval and recognition of core courses that teach basic dental science.

The regulations shall define the minimum education and training requirements necessary to achieve proficiency in the procedures authorized for each specialty registration, taking into account the combinations of classroom and practical instruction, clinical training, and supervised work experience that are most likely to provide the greatest number of opportunities for improving dental assisting skills efficiently.

(c) The board may approve specialty registration courses referred to in this section prior to January 1, 2010, and the board shall recognize

the completion of these approved courses prior to January 1, 2010, but no specialty registrations shall be issued prior to January 1, 2010.

(d) The board may approve a course for the specialty registration listed in subdivision (b) that does not include instruction in coronal polishing.

(e) The board may approve a course that only includes instruction in coronal polishing as specified in paragraph (8) of subdivision (b) of Section 1750.3.

(f) A person who holds a specialty registration pursuant to this section shall be subject to the continuing education requirements established by the board pursuant to Section 1645 and the renewal requirements of Article 6 (commencing with Section 1715).

SEC. 10. Section 1750.3 of the Business and Professions Code is amended to read:

1750.3. (a) A registered orthodontic assistant may perform all of the following dental procedures, as well as those authorized by board regulations adopted pursuant to Section 1751:

(1) Any duties that a dental assistant may perform.

(2) Mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, existing restorations, and missing teeth.

(3) Placing metal orthodontic separators.

(4) Placing ligatures and arch wires.

(5) Taking orthodontic impressions.

(6) Sizing, fitting, cementing, and removal of orthodontic bands.

(7) Selecting, prepositioning, curing in a position approved by the supervising dentist, and removal of orthodontic brackets.

(8) Coronal polishing.

(9) Preparing teeth for bonding.

(10) Applying bleaching agents and activating bleaching agents with nonlaser, light-curing devices.

(11) Removal of excess cement from coronal surfaces of teeth under orthodontic treatment by means of a hand instrument or an ultrasonic scaler.

(12) Taking facebow transfers and bite registrations for diagnostic models for case study only.

(b) A registered surgery assistant may perform the following dental procedures, as well as those authorized by board regulations adopted pursuant to Section 1751:

(1) Any duties that a dental assistant may perform.

(2) Mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, existing restorations, and missing teeth.

(3) Monitoring of patients during the preoperative, intraoperative, and postoperative phases.

(A) For purposes of this paragraph, patient monitoring includes the following:

(i) Selection and validation of monitoring sensors, selecting menus and default settings and analysis for electrocardiogram, pulse oximeter and capnograph, continuous blood pressure, pulse, and respiration rates.

(ii) Interpretation of data from noninvasive patient monitors including readings from continuous blood pressure and information from the monitor display for electrocardiogram waveform, carbon dioxide and end tidal carbon dioxide concentration, respiratory cycle data, continuous noninvasive blood pressure data, and pulse arterial oxygen saturation measurements, for the purpose of evaluating the condition of the patient during preoperative, intraoperative, and postoperative treatment.

(B) For purposes of this paragraph, patient monitoring does not include the following:

(i) Reading and transmitting information from the monitor display during the intraoperative phase of surgery for electrocardiogram waveform, carbon dioxide and end tidal carbon dioxide concentrations, respiratory cycle data, continuous noninvasive blood pressure data, or pulse arterial oxygen saturation measurements, for the purpose of interpretation and evaluation by a licensed dentist who shall be at chairside during this procedure.

(ii) Placing of sensors.

(4) Taking impressions for surgical splints and occlusal guards.

(5) Placement of surgical dressings.

(6) Adding drugs, medications, and fluids to intravenous lines using a syringe, provided that a licensed dentist is present at the patient's chairside.

(7) Removal of intravenous lines.

(8) Coronal polishing, provided that evidence of satisfactory completion of a board-approved course in this function has been submitted to the board prior to the performance thereof.

(c) A registered restorative assistant may perform all of the following dental procedures, as well as those authorized by board regulations adopted pursuant to Section 1751:

(1) Any duties that a dental assistant may perform.

(2) Mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, existing restorations, and missing teeth.

(3) Sizing, fitting, adjusting, intraorally fabricating, temporarily cementing, and removing temporary crowns and other temporary restorations.

(4) Placing bases and liners on sound dentin.

(5) Removing excess cement from supragingival surfaces of teeth with a hand instrument or an ultrasonic scaler.

(6) Taking facebow transfers and bite registrations for diagnostic models for case study only.

(7) Taking impressions for space-maintaining appliances and occlusal guards.

(8) Coronal polishing.

(9) Applying pit and fissure sealants.

(10) Applying bleaching agents and activating bleaching agents with nonlaser, light-curing devices.

(11) Placement of surgical dressings.

(d) The supervising dentist shall be responsible for determining the level of supervision required for assistants registered pursuant to this section.

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

SEC. 11. Section 1750.4 of the Business and Professions Code is amended to read:

1750.4. (a) A dentist who holds an active, current, and unrestricted license to practice dentistry under this chapter may train and educate his or her employees, or employees of the dental office, primary care clinic, or hospital where the dentist is practicing and directly supervises the employees, without charge or cost to the employees, in all of the allowable duties for the purpose of licensure in one of the specialty licensure categories set forth in Section 1750.2. A dentist may not begin the work experience training and education of an employee until his or her application for that particular employee is approved by the Committee on Dental Auxiliaries. For purposes of this subdivision, an unrestricted license means a license that is not suspended, placed on probation, or restricted pursuant to subparagraph (B) or (C) of paragraph (3) of subdivision (a) of Section 1635.5.

(1) In order to train or educate pursuant to this subdivision, the dentist shall be subject to the following terms and conditions, which are applicable prior to commencing training for each employee:

(A) On a completed and signed application form approved by the committee, the dentist shall provide the specialty dental assistant category in which the dentist will be training the employee and the name of the employee. When the committee provides a requested application to an employer, the committee shall also provide a copy of the regulations governing the education and training of the specialty assistants or provide access to the regulations on the committee's Internet Web site.

(B) The education and training the dentist provides shall be in compliance with the regulations adopted by the board pursuant to subdivision (b) of Section 1750.2. Employees trained pursuant to this section shall be considered bona fide students, as described in Section 1626.5, as added by Section 6 of Chapter 655 of the Statutes of 1999.

The dentist shall not allow the employee to begin the clinical training on patients until the employee has completed the didactic and preclinical training, which includes nonpatient training on typodonts and other laboratory models and as prescribed in regulations, and a minimum of 120 days as a dental assistant in California or another state, which may include graduation from a regional occupational center or regional occupation program pursuant to paragraph (1) of subdivision (b).

(C) The dentist shall pay a fee to the committee to cover administrative costs not to exceed two hundred fifty dollars ($250) for each employee he or she is training and educating. If a dentist is training and educating an employee in more than one of the specialty licensure categories at the same time, the dentist shall pay the fee for each category in which the employee is being trained and educated.

(D) Prior to beginning employee training, the dentist shall complete a teaching methodology course approved by the board that is six hours in length and covers educational objectives, content, instructional methods, and evaluation procedures. The dentist shall be exempt from this requirement if he or she holds any one of the following degrees, credentials, or positions:

(i) A postgraduate degree in education.

(ii) A Ryan Designated Subjects Vocational Education Teaching Credential.

(iii) A Standard Designated Subjects Teaching Credential.

(iv) A Community College Teaching Credential.

(v) Is a faculty member of a dental school approved by the Commission on Dental Accreditation.

The dentist shall provide to the board proof of one of these designations or shall submit a certificate of course completion in teaching methodology.

(2) All duties performed by an employee pursuant to this section shall be done in the dentist's presence. The dentist shall ensure that any patient treated by a bona fide student is verbally informed of the student's status.

(3) The work experience pathway for the employee shall not exceed a term of 18 months, starting on the date that the Committee on Dental Auxiliaries approves the application submitted by the dentist for that employee.

(4) Upon successful completion of the work experience pathway period, the dentist shall certify in writing that the employee has successfully completed the educational program covering all procedures authorized for the specialty category for which the employee is seeking licensure.

(5) With respect to this subdivision, the committee:

(A) Shall approve the application form described in subparagraph (A) of paragraph (1). The application form shall not be required to comply with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) Shall have a maximum of 60 days from the date a completed application is received in which to approve or deny an application under this subdivision. Nothing in this section shall prohibit a dentist from appealing the denial of an application to the executive officer of the committee.

(C) May inspect the dentist's facilities and practice at any time to ensure compliance with regulations adopted by the board pursuant to Section 1750.2.

(D) May revoke an approval for a dentist to provide training or education pursuant to this section if the dentist is disciplined by the board, fails to provide the training or education in accordance with the law and regulations governing the specialty licensure category, or fails to allow an inspection by the committee, or other good cause. A dentist whose approval is revoked may appeal the revocation to the committee's executive officer.

(E) May limit by regulations, approved by the board, the number of times a dentist may train or educate an individual employee in one or more of the specialty licensure categories.

(F) May limit by regulations, approved by the board, the number of employees a dentist may train during the same time period.

(G) May by regulations, approved by the board, require an applicant for licensure who has repeatedly failed to pass either the written or practical examination for the specialty licensure category to complete additional training and education before he or she is allowed to retake the examination.

(b) As a condition for licensure for specialty registration under Section 1750.2, an applicant who completes a work experience pathway pursuant to this section shall do the following:

(1) Certify to the board that he or she has a minimum of 1600 hours of prior work experience as a dental assistant. The 1600 hours of required work experience may be obtained by working for multiple employers, if the applicant provides written evidence of work experience from each dentist employer. The employee may begin the work experience pathway before he or she completes 1600 hours of work experience, but may not apply for licensure until that work experience is completed. The board shall give credit toward the 1600 hours of work experience to persons who have graduated from a dental assisting program in a postsecondary institution, secondary institution, regional occupational center, or regional occupation program that is not approved by the board. The credit shall

equal the hours spent in classroom training and internship on an hour-for-hour basis not to exceed 400 hours.

(2) Certify to the board that he or she has completed the educational program covering all procedures authorized for the specialty category for which the applicant is seeking licensure.

(3) Obtain a passing score on a written examination that is approved by the board and administered by the Committee on Dental Auxiliaries (COMDA) or by an entity that is recommended by COMDA. COMDA may enter into a written agreement with a public or private organization for the administration of the examination. All aspects of the examination shall comply with Section 139.

(4) Obtain a passing score on the practical examination for the specialty category for which the employee is seeking licensure that is approved by the board and administered by the Committee on Dental Auxiliaries (COMDA) or by an entity recommended by COMDA. COMDA may enter into a written agreement with a public or private organization for the administration of the examination. All aspects of the examination shall comply with Section 139.

SEC. 11.5. Section 1750.4 of the Business and Professions Code is amended to read:

1750.4. (a) A dentist who holds an active, current, and unrestricted license to practice dentistry under this chapter may train and educate his or her employees, or employees of the dental office, primary care clinic, or hospital where the dentist is practicing and directly supervises the employees, without charge or cost to the employees, in all of the allowable duties for the purpose of licensure in one of the specialty licensure categories set forth in Section 1750.2. A dentist may not begin the work experience training and education of an employee until his or her application for that particular employee is approved by the board. For purposes of this subdivision, an unrestricted license means a license that is not suspended, placed on probation, or restricted pursuant to subparagraph (B) or (C) of paragraph (3) of subdivision (a) of Section 1635.5.

(1) In order to train or educate pursuant to this subdivision, the dentist shall be subject to the following terms and conditions, which are applicable prior to commencing training for each employee:

(A) On a completed and signed application form approved by the board, the dentist shall provide the specialty dental assistant category in which the dentist will be training the employee and the name of the employee. When the board provides a requested application to an employer, the board shall also provide a copy of the regulations governing the education and training of the specialty assistants or provide access to the regulations on the board's Internet Web site.

(B) The education and training the dentist provides shall be in compliance with the regulations adopted by the board pursuant to subdivision (b) of Section 1750.2. Employees trained pursuant to this section shall be considered bona fide students, as described in Section 1626.5, as added by Section 6 of Chapter 655 of the Statutes of 1999. The dentist shall not allow the employee to begin the clinical training on patients until the employee has completed the didactic and preclinical training, which includes nonpatient training on typodonts and other laboratory models and as prescribed in regulations, and a minimum of 120 days as a dental assistant in California or another state, which may include graduation from a regional occupational center or regional occupation program pursuant to paragraph (1) of subdivision (b).

(C) The dentist shall pay a fee to the board to cover administrative costs not to exceed two hundred fifty dollars ($250) for each employee he or she is training and educating. If a dentist is training and educating an employee in more than one of the specialty licensure categories at the same time, the dentist shall pay the fee for each category in which the employee is being trained and educated.

(D) Prior to beginning employee training, the dentist shall complete a teaching methodology course approved by the board that is six hours in length and covers educational objectives, content, instructional methods, and evaluation procedures. The dentist shall be exempt from this requirement if he or she holds any one of the following degrees, credentials, or positions:

(i) A postgraduate degree in education.

(ii) A Ryan Designated Subjects Vocational Education Teaching Credential.

(iii) A Standard Designated Subjects Teaching Credential.

(iv) A Community College Teaching Credential.

(v) Is a faculty member of a dental school approved by the Commission on Dental Accreditation.

The dentist shall provide to the board proof of one of these designations or shall submit a certificate of course completion in teaching methodology.

(2) All duties performed by an employee pursuant to this section shall be done in the dentist's presence. The dentist shall ensure that any patient treated by a bona fide student is verbally informed of the student's status.

(3) The work experience pathway for the employee shall not exceed a term of 18 months, starting on the date that the board approves the application submitted by the dentist for that employee.

(4) Upon successful completion of the work experience pathway period, the dentist shall certify in writing that the employee has successfully completed the educational program covering all procedures

authorized for the specialty category for which the employee is seeking licensure.

(5) With respect to this subdivision, the board:

(A) Shall approve the application form described in subparagraph (A) of paragraph (1). The application form shall not be required to comply with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) Shall have a maximum of 60 days from the date a completed application is received in which to approve or deny an application under this subdivision. Nothing in this section shall prohibit a dentist from appealing the denial of an application to the executive officer of the board.

(C) May inspect the dentist's facilities and practice at any time to ensure compliance with regulations adopted by the board pursuant to Section 1750.2.

(D) May revoke an approval for a dentist to provide training or education pursuant to this section if the dentist is disciplined by the board, fails to provide the training or education in accordance with the law and regulations governing the specialty licensure category, or fails to allow an inspection by the board, or other good cause. A dentist whose approval is revoked may appeal the revocation to the board's executive officer.

(E) May limit by regulations, approved by the board, the number of times a dentist may train or educate an individual employee in one or more of the specialty licensure categories.

(F) May limit by regulations, approved by the board, the number of employees a dentist may train during the same time period.

(G) May by regulations, approved by the board, require an applicant for licensure who has repeatedly failed to pass either the written or practical examination for the specialty licensure category to complete additional training and education before he or she is allowed to retake the examination.

(b) As a condition for licensure for specialty registration under Section 1750.2, an applicant who completes a work experience pathway pursuant to this section shall do the following:

(1) Certify to the board that he or she has a minimum of 1600 hours of prior work experience as a dental assistant. The 1600 hours of required work experience may be obtained by working for multiple employers, if the applicant provides written evidence of work experience from each dentist employer. The employee may begin the work experience pathway before he or she completes 1600 hours of work experience, but may not apply for licensure until that work experience is completed. The board shall give credit toward the 1600 hours of work experience to persons

who have graduated from a dental assisting program in a postsecondary institution, secondary institution, regional occupational center, or regional occupation program that is not approved by the board. The credit shall equal the hours spent in classroom training and internship on an hour-for-hour basis not to exceed 400 hours.

(2) Certify to the board that he or she has completed the educational program covering all procedures authorized for the specialty category for which the applicant is seeking licensure.

(3) Obtain a passing score on a written examination that is approved by the board and administered by the board or by an entity that is recommended by the board. The board may enter into a written agreement with a public or private organization for the administration of the examination. All aspects of the examination shall comply with Section 139.

(4) Obtain a passing score on the practical examination for the specialty category for which the employee is seeking licensure that is approved by the board and administered by the board or by an entity recommended by the board. The board may enter into a written agreement with a public or private organization for the administration of the examination. All aspects of the examination shall comply with Section 139.

SEC. 12. Section 1751 of the Business and Professions Code, as amended by Section 7.1 of Chapter 621 of the Statutes of 2005, is amended to read:

1751. (a) By September 15, 1993, the board, upon recommendation of the committee, consistent with this article, standards of good dental practice, and the health and welfare of patients, shall adopt regulations relating to the functions that may be performed by dental assistants under direct or general supervision, and the settings within which dental assistants may work. At least once every seven years thereafter, the board shall review the list of functions performable by dental assistants, the supervision level, and settings under which they may be performed, and shall update the regulations as needed to keep them current with the state of the practice.

(b) Under the supervision of a registered dental hygienist in alternative practice, a dental assistant may perform intraoral retraction and suctioning.

(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. 12.5. Section 1751 of the Business and Professions Code, as amended by Section 7.1 of Chapter 621 of the Statutes of 2005, is amended to read:

1751. (a) By September 15, 1993, the board, upon recommendation of the dental assisting committee, consistent with this article, standards of good dental practice, and the health and welfare of patients, shall adopt regulations relating to the functions that may be performed by dental assistants under direct or general supervision, and the settings within which dental assistants may work. At least once every seven years thereafter, the board shall review the list of functions performable by dental assistants, the supervision level, and settings under which they may be performed, and shall update the regulations as needed to keep them current with the state of the practice.

(b) Under the supervision of a registered dental hygienist in alternative practice, a dental assistant may perform intraoral retraction and suctioning.

(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. 13. Section 1751 of the Business and Professions Code, as amended by Section 8 of Chapter 621 of the Statutes of 2005, is amended to read:

1751. (a) The board, upon recommendation of the committee, shall adopt regulations governing the procedures that dental assistants, registered orthodontic assistants, registered surgery assistants, registered restorative assistants, registered dental assistants, registered restorative assistants in extended functions, and registered dental assistants in extended functions are authorized to perform consistent with and necessary to implement the provisions of this article, and the settings within which each may practice.

(b) The board shall conduct an initial review of the procedures, supervision level, settings under which they may be performed, and utilization of extended functions dental auxiliaries by January 1, 2012. The board shall submit the results of its review to the Joint Committee on Boards, Commissions, and Consumer Protection. After the initial review, a review shall be conducted at least once every five to seven years thereafter and the board shall update regulations as necessary to keep them current with the state of dental practice.

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

SEC. 13.2. Section 1751 of the Business and Professions Code, as amended by Section 8 of Chapter 621 of the Statutes of 2005, is amended to read:

1751. (a) The board, upon recommendation of the dental assisting committee, shall adopt regulations governing the procedures that dental assistants, registered orthodontic assistants, registered surgery assistants, registered restorative assistants, registered dental assistants, registered

restorative assistants in extended functions, and registered dental assistants in extended functions are authorized to perform consistent with and necessary to implement the provisions of this article, and the settings within which each may practice.

(b) The board shall conduct an initial review of the procedures, supervision level, settings under which they may be performed, and utilization of extended functions dental auxiliaries by January 1, 2012. The board shall submit the results of its review to the Joint Committee on Boards, Commissions, and Consumer Protection. After the initial review, a review shall be conducted at least once every five to seven years thereafter and the board shall update regulations as necessary to keep them current with the state of dental practice.

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

SEC. 13.4. Section 1751 of the Business and Professions Code, as amended by Section 8 of Chapter 621 of the Statutes of 2005, is amended to read:

1751. (a) The board, upon recommendation of the committee, shall adopt regulations governing the procedures that dental assistants, registered orthodontic assistants, registered surgery assistants, registered restorative assistants, registered dental assistants, registered restorative assistants in extended functions, and registered dental assistants in extended functions are authorized to perform consistent with and necessary to implement the provisions of this article, and the settings within which each may practice.

(b) The board shall conduct an initial review of the procedures, supervision level, settings under which they may be performed, and utilization of extended functions dental auxiliaries by January 1, 2012. The board shall submit the results of its review to the Legislature and the Office of the Consumer Advocate. After the initial review, a review shall be conducted at least once every five to seven years thereafter and the board shall update regulations as necessary to keep them current with the state of dental practice.

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

SEC. 13.6. Section 1751 of the Business and Professions Code, as amended by Section 8 of Chapter 621 of the Statutes of 2005, is amended to read:

1751. (a) The board, upon recommendation of the dental assisting committee, shall adopt regulations governing the procedures that dental assistants, registered orthodontic assistants, registered surgery assistants, registered restorative assistants, registered dental assistants, registered restorative assistants in extended functions, and registered dental assistants in extended functions are authorized to perform consistent

with and necessary to implement the provisions of this article, and the settings within which each may practice.

(b) The board shall conduct an initial review of the procedures, supervision level, settings under which they may be performed, and utilization of extended functions dental auxiliaries by January 1, 2012. The board shall submit the results of its review to the Legislature and the Office of the Consumer Advocate. After the initial review, a review shall be conducted at least once every five to seven years thereafter and the board shall update regulations as necessary to keep them current with the state of dental practice.

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

SEC. 14. Section 1752 of the Business and Professions Code, as amended by Section 10 of Chapter 621 of the Statutes of 2005, is amended to read:

1752. (a) The supervising licensed dentist shall be responsible for determining the competency of the dental assistant to perform allowable functions.

(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. 15. Section 1752 of the Business and Professions Code, as amended by Section 10.1 of Chapter 621 of the Statutes of 2005, is amended to read:

1752. (a) A "registered dental assistant in extended functions" is an individual licensed pursuant to this article who may perform basic restorative services and direct patient care, as authorized by Sections 1750, 1750.3, and 1753.1, and by the board regulations adopted pursuant to Section 1751 under the supervision of a licensed dentist.

(b) A "registered restorative assistant in extended functions" is an individual licensed pursuant to this article who may perform basic restorative services and direct patient care, as authorized by Section 1750, subdivision (c) of Section 1750.3, and Section 1753.1, and by board regulations adopted pursuant to Section 1751 under the supervision of a licensed dentist.

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

SEC. 16. Section 1752.1 of the Business and Professions Code is amended to read:

1752.1. (a) The board shall license as a registered dental assistant a person who files an application prior to September 1, 2009, and submits written evidence, satisfactory to the board, of either one of the following requirements:

(1) Graduation from an educational program in dental assisting approved by the board, and satisfactory performance on written and practical examinations required by the board.

(2) Satisfactory work experience of more than 12 months as a dental assistant in California or another state and satisfactory performance on a written and practical examination required by the board. The board shall give credit toward the 12 months work experience referred to in this subdivision to persons who have graduated from a dental assisting program in a postsecondary institution approved by the Department of Education or in a secondary institution, regional occupational center, or regional occupational program, that are not, however, approved by the board pursuant to subdivision (a). The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis not to exceed 16 weeks. The board, in cooperation with the Superintendent of Public Instruction, shall establish the minimum criteria for the curriculum of nonboard-approved programs. Additionally, the board shall notify those programs only if the program's curriculum does not meet established minimum criteria, as established for board-approved registered dental assistant programs, except any requirement that the program be given in a postsecondary institution. Graduates of programs not meeting established minimum criteria shall not qualify for satisfactory work experience as defined by this section.

(b) In addition to the requirements specified in subdivision (a), each applicant for registered dental assistant licensure on or after July 1, 2002, shall provide evidence of having successfully completed board-approved courses in radiation safety and coronal polishing as a condition of licensure. The length and content of the courses shall be governed by applicable board regulations.

(c) An applicant who fails to pass the written and practical examinations required by this section on or before June 30, 2010, shall not be eligible for further reexamination and must apply for and meet the requirements for registered dental assistant licensure specified in Section 1752.5. Between September 1, 2009, and June 30, 2010, an applicant shall only be allowed to apply to take the written examination two times, and shall only be allowed to apply to take the practical examination two times.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 17. Section 1752.2 of the Business and Professions Code is amended to read:

1752.2. (a) A board-approved educational program in registered dental assisting, as provided in subdivisions (a) and (b) of Section 1752.5,

is a program that has met the requirements for approval pursuant to board regulations.

(b) An educational program in registered dental assisting that has been approved by the board prior to January 1, 2010, to teach the duties that a registered dental assistant was allowed to perform pursuant to board regulations prior to January 1, 2010, shall continue to be so approved on and after January 1, 2010, if it has certified no later than November 30, 2009, on a form specified by the board, that it shall provide instruction in all duties that registered dental assistants shall be allowed to perform on and after January 1, 2010, with the exception of adding drugs, medications, and fluids to intravenous lines using a syringe and the monitoring of patients during the preoperative, intraoperative, and postoperative phases.

(c) The board may at any time conduct a thorough evaluation of an approved educational program's curriculum and facilities to determine whether the program meets the requirements for approval as specified in board regulations.

SEC. 18. Section 1752.5 of the Business and Professions Code is amended to read:

1752.5. On and after September 1, 2009, a person may apply for and be issued a license as a registered dental assistant upon obtaining a passing score on a written and practical examination required by the board and providing evidence to the board of one of the following:

(a) Successful completion of an educational program in registered dental assisting approved by the board on or after January 1, 2008, to teach all of the functions specified in Section 1750.3, with the exception of the duties of adding drugs, medications, and fluids to intravenous lines using a syringe and the monitoring of patients during the preoperative, intraoperative, and postoperative phases.

(b) Successful completion of:

(1) An educational program in registered dental assisting approved by the board to teach the duties that registered dental assistants were allowed to perform pursuant to board regulations prior to January 1, 2010.

(2) A board-approved course or courses in the following duties:

(A) Selecting, prepositioning, curing in a position approved by the supervising dentist, and removal of orthodontic brackets.

(B) Applying pit and fissure sealants.

(c) Successful completion of:

(1) Twelve months of satisfactory work experience as a dental assistant in California or another state. The board shall give credit toward the 12 months of work experience to persons who have graduated from a dental assisting program in a postsecondary institution, secondary institution,

regional occupational center, or regional occupation program that are not approved by the board. The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis not to exceed 16 weeks.

(2) The three board-approved specialty registration courses, as defined in Section 1750.2, for registration as a registered orthodontic assistant, registered surgery assistant, and registered restorative assistant. Any specialty license issued pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 1750.2 shall be deemed to have met the requirements of this subdivision for that specialty.

(3) A board-approved radiation safety program.

SEC. 19. Section 1752.6 of the Business and Professions Code is amended to read:

1752.6. A registered dental assistant may perform all duties and procedures that a dental assistant, registered orthodontic assistant, registered surgery assistant, and a registered restorative assistant are allowed to perform, as well as those procedures authorized by regulations adopted pursuant to Section 1751, except for the following:

(a) A registered dental assistant who qualifies for licensure under subdivision (a) of Section 1752.5 may only perform the registered surgery assistant duties of adding drugs, medications, and fluids to intravenous lines and the monitoring of patients during the preoperative, intraoperative, and postoperative phases after providing evidence of completion of a board-approved course or courses in these duties.

(b) A registered dental assistant licensed on or before July 1, 2010, who qualified for licensure prior to September 1, 2009, may only perform the following duties after the completion of a board-approved course or courses in the following duties:

(1) Selecting, prepositioning, curing in a position approved by the supervising dentist, and removal of orthodontic brackets.

(2) Monitoring of patients during the preoperative, intraoperative, and postoperative phases, using noninvasive instrumentation such as pulse oximeters, electrocardiograms, and capnography.

(3) Adding drugs, medications, and fluids to intravenous lines.

(4) Applying pit and fissure sealants.

(c) The supervising dentist shall be responsible for determining the level of supervision required for authorized procedures performed by registered dental assistants.

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

SEC. 20. Section 1753 of the Business and Professions Code is amended to read:

1753. (a) On and after January 1, 2010, the board shall license as a registered dental assistant in extended functions a person who submits written evidence, satisfactory to the board, of all of the following:

(1) Current licensure as a registered dental assistant, or completion of the requirements for licensure as a registered dental assistant, as provided in Section 1752.5.

(2) Successful completion of either of the following:

(A) An extended functions postsecondary program approved by the board in all of the procedures specified in Section 1753.1.

(B) An extended functions postsecondary program approved by the board on or before July 1, 2009, to teach the duties that registered dental assistants in extended functions were allowed to perform pursuant to board regulations prior to January 1, 2010, and a course approved by the board in the procedures specified in paragraphs (8) through (13) of subdivision (b) of Section 1753.1.

(3) Successful completion of board-approved courses in radiation safety and, within the last two years, courses in infection control, California dental law, and basic life support.

(4) Satisfactory performance on a written examination and a clinical or practical examination specified by the board. The board shall designate whether the written examination shall be administered by the committee or by the board-approved extended functions program.

(b) On and after January 1, 2010, the board shall license as a registered restorative assistant in extended functions a person who submits written evidence, satisfactory to the board, of all of the following:

(1) Completion of 12 months of satisfactory work experience as a dental assistant in California or another state. The board shall give credit toward the 12 months of work experience to persons who have graduated from a dental assisting program in a postsecondary institution, secondary institution, regional occupational center, or regional occupation program that are not approved by the board. The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis, not to exceed 16 weeks.

(2) Successful completion of a board-approved course in radiation safety, and, within the last two years, courses in infection control, California dental law, and basic life support.

(3) Successful completion of a postsecondary program approved by the board for restorative dental assisting specialty registration specified in subdivision (c) of Section 1750.3.

(4) Successful completion of an extended functions postsecondary program approved by the board in all of the procedures specified in Section 1753.1.

(5) Satisfactory performance on a written examination and a clinical or practical examination specified by the board. The board shall designate whether the written examination shall be administered by the committee or by the board-approved extended functions program.

(c) In approving extended functions postsecondary programs required to be completed for licensure pursuant to this section, the board shall require that the programs be taught by persons having prior experience teaching the applicable procedures specified in Section 1753.1, or procedures otherwise authorized by the board pursuant to Section 1751, in a dental school approved either by the Commission on Dental Accreditation or a comparable organization approved by the board. Approved programs shall include didactic, laboratory, and clinical modalities.

(d) The board may approve extended functions postsecondary programs referred to in this section prior to January 1, 2010, and the board shall recognize the completion of these approved programs prior to January 1, 2010.

SEC. 20.5. Section 1753 of the Business and Professions Code is amended to read:

1753. (a) On and after January 1, 2010, the board shall license as a registered dental assistant in extended functions a person who submits written evidence, satisfactory to the board, of all of the following:

(1) Current licensure as a registered dental assistant, or completion of the requirements for licensure as a registered dental assistant, as provided in Section 1752.5.

(2) Successful completion of either of the following:

(A) An extended functions postsecondary program approved by the board in all of the procedures specified in Section 1753.1.

(B) An extended functions postsecondary program approved by the board on or before July 1, 2009, to teach the duties that registered dental assistants in extended functions were allowed to perform pursuant to board regulations prior to January 1, 2010, and a course approved by the board in the procedures specified in paragraphs (8) through (13) of subdivision (b) of Section 1753.1.

(3) Successful completion of board-approved courses in radiation safety and, within the last two years, courses in infection control, California dental law, and basic life support.

(4) Satisfactory performance on a written examination and a clinical or practical examination specified by the board. The board shall designate whether the written examination shall be administered by the dental assisting committee.

(b) On and after January 1, 2010, the board shall license as a registered restorative assistant in extended functions a person who submits written evidence, satisfactory to the board, of all of the following:

(1) Completion of 12 months of satisfactory work experience as a dental assistant in California or another state. The board shall give credit toward the 12 months of work experience to persons who have graduated from a dental assisting program in a postsecondary institution, secondary institution, regional occupational center, or regional occupation program that are not approved by the board. The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis, not to exceed 16 weeks.

(2) Successful completion of a board-approved course in radiation safety, and, within the last two years, courses in infection control, California dental law, and basic life support.

(3) Successful completion of a postsecondary program approved by the board for restorative dental assisting specialty registration specified in subdivision (c) of Section 1750.3.

(4) Successful completion of an extended functions postsecondary program approved by the board in all of the procedures specified in Section 1753.1.

(5) Satisfactory performance on a written examination and a clinical or practical examination specified by the board. The board shall designate whether the written examination shall be administered by the dental assisting committee.

(c) In approving extended functions postsecondary programs required to be completed for licensure pursuant to this section, the board shall require that the programs be taught by persons having prior experience teaching the applicable procedures specified in Section 1753.1, or procedures otherwise authorized by the board pursuant to Section 1751, in a dental school approved either by the Commission on Dental Accreditation or a comparable organization approved by the board. Approved programs shall include didactic, laboratory, and clinical modalities.

(d) The board may approve extended functions postsecondary programs referred to in this section prior to January 1, 2010, and the board shall recognize the completion of these approved programs prior to January 1, 2010.

SEC. 21. Section 1753.1 of the Business and Professions Code is amended to read:

1753.1. (a) A registered dental assistant in extended functions licensed on or after January 1, 2010, is authorized to perform all duties and procedures that a registered dental assistant is authorized to perform,

and those duties that the board may prescribe by regulation pursuant to Section 1751.

(b) A registered dental assistant in extended functions licensed on or after January 1, 2010, is authorized to perform the following additional procedures under direct supervision and pursuant to the order, control, and full professional responsibility of a licensed dentist:

(1) Cord retraction of gingivae for impression procedures.

(2) Taking impressions for cast restorations.

(3) Formulating indirect patterns for endodontic post and core castings.

(4) Fitting trial endodontic filling points.

(5) Drying canals previously opened by the supervising dentist, with absorbent points.

(6) Testing pulp vitality.

(7) Removing excess cement from subgingival tooth surfaces with a hand instrument.

(8) Fitting and cementing stainless steel crowns.

(9) Placing, condensing, and carving amalgam restorations.

(10) Placing class I, III, and V nonmetallic restorations.

(11) Taking facebow transfers and bite registrations for fixed prostheses.

(12) Taking final impressions for tooth-borne, removable prostheses.

(13) Placing and adjusting permanent crowns for cementation by the dentist.

(14) Applying etchants for bonding restorative materials.

(15) Other procedures authorized by regulations adopted by the board pursuant to Section 1751.

(c) A registered restorative assistant in extended functions licensed on or after January 1, 2010, is authorized to perform all duties and procedures that a registered restorative assistant is authorized to perform, those duties that the board may prescribe by regulation pursuant to Section 1751, and the duties specified in subdivision (b) of this section.

(d) All procedures required to be performed under direct supervision shall be checked and approved by the supervising dentist prior to the patient's dismissal from the office.

SEC. 22. Section 1754 of the Business and Professions Code is amended to read:

1754. (a) By September 15, 1993, the board, upon recommendation of the committee and consistent with this article, standards of good dental practice, and the health and welfare of patients, shall adopt regulations relating to the functions that may be performed by registered dental assistants under direct or general supervision, and the settings within which registered dental assistants may work. At least once every seven years thereafter, the board shall review the list of functions performable

by registered dental assistants, the supervision level, and settings under which they may be performed, and shall update the regulations as needed to keep them current with the state of the practice.

(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. 23. Section 1756 of the Business and Professions Code is amended to read:

1756. (a) The board shall license as a registered dental assistant in extended functions a person who satisfies all of the following requirements:

(1) Status as a registered dental assistant.

(2) Completion of clinical training approved by the board in a facility affiliated with a dental school under the direct supervision of the dental school faculty.

(3) Satisfactory performance on an examination required by the board.

(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. 24. Section 1757 of the Business and Professions Code is amended to read:

1757. (a) Each person who holds a license as a registered dental assistant in extended functions on the effective date of this section may only perform those procedures that a registered dental assistant is allowed to perform as specified in and limited by subdivision (b) of Section 1752.6, and the procedures listed in paragraphs (1), (2), (3), (4), (5), (6), (7), and (14) of subdivision (b) of Section 1753.1, until he or she provides evidence of having completed a board-approved course or courses in the additional procedures specified in paragraphs (8) to (13) of subdivision (b) of Section 1753.1, and an examination in those additional procedures as specified by the board.

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

SEC. 25. Section 1770 of the Business and Professions Code, as amended by Section 22 of Chapter 621 of the Statutes of 2005, is amended to read:

1770. (a) A licensed dentist may simultaneously utilize in his or her practice no more than two dental auxiliaries in extended functions licensed pursuant to Sections 1756 and 1768.

(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. 25.5. Section 1770 of the Business and Professions Code, as amended by Section 22 of Chapter 621 of the Statutes of 2005, is amended to read:

1770. (a) A licensed dentist may simultaneously utilize in his or her practice no more than two dental assistants in extended functions or registered dental hygienists in extended functions licensed pursuant to Sections 1756 and 1918.

(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. 26. Section 1770 of the Business and Professions Code, as amended by Section 23 of Chapter 621 of the Statutes of 2005, is amended to read:

1770. (a) A licensed dentist may simultaneously utilize in his or her practice no more than three dental auxiliaries in extended functions licensed pursuant to Sections 1753 and 1768.

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

SEC. 26.5. Section 1770 of the Business and Professions Code, as amended by Section 23 of Chapter 621 of the Statutes of 2005, is amended to read:

1770. (a) A licensed dentist may simultaneously utilize in his or her practice no more than three dental assistants in extended functions or registered dental hygienists in extended functions licensed pursuant to Sections 1753 and 1918.

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

SEC. 27. Section 2177 of the Business and Professions Code is amended to read:

2177. (a) A passing score is required for an entire examination or for each part of an examination, as established by resolution of the Division of Licensing.

(b) Applicants may elect to take the written examinations conducted or accepted by the division in separate parts.

(c) (1) An applicant shall have obtained a passing score on Part III of the United States Medical Licensing Examination within not more than four attempts in order to be eligible for a physician's and surgeon's certificate.

(2) Notwithstanding paragraph (1), an applicant who obtains a passing score on Part III of the United States Medical Licensing Examination in more than four attempts and who meets the requirements of Section 2135.5 shall be eligible to be considered for issuance of a physician's and surgeon's certificate.

SEC. 28. Section 2225 of the Business and Professions Code is amended to read:

2225. (a) Notwithstanding Section 2263 and any other provision of law making a communication between a physician and surgeon or a doctor of podiatric medicine and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted under this chapter. Members of the board, the Senior Assistant Attorney General of the Health Quality Enforcement Section, members of the California Board of Podiatric Medicine, and deputies, employees, agents, and representatives of the board or the California Board of Podiatric Medicine and the Senior Assistant Attorney General of the Health Quality Enforcement Section shall keep in confidence during the course of investigations, the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority of the board or the California Board of Podiatric Medicine and the Health Quality Enforcement Section to examine records of patients in the office of a physician and surgeon or a doctor of podiatric medicine is limited to records of patients who have complained to the board or the California Board of Podiatric Medicine about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and investigators and representatives of the board or the California Board of Podiatric Medicine, may inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the board or the California Board of Podiatric Medicine, they shall be provided within 15 business days of receipt of the request, unless the licensee is unable to provide the documents within this time period for good cause, including, but not

limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The board may use its authority to cite and fine a physician and surgeon for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

SEC. 29. Section 2313 of the Business and Professions Code is amended to read:

2313. The Division of Medical Quality shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board or the division to enjoin licensees pursuant to Sections 125.7, 125.8 and 2311, the circumstances in each case that prompted the board or division to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board or a division against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances, including those related to the undertreatment or undermedication of pain.

(c) Information relative to the performance of the division, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of complaint forms received; number of Section 805 reports by type; number of Section 801.01 and Section 803 reports; coroner reports received; number of convictions reported to the division; number of criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the division and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines, and number of public reprimands issued; number of cases in process more than six months from receipt by the division of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the division for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number

successfully completing diversion programs and failing to do so, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and caseloads of investigators for original cases and for probation cases, respectively.

"Action," for purposes of this section, includes proceedings brought by, or on behalf of, the division against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(d) The total number of reports received pursuant to Section 805 by the type of peer review body reporting and, where applicable, the type of health care facility involved and the total number and type of administrative or disciplinary actions taken by the Medical Board of California with respect to the reports.

(e) The number of malpractice settlements in excess of thirty thousand dollars ($30,000) reported pursuant to Section 801.01. This information shall be grouped by specialty practice and shall include the total number of physicians and surgeons practicing in each specialty. For the purpose of this subdivision, "specialty" includes all specialties and subspecialties considered in determining the risk categories described in Section 803.1.

SEC. 30. Section 2335 of the Business and Professions Code is amended to read:

2335. (a) All proposed decisions and interim orders of the Medical Quality Hearing Panel designated in Section 11371 of the Government Code shall be transmitted to the executive director of the board, or the Executive Director of the California Board of Podiatric Medicine as to the licensees of that board, within 48 hours of filing.

(b) All interim orders shall be final when filed.

(c) A proposed decision shall be acted upon by a panel of the Division of Medical Quality or the California Board of Podiatric Medicine, as the case may be, in accordance with Section 11517 of the Government Code, except that all of the following shall apply to proceedings against licensees under this chapter:

(1) When considering a proposed decision, the division panel and the California Board of Podiatric Medicine shall give great weight to the findings of fact of the administrative law judge, except to the extent those findings of fact are controverted by new evidence.

(2) The Division of Medical Quality or the California Board of Podiatric Medicine shall poll the members of the division panel or California Board of Podiatric Medicine by written mail ballot concerning the proposed decision. The mail ballot shall be sent within 10 calendar days of receipt of the proposed decision, and shall poll each member on whether the member votes to approve the decision, to approve the

decision with an altered penalty, to refer the case back to the administrative law judge for the taking of additional evidence, to defer final decision pending discussion of the case by the panel or board as a whole, or to nonadopt the decision. No party to the proceeding, including employees of the agency that filed the accusation, and no person who has a direct or indirect interest in the outcome of the proceeding or who presided at a previous stage of the decision, may communicate directly or indirectly, upon the merits of a contested matter while the proceeding is pending, with any member of the panel or board, without notice and opportunity for all parties to participate in the communication. The votes of four members of a division panel, and a majority of the California Board of Podiatric Medicine, are required to approve the decision with an altered penalty, to refer the case back to the administrative law judge for the taking of further evidence, or to nonadopt the decision. The votes of two members of the panel or board are required to defer final decision pending discussion of the case by the panel or board as a whole. If there is a vote by the specified number to defer final decision pending discussion of the case by the panel or board as a whole, provision shall be made for that discussion before the 100-day period specified in paragraph (3) expires, but in no event shall that 100-day period be extended.

(3) If four members of a division panel, or a majority of the California Board of Podiatric Medicine vote to do so, the panel of the division and the California Board of Podiatric Medicine shall issue an order of nonadoption of a proposed decision within 100 calendar days of the date it is received by the board. If a panel of the division or the California Board of Podiatric Medicine does not refer the case back to the administrative law judge for the taking of additional evidence or issue an order of nonadoption within 100 days, the decision shall be final and subject to review under Section 2337. Members of a panel of the division or the California Board of Podiatric Medicine who review a proposed decision or other matter and vote by mail as provided in paragraph (2) shall return their votes by mail to the board within 30 days from receipt of the proposed decision or other matter.

(4) The division panel or California Board of Podiatric Medicine shall afford the parties the opportunity to present oral argument before deciding a case after nonadoption of the administrative law judge's decision.

(5) A vote of four members of a division panel, or a majority of the California Board of Podiatric Medicine, are required to increase the penalty from that contained in the proposed administrative law judge's decision. No member of the division panel or of the California Board of Podiatric Medicine may vote to increase the penalty except after reading

the entire record and personally hearing any additional oral argument and evidence presented to the panel or board.

SEC. 30.5. Section 2335 of the Business and Professions Code is amended to read:

2335. (a) All proposed decisions and interim orders of the Medical Quality Hearing Panel designated in Section 11371 of the Government Code shall be transmitted to the executive director of the board, or the Executive Director of the California Board of Podiatric Medicine as to the licensees of that board, within 48 hours of filing.

(b) All interim orders shall be final when filed.

(c) A proposed decision shall be acted upon by the board or by any panel appointed pursuant to Section 2008 or by the California Board of Podiatric Medicine, as the case may be, in accordance with Section 11517 of the Government Code, except that all of the following shall apply to proceedings against licensees under this chapter:

(1) When considering a proposed decision, the board or panel and the California Board of Podiatric Medicine shall give great weight to the findings of fact of the administrative law judge, except to the extent those findings of fact are controverted by new evidence.

(2) The board's staff or the staff of the California Board of Podiatric Medicine shall poll the members of the board or panel or of the California Board of Podiatric Medicine by written mail ballot concerning the proposed decision. The mail ballot shall be sent within 10 calendar days of receipt of the proposed decision, and shall poll each member on whether the member votes to approve the decision, to approve the decision with an altered penalty, to refer the case back to the administrative law judge for the taking of additional evidence, to defer final decision pending discussion of the case by the panel or board as a whole, or to nonadopt the decision. No party to the proceeding, including employees of the agency that filed the accusation, and no person who has a direct or indirect interest in the outcome of the proceeding or who presided at a previous stage of the decision, may communicate directly or indirectly, upon the merits of a contested matter while the proceeding is pending, with any member of the panel or board, without notice and opportunity for all parties to participate in the communication. The votes of a majority of the board or of the panel, and a majority of the California Board of Podiatric Medicine, are required to approve the decision with an altered penalty, to refer the case back to the administrative law judge for the taking of further evidence, or to nonadopt the decision. The votes of two members of the panel or board are required to defer final decision pending discussion of the case by the panel or board as a whole. If there is a vote by the specified number to defer final decision pending discussion of the case by the panel or board as a whole, provision shall

be made for that discussion before the 100-day period specified in paragraph (3) expires, but in no event shall that100-day period be extended.

(3) If a majority of the board or of the panel, or a majority of the California Board of Podiatric Medicine vote to do so, the board or the panel or the California Board of Podiatric Medicine shall issue an order of nonadoption of a proposed decision within 100 calendar days of the date it is received by the board. If the board or the panel or the California Board of Podiatric Medicine does not refer the case back to the administrative law judge for the taking of additional evidence or issue an order of nonadoption within 100 days, the decision shall be final and subject to review under Section 2337. Members of the board or of any panel or of the California Board of Podiatric Medicine who review a proposed decision or other matter and vote by mail as provided in paragraph (2) shall return their votes by mail to the board within 30 days from receipt of the proposed decision or other matter.

(4) The board or the panel or the California Board of Podiatric Medicine shall afford the parties the opportunity to present oral argument before deciding a case after nonadoption of the administrative law judge's decision.

(5) A vote of a majority of the board or of a panel, or a majority of the California Board of Podiatric Medicine, are required to increase the penalty from that contained in the proposed administrative law judge's decision. No member of the board or panel or of the California Board of Podiatric Medicine may vote to increase the penalty except after reading the entire record and personally hearing any additional oral argument and evidence presented to the panel or board.

SEC. 31. Section 2416 of the Business and Professions Code is amended to read:

2416. Physicians and surgeons and doctors of podiatric medicine may conduct their professional practices in a partnership or group of physician and surgeons or a partnership or group of doctors of podiatric medicine, respectively. Physician and surgeons and doctors of podiatric medicine may establish a professional partnership that includes both physician and surgeons and doctors of podiatric medicine, if both of the following conditions are satisfied:

(a) A majority of the partners and partnership interests in the professional partnership are physician and surgeons or osteopathic physician and surgeons.

(b) Notwithstanding Chapter 2 (commencing with Section 15001) of Title 1 of the Corporations Code, a partner who is not a physician and surgeon shall not practice in the partnership or vote on partnership matters related to the practice of medicine that are outside his or her scope of

practice. All partners may vote on general administrative, management, and business matters.

SEC. 32. Section 2471 is added to the Business and Professions Code, to read:

2471. Except as provided by Section 159.5, the board may employ, within the limits of the funds received by the board, all personnel necessary to carry out this chapter.

SEC. 33. Section 2497.5 of the Business and Professions Code is amended to read:

2497.5. (a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

(c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Board of Podiatric Medicine Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

SEC. 34. Section 2570.7 of the Business and Professions Code is amended to read:

2570.7. (a) An applicant who has satisfied the requirements of Section 2570.6 may apply for examination for licensure or certification

in a manner prescribed by the board. Subject to the provisions of this chapter, an applicant who fails an examination may apply for reexamination.

(b) Each applicant for licensure or certification shall successfully complete the entry level certification examination for occupational therapists or occupational therapy assistants approved by the board, such as the examination administered by the National Board for Certification in Occupational Therapy or by another nationally recognized credentialing body. The examination shall be appropriately validated. Each applicant shall be examined by written examination to test his or her knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and any other subjects that the board may require to determine the applicant's fitness to practice under this chapter.

(c) Applicants for licensure or certification shall be examined at a time and place and under that supervision as the board may require.

SEC. 35. Section 2570.8 is added to the Business and Professions Code, to read:

2570.8. For the purposes of verifying a license issued under this chapter, a person may rely on the licensure information posted on the board's Internet Web site, which includes the issuance and expiration dates of a license issued by the board.

SEC. 36. Section 2717 of the Business and Professions Code is amended to read:

2717. (a) The board shall collect and analyze workforce data from its licensees for future workforce planning. The board may collect the data at the time of license renewal or from a scientifically selected random sample of its licensees. The board shall produce reports on the workforce data it collects, at a minimum, on a biennial basis. The board shall maintain the confidentiality of the information it receives from licensees under this section and shall only release information in an aggregate form that cannot be used to identify an individual. The workforce data collected by the board shall include, at a minimum, employment information such as hours of work, number of positions held, time spent in direct patient care, clinical practice area, type of employer, and work location. The data shall also include future work intentions, reasons for leaving or reentering nursing, job satisfaction ratings, and demographic data.

(b) Aggregate information collected pursuant to this section shall be placed on the board's Internet Web site.

(c) The board is authorized to expend the sum of one hundred forty-five thousand dollars ($145,000) from the Board of Registered

Nursing Fund in the Professions and Vocations Fund for the purpose of implementing this section.

(d) This section shall be implemented by the board on or before July 1, 2003.

SEC. 37. Section 2732.05 of the Business and Professions Code is amended to read:

2732.05. (a) Every employer of a registered nurse, every employer of a registered nurse required to hold any board-issued certification, and every person acting as an agent for such a nurse in obtaining employment, shall ascertain that the nurse is currently authorized to practice as a registered nurse or as a registered nurse pursuant to a board-issued certification within the provisions of this chapter. As used in this section, "board-issued certification" includes, but is not limited to, certification as a nurse practitioner, nurse practitioner with a furnishing number, nurse anesthetist, nurse midwife, nurse midwife with a furnishing number, public health nurse, clinical nurse specialist, or board listed psychiatric mental health nurse.

(b) Every employer of a temporary licensee or interim permittee and every person acting as an agent for a temporary licensee or interim permittee in obtaining employment shall ascertain that the person is currently authorized to practice as a temporary licensee or interim permittee.

(c) As used in this section, the term "agent" includes, but is not limited to, a nurses registry and a traveling nurse agency.

Examination by an employer or agent of evidence satisfactory to the board showing the nurse's, licensee's, or permittee's current authority to practice under this chapter, prior to employment, shall constitute a determination of authority to so practice.

Nothing in this section shall apply to a patient, or other person acting for a specific patient, who engages the services of a registered nurse or temporary licensee to provide nursing care to a single patient.

SEC. 38. Section 3057 of the Business and Professions Code is amended to read:

3057. (a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Has successfully passed the licensing examination for an optometric license in another state.

(3) Submits proof that he or she is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements.

(4) Submits proof that he or she has been in active practice in a state in which he or she is licensed for a total of at least 5,000 hours in five of the seven consecutive years immediately preceding the date of his or her application under this section.

(5) Is not subject to disciplinary action as set forth in subdivision (h) of Section 3110. If the person has been subject to disciplinary action, the board shall review that action to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(6) Has furnished a signed release allowing the disclosure of information from the Healthcare Integrity and Protection Data Bank and, if applicable, the verification of registration status with the federal Drug Enforcement Administration. The board shall review this information to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(7) Has never had his or her license to practice optometry revoked or suspended.

(8) Is not subject to denial of an application for licensure based on any of the grounds listed in Section 480.

(9) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(10) Has met the certification requirements of Section 3041.3 to use therapeutic pharmaceutical agents under subdivision (e) of Section 3041.

(11) Submits any other information as specified by the board to the extent it is required for licensure by examination under this chapter.

(12) Files an application on a form prescribed by the board, with an acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(A) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(B) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(13) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(14) Has successfully passed the board's jurisprudence examination.

(b) If the board finds that the competency of a candidate for licensure pursuant to this section is in question, the board may require the passage of a written, practical, or clinical exam or completion of additional continuing education or coursework.

(c) In cases where the person establishes, to the board's satisfaction, that he or she has been displaced by a federally declared emergency and

cannot relocate to his or her state of practice within a reasonable time without economic hardship, the board is authorized to do both of the following:

(1) Approve an application where the person's time in active practice is less than that specified in paragraph (4) of subdivision (a), if a sufficient period in active practice can be verified by the board and all other requirements of subdivision (a) are satisfied by the person.

(2) Reduce or waive the fees required by paragraph (13) of subdivision (a).

(d) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(e) The term "in good standing," as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

SEC. 39. Section 3527 of the Business and Professions Code is amended to read:

3527. (a) The committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct that includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(b) The committee may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.

(c) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required

in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Medical Board of California, in conjunction with an action it has commenced against a physician and surgeon, may, in its own discretion and without the concurrence of the board, order the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(e) The committee may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, a physician assistant license, after a hearing as required in Section 3528 for unprofessional conduct that includes, except for good cause, the knowing failure of a licensee to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the committee shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the committee shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The committee shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(f) The committee may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

SEC. 40. Section 3530 of the Business and Professions Code is repealed.

SEC. 41. Section 3530 is added to the Business and Professions Code, to read:

3530. (a) A person whose license or approval has been revoked or suspended, or who has been placed on probation, may petition the committee for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license or approval revoked for unprofessional conduct, except that the committee may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license or approval revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians licensed either by the Medical Board of California or the Osteopathic Medical Board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the committee. The committee may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the committee that shall be acted upon in accordance with the Administrative Procedure Act.

(d) The committee or the administrative law judge hearing the petition, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued, as the committee or administrative law judge finds necessary.

(e) The committee or administrative law judge, when hearing a petition for reinstating a license or approval or modifying a penalty, may recommend the imposition of any terms and conditions deemed necessary.

(f) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall

be considered while there is an accusation or petition to revoke probation pending against the person. The committee may deny, without a hearing or argument, any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter Sections 822 and 823.

SEC. 42. Section 3634 of the Business and Professions Code is amended to read:

3634. A license issued under this chapter shall be subject to renewal biennially as prescribed by the bureau and shall expire unless renewed in that manner. The bureau may provide by regulation for the late renewal of a license.

SEC. 43. Section 4068 of the Business and Professions Code is amended to read:

4068. (a) Notwithstanding any provision of this chapter, a prescriber may dispense a dangerous drug, including a controlled substance, to an emergency room patient if all of the following apply:

(1) The hospital pharmacy is closed and there is no pharmacist available in the hospital.

(2) The dangerous drug is acquired by the hospital pharmacy.

(3) The dispensing information is recorded and provided to the pharmacy when the pharmacy reopens.

(4) The hospital pharmacy retains the dispensing information and, if the drug is a schedule II, schedule III, or schedule IV controlled substance, reports the dispensing information to the Department of Justice pursuant to Section 11165 of the Health and Safety Code.

(5) The prescriber determines that it is in the best interest of the patient that a particular drug regimen be immediately commenced or continued, and the prescriber reasonably believes that a pharmacy located outside the hospital is not available and accessible at the time of dispensing to the patient.

(6) The quantity of drugs dispensed to any patient pursuant to this section are limited to that amount necessary to maintain uninterrupted therapy during the period when pharmacy services outside the hospital are not readily available or accessible, but shall not exceed a 72-hour supply.

(7) The prescriber shall ensure that the label on the drug contains all the information required by Section 4076.

(b) The prescriber shall be responsible for any error or omission related to the drugs dispensed.

SEC. 44. Section 4084 of the Business and Professions Code is amended to read:

4084. (a) When a board inspector finds, or has probable cause to believe, that any dangerous drug or dangerous device is adulterated, misbranded, 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, misbranded, 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.

(f) For the purposes of this article, "misbranded" shall have the meaning defined in Article 3 (commencing with Section 111330) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

SEC. 45. Section 4101 of the Business and Professions Code is amended to read:

4101. (a) A pharmacist who takes charge of, or acts as pharmacist-in-charge of a pharmacy or other entity licensed by the board, who terminates his or her employment at the pharmacy or other entity, shall notify the board within 30 days of the termination of employment.

(b) A designated representative-in-charge of a wholesaler or veterinary food drug-animal retailer, who terminates his or her employment at that entity shall notify the board within 30 days of the termination of employment.

SEC. 46. 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 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 premises 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 five hundred fifty dollars ($550) or another amount established by the board not to exceed the annual fee for renewal of a license to compound injectable sterile drug products. When needed to protect public safety, a temporary license may be issued for a period not to exceed 180 days, subject to terms and conditions that the board deems necessary. If the board determines that a temporary license was issued by mistake or denies the application for a permanent license, the temporary license shall terminate upon either personal service of the notice of termination upon the licenseholder or service by certified mail, return receipt requested, at the licenseholder's address of record with the board, whichever occurs first. Neither for purposes of retaining a temporary license, nor for purposes of any disciplinary or license denial proceeding before the board, shall the temporary licenseholder be deemed to have a vested property right or interest in the license.

(g) This section shall become operative on January 1, 2006.

SEC. 47. Section 4161 of the Business and Professions Code is amended 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 five hundred fifty dollars ($550) or another amount established by the board not to exceed the annual fee for renewal of a license to compound injectable sterile drug products. When needed to protect public safety, a temporary license may be issued for a period not to exceed 180 days, subject to terms and conditions that the board deems necessary. If the board determines that a temporary license was issued by mistake or denies the application for a permanent

license, the temporary license shall terminate upon either personal service of the notice of termination upon the licenseholder or service by certified mail, return receipt requested, at the licenseholder's address of record with the board, whichever occurs first. Neither for purposes of retaining a temporary license, nor for purposes of any disciplinary or license denial proceeding before the board, shall the temporary licenseholder be deemed to have a vested property right or interest in the license.

(*l*) The registration fee shall be the fee specified in subdivision (f) of Section 4400.

SEC. 48. Section 4162 of the Business and Professions Code is amended to read:

4162. (a) (1) An applicant, that is not a government-owned and operated wholesaler, 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, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends those dates.

SEC. 49. Section 4162.5 of the Business and Professions Code is amended 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), 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 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 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.

(4) A person to whom an approved new drug application or a biologics license 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 or biologics license application, and is licensed or applies for licensure as a nonresident wholesaler, shall not be required to post a surety bond as provided in this section.

(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, 2015, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends those dates.

SEC. 50. Section 4200 of the Business and Professions Code is amended to read:

4200. (a) The board may license as a pharmacist an applicant who meets all the following requirements:

(1) Is at least 18 years of age.

(2) (A) Has graduated from a college of pharmacy or department of pharmacy of a university recognized by the board; or

(B) If the applicant graduated from a foreign pharmacy school, the foreign-educated applicant has been certified by the Foreign Pharmacy Graduate Examination Committee.

(3) Has completed at least 150 semester units of collegiate study in the United States, or the equivalent thereof in a foreign country. No less than 90 of those semester units shall have been completed while in resident attendance at a school or college of pharmacy.

(4) Has earned at least a baccalaureate degree in a course of study devoted to the practice of pharmacy.

(5) Has completed 1,500 hours of pharmacy practice experience or the equivalent in accordance with Section 4209.

(6) Has passed a written and practical examination given by the board prior to December 31, 2003, or has passed the North American Pharmacist Licensure Examination and the California Practice Standards and Jurisprudence Examination for Pharmacists on or after January 1, 2004.

(b) Proof of the qualifications of an applicant for licensure as a pharmacist, shall be made to the satisfaction of the board and shall be substantiated by affidavits or other evidence as may be required by the board.

(c) Each person, upon application for licensure as a pharmacist under this chapter, shall pay to the executive officer of the board, the fees provided by this chapter. The fees shall be compensation to the board for investigation or examination of the applicant.

SEC. 51. Section 4200.1 of the Business and Professions Code is amended to read:

4200.1. (a) Notwithstanding Section 135, an applicant may take the North American Pharmacist Licensure Examination four times, and may take the California Practice Standards and Jurisprudence Examination for Pharmacists four times.

(b) Notwithstanding Section 135, an applicant may take the North American Pharmacist Licensure Examination and the California Practice Standards and Jurisprudence Examination for Pharmacists four additional times each if he or she successfully completes, at minimum, 16 additional semester units of education in pharmacy as approved by the board.

(c) The applicant shall comply with the requirements of Section 4200 for each application for reexamination made pursuant to subdivision (b).

(d) An applicant may use the same coursework to satisfy the additional educational requirement for each examination under subdivision (b), if the coursework was completed within 12 months of the date of his or her application for reexamination.

(e) For purposes of this section, the board shall treat each failing score on the pharmacist licensure examination administered by the board prior

to January 1, 2004, as a failing score on both the North American Pharmacist Licensure Examination and the California Practice Standards and Jurisprudence Examination for Pharmacists.

(f) From January 1, 2004, to July 1, 2008, inclusive, the board shall collect data on the applicants who are admitted to, and take, the licensure examinations required by Section 4200. The board shall report to the Joint Committee on Boards, Commissions, and Consumer Protection before September 1, 2008, regarding the impact on those applicants of the examination limitations imposed by this section. The report shall include, but not be limited to, the following information:

(1) The number of applicants taking the examination and the number who fail the examination for the fourth time.

(2) The number of applicants who, after failing the examination for the fourth time, complete a pharmacy studies program in California or another state to satisfy the requirements of this section and who apply to take the licensure examination required by Section 4200.

(3) To the extent possible, the school from which the applicant graduated and the school's location and the pass/fail rates on the examination for each school.

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

SEC. 51.5. Section 4200.1 of the Business and Professions Code is amended to read:

4200.1. (a) Notwithstanding Section 135, an applicant may take the North American Pharmacist Licensure Examination four times, and may take the California Practice Standards and Jurisprudence Examination for Pharmacists four times.

(b) Notwithstanding Section 135, an applicant may take the North American Pharmacist Licensure Examination and the California Practice Standards and Jurisprudence Examination for Pharmacists four additional times each if he or she successfully completes, at minimum, 16 additional semester units of education in pharmacy as approved by the board.

(c) The applicant shall comply with the requirements of Section 4200 for each application for reexamination made pursuant to subdivision (b).

(d) An applicant may use the same coursework to satisfy the additional educational requirement for each examination under subdivision (b), if the coursework was completed within 12 months of the date of his or her application for reexamination.

(e) For purposes of this section, the board shall treat each failing score on the pharmacist licensure examination administered by the board prior to January 1, 2004, as a failing score on both the North American

Pharmacist Licensure Examination and the California Practice Standards and Jurisprudence Examination for Pharmacists.

(f) From January 1, 2004, to July 1, 2008, inclusive, the board shall collect data on the applicants who are admitted to, and take, the licensure examinations required by Section 4200. The board shall report to the Legislature and the Office of the Consumer Advocate before September 1, 2008, regarding the impact on those applicants of the examination limitations imposed by this section. The report shall include, but not be limited to, the following information:

(1) The number of applicants taking the examination and the number who fail the examination for the fourth time.

(2) The number of applicants who, after failing the examination for the fourth time, complete a pharmacy studies program in California or another state to satisfy the requirements of this section and who apply to take the licensure examination required by Section 4200.

(3) To the extent possible, the school from which the applicant graduated and the school's location and the pass/fail rates on the examination for each school.

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

SEC. 52. Section 4200.2 of the Business and Professions Code is amended to read:

4200.2. When developing the California Practice Standards and Jurisprudence Examination for Pharmacists, the board shall include all of the following:

(a) Examination items to demonstrate the candidate's proficiency in patient communication skills.

(b) Aspects of contemporary standards of practice for pharmacists in California, including, but not limited to, the provision of pharmacist care and the application of clinical knowledge to typical pharmacy practice situations that are not evaluated by the North American Pharmacy Licensure Examination.

SEC. 53. Section 4208 of the Business and Professions Code is amended to read:

4208. (a) At the discretion of the board, an intern pharmacist license may be issued for a period of:

(1) One to six years to a person who is currently enrolled in a school of pharmacy recognized by the board.

(2) Two years to a person who is a graduate of a school of pharmacy recognized by the board and who has applied to become licensed as a pharmacist in California.

(3) Two years to a foreign graduate who has met educational requirements described in paragraphs (1) and (2) of subdivision (a) of Section 4200.

(4) One year to a person who has failed the pharmacist licensure examination four times and has reenrolled in a school of pharmacy to satisfy the requirements of Section 4200.1.

(b) The board may issue an intern pharmacist license to an individual for the period of time specified in a decision of reinstatement adopted by the board.

(c) An intern pharmacist shall notify the board within 30 days of any change of address.

(d) An intern pharmacist whose license has been issued pursuant to paragraph (1) or (4) of subdivision (a) shall return his or her license, by registered mail, within 30 days of no longer being enrolled in a school of pharmacy. The intern pharmacist license shall be canceled by the board. Notwithstanding subdivision (c), an intern pharmacist license may be reinstated if the student reenrolls in a school of pharmacy recognized by the board to fulfill the education requirements of paragraphs (1) to (4), inclusive, of subdivision (a) of Section 4200.

(e) A person who has not completed the experience requirements necessary to be eligible for the licensure examination may have his or her intern license extended for a period of up to two years at the discretion of the board if he or she is able to demonstrate his or her inability to exercise the privileges of the intern license during the initial license period.

SEC. 54. Section 4314 of the Business and Professions Code is amended to read:

4314. (a) The board may issue citations containing fines and orders of abatement for any violation of Section 733, for any violation of this chapter or regulations adopted pursuant to this chapter, or for any violation of Division 116 (commencing with Section 150200) of the Health and Safety Code, in accordance with Sections 125.9, 148, and 4005 and the regulations adopted pursuant to those sections.

(b) Where appropriate, a citation issued by the board, as specified in this section, may subject the person or entity to whom the citation is issued to an administrative fine.

(c) Notwithstanding any other provision of law, where appropriate, a citation issued by the board may contain an order of abatement. The order of abatement shall fix a reasonable time for abatement of the violation. It may also require the person or entity to whom the citation is issued to demonstrate how future compliance with the Pharmacy Law, and the regulations adopted pursuant thereto, will be accomplished. A demonstration may include, but is not limited to, submission of a

corrective action plan, and requiring completion of up to six hours of continuing education courses in the subject matter specified in the order of abatement. Any continuing education courses required by the order of abatement shall be in addition to those required for license renewal.

(d) Nothing in this section shall in any way limit the board from issuing a citation, fine, and order of abatement pursuant to Section 4067 or Section 56.36 of the Civil Code, and the regulations adopted pursuant to those sections.

SEC. 55. Section 4315 of the Business and Professions Code is amended to read:

4315. (a) The executive officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with Section 733, for failure to comply with this chapter or regulations adopted pursuant to this chapter, or for failure to comply with Division 116 (commencing with Section 150200) of the Health and Safety Code, directing the licensee to come into compliance.

(b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the statutes or regulations violated.

(c) The letter of admonishment shall inform the licensee that within 30 days of service of the order of admonishment the licensee may do either of the following:

(1) Submit a written request for an office conference to the executive officer of the board to contest the letter of admonishment.

(A) Upon a timely request, the executive officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the executive officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.

(B) Prior to or at the office conference, the licensee may submit to the executive officer declarations and documents pertinent to the subject matter of the letter of admonishment.

(C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(D) The executive officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the executive officer, or his or her designee, shall personally serve or send by certified mail to the licensee's

address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

(2) Comply with the letter of admonishment and submit a written corrective action plan to the executive officer documenting compliance. If an office conference is not requested pursuant to this section, compliance with the letter of admonishment shall not constitute an admission of the violation noted in the letter of admonishment.

(d) The letter of admonishment shall be served upon the licensee personally or by certified mail at the licensee's address of record with the board. If the licensee is served by certified mail, service shall be effective upon deposit in the United States mail.

(e) The licensee shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.

(f) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:

(1) Issue a citation pursuant to Section 125.9, 148, or 4067 or pursuant to Section 1775 of Title 16 of the California Code of Regulations.

(2) Institute disciplinary proceedings pursuant to Article 19 (commencing with Section 4300).

SEC. 56. Section 4980.01 of the Business and Professions Code is amended to read:

4980.01. (a) Nothing in this chapter shall be construed to constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, or the Psychology Licensing Act.

(b) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of his or her pastoral or professional duties, or to any person who is admitted to practice law in the state, or who is licensed to practice medicine, when providing counseling services as part of his or her professional practice.

(c) (1) This chapter shall not apply to an employee working in any of the following settings if his or her work is performed solely under the supervision of the employer:

(A) A governmental entity.

(B) A school, college, or university.

(C) An institution that is both nonprofit and charitable.

(2) This chapter shall not apply to a volunteer working in any of the settings described in paragraph (1) if his or her work is performed solely under the supervision of the entity, school, or institution.

(d) A marriage and family therapist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

(e) Notwithstanding subdivisions (b) and (c), all persons registered as interns or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

SEC. 57. Section 4980.38 of the Business and Professions Code is amended to read:

4980.38. (a) Each educational institution preparing applicants to qualify for licensure shall notify each of its students by means of its public documents or otherwise in writing that its degree program is designed to meet the requirements of Sections 4980.37 and 4980.40, and shall certify to the board that it has so notified its students.

(b) In addition to all of the other requirements for licensure, each applicant shall submit to the board a certification by the chief academic officer, or his or her designee, of the applicant's educational institution that the applicant has fulfilled the requirements enumerated in Sections 4980.37 and 4980.40, and subdivisions (d) and (e) of Section 4980.41.

SEC. 58. 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 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. 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) 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 of experience that meet the requirements of Section 4980.43.

(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) 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. 59. Section 4980.44 of the Business and Professions Code is amended to read:

4980.44. An unlicensed marriage and family therapist intern employed under this chapter shall comply with the following requirements:

(a) Possess, at a minimum, a master's degree as specified in Section 4980.40.

(b) Register with the board prior to performing any duties, except as otherwise provided in subdivision (e) of Section 4980.43.

(c) Inform each client or patient prior to performing any professional services that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

SEC. 60. Section 4980.54 of the Business and Professions Code is amended to read:

4980.54. (a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to assure that an applicant is prepared and qualified to take

the licensure examinations as specified in subdivision (g) of Section 4980.40 and, if he or she passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage and family therapists and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

(c) Except as provided in subdivision (e), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of marriage and family therapy in the preceding two years, as determined by the board.

(d) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as defined by the board.

(f) The continuing education shall be obtained from one of the following sources:

(1) An accredited school or state-approved school that meets the requirements set forth in Section 4980.40. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four-year institution of higher learning, or a mental health professional association, approved by the board.

(g) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (f), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(h) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of marriage and family therapy.

(2) Aspects of the discipline of marriage and family therapy in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy.

(i) A system of continuing education for licensed marriage and family therapists shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(j) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (f) shall be deemed to be an approved provider.

(k) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

SEC. 61. Section 4980.57 of the Business and Professions Code is amended to read:

4980.57. (a) The board shall require a licensee who began graduate study prior to January 1, 2004, to take a continuing education course during his or her first renewal period after the operative date of this section in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement.

(b) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required under subdivision (c) of Section 4980.54.

SEC. 62. Section 4980.80 of the Business and Professions Code is amended to read:

4980.80. The board may issue a license to a person who, at the time of application, has held for at least two years a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if the education and supervised experience requirements are substantially the equivalent of this chapter and the person successfully completes the board administered licensing examinations as specified by subdivision (g) of Section 4980.40 and

pays the fees specified. Issuance of the license is further conditioned upon the person's completion of the following coursework or training:

(a) (1) An applicant who completed a two semester or three quarter unit course in law and professional ethics for marriage, and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree shall complete an 18-hour course in California law and professional ethics that includes, but is not limited to, the following subjects: advertising, scope of practice, scope of competence, treatment of minors, confidentiality, dangerous patients, psychotherapist-patient privilege, recordkeeping, patient access to records, requirements of the Health Insurance Portability and Accountability Act of 1996, dual relationships, child abuse, elder and dependent adult abuse, online therapy, insurance reimbursement, civil liability, disciplinary actions and unprofessional conduct, ethics complaints and ethical standards, termination of therapy, standards of care, relevant family law, and therapist disclosures to patients.

(2) An applicant who has not completed a two semester or three quarter unit course in law and professional ethics for marriage and family therapists that included areas of study as specified in Section 4980.41 as part of his or her qualifying degree, shall complete a two semester or three quarter unit course in California law and professional ethics that includes, at minimum, the areas of study specified in Section 4980.41.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25 and any regulations promulgated thereunder.

(d) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(e) (1) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(2) On and after January 1, 2004, a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(f) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(g) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychopharmacology. This course

may be taken either in fulfillment of other requirements for licensure or in a separate course.

(h) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

SEC. 63. Section 4980.90 of the Business and Professions Code is amended to read:

4980.90. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a marriage and family therapist.

(b) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed all of the following:

(1) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25 and any regulations promulgated thereunder.

(4) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(5) (A) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other educational requirements for licensure or in a separate course.

(B) On and after January 1, 2004, a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(6) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(7) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(8) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(c) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant meets both of the following requirements:

(1) The applicant has been granted a degree in a single integrated program primarily designed to train marriage and family therapists.

(2) The applicant's education meets the requirements of Sections 4980.37 and 4980.40. The degree title need not be identical to those required by subdivision (a) of Section 4980.40. If the applicant's degree does not contain the content required by Section 4980.37 or the overall number of units required by subdivision (a) of Section 4980.40, the board may, in its discretion, accept the applicant's education as substantially equivalent if the following criteria are satisfied:

(A) The applicant's degree contains the required number of practicum units and coursework required in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment as specified in Section 4980.40.

(B) The applicant remediates his or her specific deficiency by completing the course content required by Section 4980.37 or the units required by subdivision (a) of Section 4980.40.

(C) The applicant's degree otherwise complies with this section.

SEC. 64. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the

qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as

established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(z) Failure to comply with Section 2290.5.

SEC. 65. Section 4984.01 is added to the Business and Professions Code, to read:

4984.01. (a) The marriage and family therapist intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew the registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken against him or her by a regulatory or licensing board in this or any other state subsequent to the last renewal of the registration.

(c) The registration may be renewed a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for and obtain a new intern registration if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration. An applicant who is issued a subsequent intern registration pursuant to this subdivision may be

employed or volunteer in any allowable work setting except private practice.

SEC. 66. Section 4984.1 of the Business and Professions Code is amended to read:

4984.1. A licensee may renew a license at any time within three years after its expiration by completing all of the actions described in subdivision (b) of Section 4984 and paying any delinquency fees.

SEC. 67. Section 4984.4 of the Business and Professions Code is amended to read:

4984.4. A license that is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued; however, the licensee may apply for and obtain a new license if the following criteria are satisfied:

(a) No fact, circumstance, or condition exists that, if the license were issued, would constitute grounds for its revocation or suspension.

(b) He or she submits an application for examination eligibility and the fee for that application.

(c) He or she takes and passes the current licensing examinations.

(d) He or she submits the fee for initial license issuance.

SEC. 68. Section 4984.7 of the Business and Professions Code is repealed.

SEC. 69. Section 4984.7 is added to the Business and Professions Code, to read:

4984.7. (a) The board shall assess the following fees relating to the licensure of marriage and family therapists:

(1) The application fee for an intern registration shall be seventy-five dollars ($75).

(2) The renewal fee for an intern registration shall be seventy-five dollars ($75).

(3) The fee for the application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be one hundred dollars ($100). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fee.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred eighty dollars ($180).

(7) The fee for license renewal shall be a maximum of one hundred eighty dollars ($180).

(8) The fee for inactive license renewal shall be a maximum of ninety dollars ($90).

(9) The renewal delinquency fee shall be a maximum of ninety dollars ($90). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 70. Section 4984.72 is added to the Business and Professions Code, to read:

4984.72. An applicant who fails a 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 the fee for the examination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all requirements in effect on the date of application, and pays all required fees.

SEC. 71. Section 4984.8 of the Business and Professions Code is repealed.

SEC. 72. Section 4984.8 is added to the Business and Professions Code, to read:

4984.8. (a) A licensee may apply to the board to request that his or her license be placed on inactive status.

(b) A licensee on inactive status shall be subject to this chapter and shall not engage in the practice of marriage and family therapy in this state.

(c) A licensee who holds an inactive license shall pay a biennial fee in the amount of one-half of the standard renewal fee and shall be exempt from continuing education requirements.

(d) A licensee on inactive status who has not committed an act or crime constituting grounds for denial of licensure may, upon request, restore his or her license to practice marriage and family therapy to active status.

(1) A licensee requesting to restore his or her license to active status between renewal cycles shall pay the remaining one-half of his or her renewal fee.

(2) A licensee requesting to restore his or her license to active status, whose license will expire less than one year from the date of the request, shall complete 18 hours of continuing education as specified in Section 4980.54.

(3) A licensee requesting to restore his or her license to active status, whose license will expire more than one year form the date of the request, shall complete 36 hours of continuing education as specified in Section 4980.54.

SEC. 73. Section 4989.36 of the Business and Professions Code is amended to read:

4989.36. A licensee may renew a license that has expired at any time within three years after its expiration date by taking all of the actions described in Section 4989.32 and by paying all unpaid prior renewal fees and delinquency fees.

SEC. 74. Section 4989.42 of the Business and Professions Code is amended to read:

4989.42. A license that is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter. A licensee may apply for a new license if he or she satisfies all of the following requirements:

(a) No fact, circumstance, or condition exists that, if the license were issued, would constitute grounds for its revocation or suspension.

(b) Payment of the fees that would be required if he or she were applying for a license for the first time.

(c) Passage of the current licensure examination.

SEC. 75. Section 4989.54 of the Business and Professions Code is amended to read:

4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.

(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.

(4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.

(b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license.

(d) Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in subdivision (c) or any combination thereof.

(e) Advertising in a manner that is false, misleading, or deceptive.

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage and family therapist.

(j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(k) Gross negligence or incompetence in the practice of educational psychology.

(*l*) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

(s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

SEC. 76. Section 4992.3 of the Business and Professions Code is amended to read:

4992.3. The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the

conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Gross negligence or incompetence in the performance of clinical social work.

(e) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client or with a former client within two years from the termination date of therapy with the client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(*l*) Performing, or holding one's self out as being able to perform, or offering to perform or permitting, any registered associate clinical social worker or intern under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered associate clinical social worker or intern by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(t) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(u) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(v) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(w) Failure to comply with Section 2290.5.

SEC. 77. Section 4992.10 is added to the Business and Professions Code, to read:

4992.10. A licensed clinical social worker who conducts a private practice under a fictitious business name shall not use a name that is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.

SEC. 78. Section 4996.3 of the Business and Professions Code is repealed.

SEC. 79. Section 4996.3 is added to the Business and Professions Code, to read:

4996.3. (a) The board shall assess the following fees relating to the licensure of clinical social workers:

(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars ($75).

(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars ($75).

(3) The fee for application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be a maximum of one hundred fifty dollars ($150). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and 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.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars ($155).

(7) The fee for license renewal shall be a maximum of one hundred fifty-five dollars ($155).

(8) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents ($77.50).

(9) The renewal delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 80. Section 4996.4 of the Business and Professions Code is amended to read:

4996.4. 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 required fees.

SEC. 81. Section 4996.6 of the Business and Professions Code is amended to read:

4996.6. (a) Licenses issued under this chapter shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(b) To renew an unexpired license, the licensee shall, on or before the expiration date of the license, complete the following actions:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two-year renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4996.22.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

(c) To renew an expired license within three years of its expiration, the licensee shall, as a condition precedent to renewal, complete all of the actions described in subdivision (b) and pay a delinquency fee.

(d) A license that is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter; however, the licensee may apply for and obtain a new license if he or she satisfies all of the following requirements:

(1) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(2) He or she submits an application for examination eligibility.

(3) He or she takes and passes the current licensing examinations.

(4) He or she submits the fees for examination eligibility and for initial license issuance.

SEC. 82. Section 4996.14 of the Business and Professions Code is repealed.

SEC. 83. Section 4996.14 is added to the Business and Professions Code, to read:

4996.14. (a) This chapter shall not apply to an employee who is working in any of the following settings if his or her work is performed solely under the supervision of the employer:

(1) A governmental entity.

(2) A school, college, or university.

(3) An institution that is both nonprofit and charitable.

(b) This chapter shall not apply to a volunteer who is working in any of the settings described in subdivision (a) if his or her work is performed solely under the supervision of the entity, school, college, university, or institution.

(c) This chapter shall not apply to a person using hypnotic techniques by referral from any of the following persons if his or her practice is performed solely under the supervision of the employer:

(1) A person licensed to practice medicine.

(2) A person licensed to practice dentistry.

(3) A person licensed to practice psychology.

(d) This chapter shall not apply to a person using hypnotic techniques that offer vocational self-improvement, and the person is not performing therapy for emotional or mental disorders.

SEC. 84. Section 4996.18 of the Business and Professions Code is amended to read:

4996.18. (a) A person who wishes to be credited with experience toward licensure requirements shall register with the board as an associate clinical social worker prior to obtaining that experience. The application shall be made on a form prescribed by the board.

(b) An applicant for registration shall satisfy the following requirements:

(1) Possess a master's degree from an accredited school or department of social work.

(2) Have committed no crimes or acts constituting grounds for denial of licensure under Section 480.

(c) An applicant who possesses a master's degree from a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and shall be required, to register as an associate clinical social worker in order to gain experience toward licensure if the applicant has not committed any crimes or acts that constitute grounds for denial of licensure under Section 480. That applicant shall not, however, be eligible for examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(d) Any experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has a personal relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(e) An applicant who possesses a master's degree from an accredited school or department of social work shall be able to apply experience the applicant obtained during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements, if the experience meets the requirements of Section 4996.20, 4996.21, or 4996.23. This subdivision shall apply retroactively to persons who possess a master's degree from an accredited school or department of social work and who obtained experience during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

(f) An applicant for registration or licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a master's of social work degree that is equivalent to a master's degree issued from a school or department of social work that is accredited by the Commission on Accreditation of the Council on Social Work Education. These applicants shall provide the board with a comprehensive evaluation of the degree and shall provide any other documentation the board deems necessary. 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 evaluation or accreditation.

(g) A registrant shall not provide clinical social work services to the public for a fee, monetary or otherwise, except as an employee.

(h) A registrant shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

SEC. 85. Section 4996.22 of the Business and Professions Code is amended to read:

4996.22. (a) (1) Except as provided in subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of social work in the preceding two years, as determined by the board.

(2) The board shall not renew any license of an applicant who began graduate study prior to January 1, 2004, pursuant to this chapter unless the applicant certifies to the board that during the applicant's first renewal period after the operative date of this section, he or she completed a continuing education course in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training.

Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under paragraph (1).

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) An accredited school of social work, as defined in Section 4991.2, or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional social work association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four-year institution of higher learning, and a mental health professional association, approved by the board.

(e) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to the procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(f) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding, or the practice, of social work.

(2) Aspects of the social work discipline in which significant recent developments have occurred.

(3) Aspects of other related disciplines that enhance the understanding, or the practice, of social work.

(g) A system of continuing education for licensed clinical social workers shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(h) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

(i) The board may adopt regulations as necessary to implement this section.

(j) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Science Examiners Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.

SEC. 86. Section 4996.28 is added to the Business and Professions Code, to read:

4996.28. (a) Registration as an associate clinical social worker shall expire one year from the last day of the month during which it was issued. To renew a registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken by a regulatory or licensing board in this or any other state, subsequent to the last renewal of the registration.

(b) A registration as an associate clinical social worker may be renewed a maximum of five times. When no further renewals are possible, an applicant may apply for and obtain a new associate clinical social worker registration if the applicant meets all requirements for registration in effect at the time of his or her application for a new associate clinical social worker registration.

SEC. 87. Section 4997 of the Business and Professions Code is repealed.

SEC. 88. Section 4997 is added to the Business and Professions Code, to read:

4997. (a) A licensee may apply to the board to request that his or her license be placed on inactive status.

(b) A licensee on inactive status shall be subject to this chapter and shall not engage in the practice of clinical social work in this state.

(c) A licensee who holds an inactive license shall pay a biennial fee in the amount of one-half of the standard renewal fee and shall be exempt from continuing education requirements.

(d) A licensee on inactive status who has not committed an act or crime constituting grounds for denial of licensure may, upon request, restore his or her license to practice clinical social work to active status.

(1) A licensee requesting his or her license be restored to active status between renewal cycles shall pay the remaining one-half of his or her renewal fee.

(2) A licensee requesting to restore his or her license to active status whose license will expire less than one year from the date of the request shall complete 18 hours of continuing education as specified in Section 4996.22.

(3) A licensee requesting to restore his or her license to active status whose license will expire more than one year from the date of the request shall complete 36 hours of continuing education as specified in Section 4996.22.

SEC. 89. Section 11372 of the Government Code is amended to read:

11372. (a) Except as provided in subdivision (b), all adjudicative hearings and proceedings relating to the discipline or reinstatement of licensees of the Medical Board of California, including licensees of affiliated health agencies within the jurisdiction of the Medical Board of California, that are heard pursuant to the Administrative Procedure Act, shall be conducted by an administrative law judge as designated in Section 11371, sitting alone if the case is so assigned by the agency filing the charging pleading.

(b) Proceedings relating to interim orders shall be heard in accordance with Section 11529.

SEC. 90. Section 12529 of the Government Code, as amended by Section 24 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings

and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, and the committees under the jurisdiction of the Medical Board of California or a division of the board, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 90.5. Section 12529 of the Government Code, as amended by Section 24 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, and

the committees under the jurisdiction of the Medical Board of California or a division of the board, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 91. Section 12529 of the Government Code, as added by Section 25 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, and the committees under the jurisdiction of the Medical Board of California or a division of the board, with the intent that the expenses be proportionally shared as to services rendered.

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

SEC. 91.5. Section 12529 of the Government Code, as added by Section 25 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the

jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, and the committees under the jurisdiction of the Medical Board of California or a division of the board with the intent that the expenses be proportionally shared as to services rendered.

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

SEC. 92. Section 12529.5 of the Government Code, as amended by Section 26 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or committees in designing and providing initial and in-service training programs for staff of the division, boards, or committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, boards, or committees as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 92.5. Section 12529.5 of the Government Code, as amended by Section 26 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or committees in designing and providing initial and in-service training programs for staff of the division, boards, or committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, boards, or committees, as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 93. Section 12529.5 of the Government Code, as added by Section 27 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related

prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or committees in designing and providing initial and in-service training programs for staff of the division, boards, or committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, boards, or committees as appropriate in consultation with the senior assistant.

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

SEC. 93.5. Section 12529.5 of the Government Code, as added by Section 27 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards'

investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or committees in designing and providing initial and in-service training programs for staff of the division, boards, or committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, boards, or committees, as appropriate in consultation with the senior assistant.

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

SEC. 94. Section 5.5 of this bill incorporates amendments to Section 1725 of the Business and Professions Code proposed by both this bill and SB 534. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1725 of the Business and Professions Code, and (3) this bill is enacted after SB 534, in which case Section 5 of this bill shall not become operative.

SEC. 95. Section 11.5 of this bill incorporates amendments to Section 1750.4 of the Business and Professions Code proposed by both this bill and SB 534. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1750.4 of the Business and Professions Code, and (3) this bill is enacted after SB 534, in which case Section 11 of this bill shall not become operative.

SEC. 96. (a) Section 12.5 of this bill incorporates amendments to Section 1751 of the Business and Professions Code proposed by both this bill and SB 534. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1751 of the Business and Professions Code, (3) and this bill is enacted after SB 534, in which case Section 12 of this bill shall not become operative.

(b) Section 13.2 of this bill incorporates amendments to Section 1751 of the Business and Professions Code proposed by both this bill and SB 534. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1751 of the Business and Professions Code, (3) SB 963 is not enacted or as enacted does not amend that section, and (4) this bill is

enacted after SB 534 in which case Sections 13, 13.4, and 13.6 of this bill shall not become operative.

(c) Section 13.4 of this bill incorporates amendments to Section 1751 of the Business and Professions Code proposed by both this bill and SB 963. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1751 of the Business and Professions Code, and (3) SB 534 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 963, in which case Sections 13, 13.2, and 13.6 of this bill shall not become operative.

(d) Section 13.6 of this bill incorporates amendments to Section 1751 of the Business and Professions Code proposed by this bill, SB 963, and SB 534. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2008, (2) all three bills amend Section 1751 of the Business and Professions Code, and (3) this bill is enacted after SB 963 and SB 534, in which case Sections 13, 13.2, and 13.4 of this bill shall not become operative.

SEC. 97. Section 20.5 of this bill incorporates amendments to Section 1753 of the Business and Professions Code proposed by both this bill and SB 534. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1753 of the Business and Professions Code, and (3) this bill is enacted after SB 534, in which case Section 20 of this bill shall not become operative.

SEC. 98. Sections 25.5 and 26.5 of this bill incorporate amendments to Section 1770 of the Business and Professions Code proposed by both this bill and SB 534. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1770 of the Business and Professions Code, and (3) this bill is enacted after SB 534, in which case Sections 25 and 26 of this bill shall not become operative.

SEC. 99. Section 30.5 of this bill incorporates amendments to Section 2335 of the Business and Professions Code proposed by both this bill and AB 253. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 2335 of the Business and Professions Code, and (3) this bill is enacted after AB 253, in which case Section 30 of this bill shall not become operative.

SEC. 100. Section 51.5 of this bill incorporates amendments to Section 4200.1 of the Business and Professions Code proposed by both this bill and SB 963. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 4200.1 of the Business and Professions Code, and

(3) this bill is enacted after SB 963, in which case Section 51 of this bill shall not become operative.

SEC. 101. Sections 90.5 and 91.5 of this bill incorporate amendments to Section 12529 of the Government Code proposed by both this bill and SB 797. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 12529 of the Government Code, and (3) this bill is enacted after SB 797, in which case Sections 90 and 91 of this bill shall not become operative.

SEC. 102. Sections 92.5 and 93.5 of this bill incorporate amendments to Section 12529.5 of the Government Code proposed by both this bill and SB 797. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 12529.5 of the Government Code, and (3) this bill is enacted after SB 797, in which case Sections 92 and 93 of this bill shall not become operative.

SEC. 103. 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 589

An act to add Section 11322.63 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 11322.63 is added to the Welfare and Institutions Code, to read:

11322.63. (a) For counties that implement a welfare-to-work plan that includes activities pursuant to subdivisions (b) and (c) of Section 11322.6, the State Department of Social Services shall pay the county 50 percent of the participant's wage subsidy, subject to both of the following conditions:

(1) The state's share in wage subsidies shall not exceed 50 percent of the maximum aid payment for the assistance unit, which includes the adult receiving the wage subsidy.

(2) State participation in wage subsidies pursuant to this section shall be limited to those county programs that provide a maximum of six months of wage subsidies for each participant.

(b) No later than January 10, 2011, the State Department of Social Services shall submit a report to the Legislature on the outcomes of implementing this section that shall include, but need not be limited to, all of the following:

(1) The number of CalWORKs recipients that entered subsidized employment.

(2) The number of CalWORKs recipients who found nonsubsidized employment after the subsidy ends.

(3) The earnings of the program participants before and after the subsidy.

(4) The impact of this program on the state's work participation rate.

(c) Payment of the state's share in wage subsidies required by this section shall be made in addition to, and independent of, the county allocations made pursuant to Section 15204.2.

CHAPTER 590

An act to amend Sections 22702, 22705, and 22706 of the Business and Professions Code, relating to tanning facilities.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 22702 of the Business and Professions Code is amended to read:

22702. As used in this chapter:

(a) "Tanning facility" means any location, place, area, structure, or business that provides persons access to any tanning device.

(b) "Department" means the Department of Consumer Affairs.

(c) "Phototherapy device" means equipment that emits ultraviolet radiation used by a health care professional in the treatment of disease.

(d) "Tanning device" means an ultraviolet tanning device and any accompanying equipment, including, but not limited to, protective eyewear, timers, and handrails.

(e) "Ultraviolet tanning device" means equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers used for tanning of the skin, including, but not limited to, a sunlamp, tanning booth, or tanning bed.

SEC. 2. Section 22705 of the Business and Professions Code is amended to read:

22705. (a) A tanning facility shall give each customer, prior to the customer's use of an ultraviolet tanning device, a written statement warning that:

(1) Not wearing the eye protection provided to the customer by the tanning center may cause damage to the eyes.

(2) Overexposure causes burns.

(3) Repeated exposure may cause premature aging of the skin and skin cancer.

(4) Abnormal skin sensitivity or burning may be caused by certain:

(A) Foods.

(B) Cosmetics.

(C) Medications, including, but not limited to, the following:

(i) Tranquilizers.

(ii) Diuretics.

(iii) Antibiotics.

(iv) High blood pressure medicines.

(v) Birth control pills.

(5) Any person taking a prescription or over-the-counter drug should consult a physician before using an ultraviolet tanning device.

(6) Any person with skin that burns easily should avoid an ultraviolet tanning device.

(7) Any person with a family history or past medical history of skin cancer should avoid an ultraviolet tanning device.

(b) A tanning facility shall conspicuously post a warning sign in any area where an ultraviolet tanning device is used that is readily visible to a person using an ultraviolet tanning device. The sign shall read as follows:

DANGER: ULTRAVIOLET RADIATION

1. Follow instructions.

2. Avoid too frequent or too lengthy exposure. As with natural sunlight, exposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause chronic sun damage characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.

3. Wear protective eyewear.

FAILURE TO USE PROTECTIVE EYEWEAR
MAY RESULT IN SEVERE BURNS OR
LONG-TERM INJURY TO THE EYES.

4. Ultraviolet radiation from sunlamps will aggravate the effects of the sun. Therefore, do not sunbathe before or after exposure to ultraviolet radiation.

5. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women on birth control pills who use this product may develop discolored skin.

IF YOU DO NOT TAN IN THE SUN YOU WILL
NOT TAN FROM USE OF THIS DEVICE.

(c) A tanning facility may include in the warning sign described in subdivision (b) the following statement: "Spray on tans and other sunless tanning products are not subject to the same effects as ultraviolet tanning devices."

(d) A tanning facility shall not claim, or distribute promotional materials that claim, that using an ultraviolet tanning device is safe or free from risk or that indoor tanning has any known health benefits.

(e) The liability of a tanning facility operator or a manufacturer of an ultraviolet tanning device is not changed by giving the warning under this section.

SEC. 3. 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 an ultraviolet 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 an ultraviolet 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 on an ultraviolet tanning device that has an accuracy of plus or minus 10 percent of any selected timer interval. The timer shall also be remotely located so that customers cannot set their own exposure time.

(5) Limit each customer using an ultraviolet tanning device 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) Persons under 14 years of age are prohibited from using an ultraviolet tanning device.

(4) A tanning facility shall not allow a person between 14 and 18 years of age to use an ultraviolet tanning device unless that person's parent or legal guardian provides consent. For purposes of this paragraph, "consent" means that the parent or legal guardian appears in person at the minor's initial use of an ultraviolet tanning device within a consecutive 12-month period and signs a written consent form in the presence of the owner or an employee of the facility. The minor's parent or legal guardian may withdraw this consent at any time. Unless so withdrawn, this consent shall be valid for 12 months from the date the written consent form is signed and may be renewed annually in accordance with this paragraph. The written consent form required by this paragraph shall state that the parent or legal guardian has read and understood the warnings given by the tanning facility, consents to the minor's use of an ultraviolet tanning device, and agrees that the minor will use the protective eyewear that the tanning facility provides.

(5) Proof of age shall be satisfied with a driver's license or other government issued identification containing the date of birth and a photograph of the individual.

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 591

An act to add Chapter 9.6 (commencing with Section 3250) to Division 4 of Title 1 of the Government Code, relating to firefighters.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) Firefighters are often called upon to render aid in hostile emergency situations rife with conflict and confrontation.

(b) In providing lifesaving services to the public, firefighters are subject to numerous job safety procedures and protocols, which sometimes are compromised or altered, in a highly charged atmosphere of critical incident stressors.

(c) Firefighters who trust their instincts in these volatile emergency situations are deserving of due process rights and protections should those circumstances arise.

(d) Mutual aid and automatic aid agreements entered into between fire agencies throughout the state require firefighters to respond to emergencies across political boundaries, therefore, the rights and protections provided to firefighters under this act constitute a matter of statewide concern.

(e) The effective protection of property and the safety of the public depends upon the maintenance of reasonable and consistent procedural protections applicable to all employers with respect to the disciplinary process.

(f) It is necessary that this act be applicable to all firefighters, as defined in subdivision (a) of Section 3251 of the Government Code, wherever situated within the State of California, in order to ensure that stable employment relations are continued throughout the state, and to further ensure that effective services are provided to all people of the state.

SEC. 2. Chapter 9.6 (commencing with Section 3250) is added to Division 4 of Title 1 of the Government Code, to read:

Chapter 9.6. Firefighters

3250. This chapter shall be known, and may be cited, as the Firefighters Procedural Bill of Rights Act.

3251. For purposes of this chapter, the following definitions apply:

(a) "Firefighter" means any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank. However, "firefighter" does not include an inmate of a state or local correctional agency who performs firefighting or related duties or persons who are subject to Chapter 9.7 (commencing with Section 3300). This chapter does not apply to any employee who has not successfully completed the probationary period established by his or her employer as a condition of employment.

(b) "Public agency" has the meaning given that term by Section 53101.

(c) "Punitive action" means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

3252. (a) Except as otherwise provided in Chapter 9.5 (commencing with Section 3201), or whenever on duty or in uniform, no firefighter shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) A firefighter shall not be prohibited from seeking election to, or serving as a member of, the governing board of a school district, or any local agency where the firefighter is not employed, including, but not limited to, any city, county, city and county, or special district, or political subdivision thereof.

3253. When any firefighter is under investigation and subjected to interrogation by his or her commanding officer, or any other member designated by the employing department or licensing or certifying agency, that could lead to punitive action, the interrogation shall be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, at a time when the firefighter is on duty, unless an imminent threat to the safety of the public requires otherwise. If the interrogation does occur during off-duty time of the firefighter being interrogated, the firefighter shall be compensated for any off-duty time in accordance with regular department procedures. The firefighter's compensation shall not be reduced as a result of any work missed while being interrogated.

(b) The firefighter under investigation shall be informed, prior to the interrogation, of the rank, name, and command of the officer or other person in charge of the interrogation, the interrogating officer, and all other persons to be present during the interrogation. All questions directed

to the firefighter under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The firefighter under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The person under interrogation shall be allowed reasonable breaks to attend to his or her own personal physical necessities.

(e) (1) The firefighter under interrogation shall not be subjected to offensive language or threatened with punitive action. A promise of reward shall not be made as an inducement to answering any question. The employer shall provide to, and obtain from, an employee a formal grant of immunity from criminal prosecution, in writing, before the employee may be compelled to respond to incriminating questions in an interrogation. Subject to that grant of immunity, a firefighter refusing to respond to questions or submit to interrogations shall be informed that the failure to answer questions directly related to the investigation or interrogation may result in punitive action.

(2) The employer shall not cause the firefighter under interrogation to be subjected to visits by the press or news media without his or her express written consent free of duress, and the firefighter's photograph, home address, telephone number, or other contact information shall not be given to the press or news media without his or her express written consent.

(f) A statement made during interrogation by a firefighter under duress, coercion, or threat of punitive action shall not be admissible in any subsequent judicial proceeding, subject to the following qualifications:

(1) This subdivision shall not limit the use of statements otherwise made by a firefighter when the employing fire department is seeking civil service sanctions against any firefighter, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements otherwise made by the firefighter under interrogation in any civil action, including administrative actions, brought by that firefighter, or that firefighter's exclusive representative, arising out of a disciplinary action.

(g) The complete interrogation of a firefighter may be recorded. If a recording is made of the interrogation, the firefighter shall have access to the recording if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The firefighter shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those portions that are otherwise required by law to be kept confidential. Notes or reports that are deemed to be confidential shall not be entered

in the firefighter's personnel file. The firefighter being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If, prior to or during the interrogation of a firefighter, it is contemplated that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that may result in punitive action against any firefighter, that firefighter, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, or be subject to any punitive action for refusing to disclose, any information received from the firefighter under investigation for noncriminal matters.

This section shall not be construed to apply to counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other firefighter.

(j) A firefighter shall not be loaned or temporarily reassigned to a location or duty assignment if a firefighter in his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

3254. (a) A firefighter shall not be subjected to punitive action, or denied promotion, or be threatened with that treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

(b) Punitive action or denial of promotion on grounds other than merit shall not be undertaken by any employing department or licensing or certifying agency against any firefighter who has successfully completed the probationary period without providing the firefighter with an opportunity for administrative appeal.

(c) A fire chief shall not be removed by a public agency or appointing authority without providing that person with written notice, the reason or reasons for removal, and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a fire chief by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, or for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, if one does not otherwise exist by rule or law, in the job of fire chief.

(d) Punitive action or denial of promotion on grounds other than merit shall not be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of discovery by the employing fire department or licensing or certifying agency. This one-year limitation period shall apply only if the discovery of the act, omission, or other misconduct occurred on or after January 1, 2008. If the employing department or licensing or certifying agency determines that discipline may be taken, it shall complete its investigation and notify the firefighter of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the firefighter voluntarily waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(2) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(5) If the investigation involves a matter in civil litigation where the firefighter is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(6) If the investigation involves a matter in criminal litigation in which the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(7) If the investigation involves an allegation of workers' compensation fraud on the part of the firefighter.

(e) If a predisciplinary response or grievance procedure is required or utilized, the time for that response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the employing department or licensing or certifying agency decides to impose discipline, that agency shall notify the firefighter in writing of its decision to impose discipline within 30 days of its decision, but not less than 48 hours prior to imposing the discipline.

(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a firefighter if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exists:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the firefighter's predisciplinary response or procedure.

3254.5. An administrative appeal instituted by a firefighter under this chapter shall be conducted in conformance with rules and procedures adopted by the employing department or licensing or certifying agency that are in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2.

3255. A firefighter shall not have any comment adverse to his or her interest entered in his or her personnel file, or any other file used for any personnel purposes by his or her employer, without the firefighter having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment. However, the entry may be made if after reading the instrument the firefighter refuses to sign it. That fact shall be noted on that document, and signed or initialed by the firefighter.

3256. A firefighter shall have 30 days within which to file a written response to any adverse comment entered in his or her personnel file. The written response shall be attached to, and shall accompany, the adverse comment.

3256.5. (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a firefighter, during usual business hours, with no loss of compensation to the firefighter, permit that firefighter to inspect personnel files that are used or have been used to determine that firefighter's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each firefighter's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefor by the firefighter.

(c) If, after examination of the firefighter's personnel file, the firefighter believes that any portion of the material is mistakenly or unlawfully placed in the file, the firefighter may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the firefighter describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the firefighter.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the firefighter's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the firefighter.

3257. (a) A firefighter shall not be compelled to submit to a lie detector test against his or her will.

(1) Disciplinary action or other recrimination shall not be taken against a firefighter refusing to submit to a lie detector test.

(2) No comment shall be entered anywhere in the investigator's notes or anywhere else that the firefighter refused to take, or did not take, a lie detector test.

(3) Testimony or evidence to the effect that the firefighter refused to take, or was subjected to, a lie detector test shall not be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

3258. A firefighter shall not be required or requested for purposes of job assignment or other personnel action to disclose any item of his or her property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his or her family or household, unless that information is otherwise required to be furnished under state law or obtained pursuant to court order.

3259. A firefighter shall not have his or her locker or other space for storage that may be assigned to him or her searched except in his or her presence, or with his or her consent, or unless a valid search warrant has been obtained or unless he or she has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing department or licensing or certifying agency.

3260. (a) It shall be unlawful for any employing department or licensing or certifying agency to deny or refuse to any firefighter the rights and protections guaranteed by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any firefighter against any employing department or licensing or certifying agency for alleged violations of this chapter.

(c) (1) If the superior court finds that the employing department or licensing or certifying agency has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other

extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order or preliminary or permanent injunction prohibiting the employing department or licensing or certifying agency from taking any punitive action against the firefighter.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the party's attorney, or both, pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a fire department as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(d) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a fire department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the firefighter, the fire department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) to be awarded to the firefighter whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the firefighter whose right or protection was denied, the fire department shall also be liable for the amount of the actual damages. Notwithstanding these provisions, a fire department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the fire department and the contractor, a "hold harmless" or similar provision that protects the fire department from liability for the actions of the contractor. An individual shall not be liable for any act for which a fire department is liable under this section.

3261. Nothing in this chapter shall in any way be construed to limit the ability of any employing department, licensing or certifying agency, or any firefighter to fulfill mutual aid agreements with other jurisdictions or agencies, and this chapter shall not be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where that activity is deemed necessary or desirable by the jurisdictions or agencies involved.

3262. The rights and protections described in this chapter shall only apply to a firefighter during events and circumstances involving the performance of his or her official duties.

SEC. 3. Any subvention of funds to reimburse a local agency or a school district for the costs mandated by the state pursuant to Chapter 9.6 (commencing with Section 3250) of Division 4 of Title 1 of the Government Code shall be limited to the actual costs directly associated with the new program or higher level of service required by this chapter. A local agency or school district may not be reimbursed for the costs of existing, similar protections and procedures required for investigations and interrogations of firefighters pursuant to regulation, rule, or ordinance of the local agency or school district, or pursuant to a memorandum of understanding between the local agency or school district and a recognized employee organization.

SEC. 4. 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.

CHAPTER 592

An act to add Sections 43011.5 and 43704 to the Health and Safety Code, and to add Section 4755 to the Vehicle Code, relating to air pollution.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. This act shall be known, and may be cited as, the Healthy Heart and Lung Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) The State Air Resources Board's Emission Reduction Plan for Ports and Goods Movement, adopted April 2006, states that goods movement activity, including trips made by diesel-fueled trucks, contributes to increases in cancer risk, premature deaths, hospitalizations for respiratory and cardiovascular causes, bronchitis, asthma attacks, and other respiratory symptoms.

(b) The State Air Resources Board identified particulate matter emissions from diesel-fueled engines as a toxic air contaminant in 1998.

The state board subsequently developed a risk reduction plan that included a goal of reducing the public health risk from diesel particulate matter by 85 percent by 2020, and began to develop regulations designed to further reduce diesel particulate matter emissions from diesel-fueled engines and vehicles.

(c) As part of its efforts to reduce diesel emissions, the State Air Resources Board has adopted regulations to control idling of diesel-fueled vehicles, including buses and trucks. Additional enforcement measures are needed to ensure consistent enforcement of these and other regulations.

SEC. 3. Section 43011.5 is added to the Health and Safety Code, to read:

43011.5. (a) Every three years, the state board shall review its existing enforcement of diesel emission control regulations and anticipated enforcement needs for future diesel emission control regulations for manufacturers, owners, or operators of on-road and off-road vehicles and engines to implement the state board's Diesel Risk Reduction Plan and Emission Reduction Plan for Ports and Goods Movement, and develop a strategic plan for consistent, comprehensive, and fair enforcement of these regulations.

(b) The state board shall consult with the districts and the public in developing the plan, and shall review the plan at a public board meeting.

(c) The plan shall include, but is not limited to, all of the following:

(1) An assessment of the need for additional staff and technology resources at the state board to ensure that the appropriate resources are available to ensure consistent enforcement of diesel emission control regulations for on-road and off-road vehicles and engines throughout the state and in areas where diesel emissions are concentrated.

(2) Goals for inspection frequency for the next three years to promote the maximum level of compliance with diesel emission control regulations for on-road and off-road vehicles and engines.

(3) An education and outreach component to increase public awareness and understanding of the diesel regulations identified in subdivision (a). The education and outreach component shall include the placement of signs and other materials in multiple languages where appropriate in locations where significant numbers of idling trucks and engines have been found, especially locations near schools and residential communities, to ensure that operators of trucks traveling through the state and other affected individuals and businesses are aware of the state's diesel engine idling requirements.

(4) A training program for local enforcement staff, including, but not limited to, outreach to highway patrol, local police, and local air district staff on enforcement of the state's diesel engine idling requirements

through workshops, educational material, and training sessions in northern and southern California.

(d) The state board shall submit the plan prepared pursuant to subdivision (a) to the relevant legislative policy and fiscal committees by January 1, 2009, and every three years thereafter.

SEC. 4. Section 43704 is added to the Health and Safety Code, to read:

43704. Any person who violates Section 2485 of Title 13 of the California Code of Regulations is subject to a minimum civil penalty of three hundred dollars ($300).

SEC. 5. Section 4755 is added to the Vehicle Code, to read:

4755. The department shall refuse registration, or renewal or transfer of registration for any commercial motor vehicle subject to Section 4000.6, if the owner or operator of the motor vehicle at the time of the application has been cited for a violation, pertaining to that vehicle, of Division 26 (commencing with Section 39000) of the Health and Safety Code or regulations of the State Air Resources Board adopted pursuant to that division, until the violation has been cleared, as determined by the State Air Resources Board.

CHAPTER 593

An act to amend Sections 25722.5, 25725, and 25726 of, and to add Sections 25722.6 and 25722.8 to, the Public Resources Code, relating to public resources.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 25722.5 of the Public Resources Code is amended to read:

25722.5. (a) In order to achieve the policy objectives set forth in Sections 25000.5 and 25722, the Department of General Services, in consultation with the commission and the State Air Resources Board, shall develop and adopt specifications and standards for all passenger cars and light-duty trucks that are purchased or leased on behalf of, or by, state offices, agencies, and departments. An authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, that is equipped with emergency lamps or lights described in Section 25252 of the Vehicle

Code is exempt from the requirements of this section. The specifications and standards shall include the following:

(1) Minimum air pollution emission specifications that meet or exceed California's Ultra-Low Emission Vehicle II (ULEV II) standards for exhaust emissions (13 Cal. Code Regs. 1961). These specifications shall apply on January 1, 2006, for passenger cars and on January 1, 2010, for light-duty trucks.

(2) Notwithstanding any other provision of law, the utilization of procurement policies that enable the Department of General Services to do all of the following:

(A) Evaluate and score emissions, fuel costs, and fuel economy in addition to capital cost to enable the Department of General Services to choose the vehicle with the lowest life-cycle cost when awarding a state vehicle procurement contract.

(B) Maximize the purchase or lease of hybrid or "Best in Class" vehicles that are substantially more fuel efficient than the class average.

(C) Maximize the purchase or lease of available vehicles that meet or exceed California's Super Ultra-Low Emission Vehicle (SULEV) passenger car standards for exhaust emissions.

(D) Maximize the purchase or lease of alternative fuel vehicles.

(3) In order to discourage the unnecessary purchase or leasing of a sport utility vehicle and a four-wheel drive truck, a requirement that each state office, agency, or department seeking to purchase or lease that vehicle, demonstrate to the satisfaction of the Director of General Services or to the entity that purchases or leases vehicles for that office, agency, or department, that the vehicle is required to perform an essential function of the office, agency, or department. If it is so demonstrated, priority consideration shall be given to the purchase or lease of an alternative fuel or hybrid sports utility vehicle or four-wheel drive vehicle.

(b) The specifications and standards developed and adopted pursuant to subdivision (a) do not apply upon the development and implementation of the method, criteria, and procedure described in Section 25722.6.

(c) Each state office, agency, and department shall review its vehicle fleet and, upon finding that it is fiscally prudent, cost effective, or otherwise in the public interest to do so, shall dispose of nonessential sport utility vehicles and four-wheel drive trucks in its fleet and replace these vehicles with more fuel-efficient passenger cars and trucks.

(d) To the maximum extent practicable, each state office, agency, and department that has bifuel natural gas, bifuel propane, and flex fuel vehicles in its vehicle fleet shall use the respective alternative fuel in those vehicles.

(e) The Director of General Services shall compile annually and maintain information on the nature of vehicles that are owned or leased by the state, including, but not limited to, all of the following:

(1) The number of passenger-type motor vehicles purchased or leased during the year, and the number owned or leased as of December 31 of each year.

(2) The number of sport utility vehicles and four-wheel drive trucks purchased or leased by the state during the year, and the number owned or leased as of December 31 of each year.

(3) The number of alternatively fueled vehicles and hybrid vehicles purchased or leased by the state during the year, and the total number owned or leased as of December 31 of each year and their location.

(4) The locations of the alternative fuel pumps available for those vehicles.

(5) The justification provided for all sport utility vehicles and four-wheel drive trucks purchased or leased by the state and the specific office, department, or agency responsible for the purchase or lease.

(6) The number of sport utility vehicles and four-wheel drive trucks purchased or leased by the state during the year, and the number owned or leased as of December 31 of each year that are alternative fuel or hybrid vehicles.

(7) The number of light-duty trucks disposed of under subdivision (c).

(8) The total dollars spent by the state on passenger-type vehicle purchases and leases, categorized by sport utility vehicle and nonsport utility vehicle, and within each of those categories, by alternative fuel, hybrid and other.

(9) The total annual consumption of gasoline and diesel fuel used by the state fleet.

(10) The total annual consumption of alternative fuels.

(11) On December 31, 2009, and annually thereafter, the Director of General Services shall also compile the total annual vehicle miles traveled by vehicles in the state fleet.

(f) Each state office, agency, and department shall cooperate with the Department of General Services' data requests in order that the department may compile and maintain the information required in subdivision (e).

(g) As soon as practicable, but no later than 12 months after receiving the data, the information compiled and maintained under subdivision (e) and a list of those state offices, agencies, and departments that are not in compliance with subdivision (f) shall be made available to the public on the Department of General Services' Internet Web site.

(h) Beginning July 1, 2009, and every three years thereafter, the Director of General Services shall report to the Legislature and the Governor the information compiled and maintained pursuant to subdivision (e).

(i) Pursuant to Article IX of the California Constitution, this section shall not apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make this section applicable.

SEC. 2. Section 25722.6 is added to the Public Resources Code, to read:

25722.6. (a) On or before December 31, 2008, the Department of General Services, in conjunction with the State Air Resources Board and the commission, shall amend the existing "Enhanced Efficiency Costing Methodology for Passenger Cars and Light-Duty Vehicles" to rank the environmental and energy benefits, and costs of motor vehicles for potential procurement by state and local governments. The vehicle rankings shall include both of the following criteria:

(1) The reduction in greenhouse gas emissions, air pollutant emissions, and petroleum use on a full fuel-cycle basis, to the extent possible, based on existing data available to the State Air Resources Board, the commission, or other reliable sources, including the California Strategy to Reduce Petroleum Dependence developed pursuant to subdivision (f) of Section 25720 and the state plan to increase the use of alternative transportation fuels developed pursuant to Section 43866 of the Health and Safety Code.

(2) The life-cycle costs of the vehicle and fuel, including maintenance.

(b) On or before December 31, 2008, the Department of General Services shall revise its procedures for the procurement of state and local government vehicles based upon the necessary performance specifications of the vehicles to perform the required work or tasks of the vehicles in the fleet. The Department of General Services shall establish vehicle "classes" depending upon the required work or tasks and the necessary performance specifications.

(c) On or before July 1, 2009, for the purpose of state fleet procurement, both of the following shall apply:

(1) Available vehicles in individual classes shall be ranked for purchase or lease using the method and criteria developed in subdivision (a).

(2) (A) Vehicles shall be procured for use in the state fleet that meet all requirements established by the federal government, including, but not limited to, the federal Energy Policy Act of 1992, Public Law 102-486, if applicable, and that have been ranked best in their class as determined by the evaluation in subdivision (a).

(B) If fueling infrastructure, for the fuel used to rank a vehicle best in class, is not available, or planned to be available within two years, the Department of General Services shall procure the vehicle ranked next best in class for which fueling infrastructure is or will be available.

(d) The Department of General Services shall evaluate vehicles for potential addition to the state and local fleets, as described in this section, on an annual basis, reflecting annual new vehicle availability.

(e) A vehicle capable of using alternative fuels shall be operated on those fuels to the maximum extent practicable unless alternative fuels are not readily available or other factors exist that may prevent the use of those fuels in the area in which the vehicle is used.

(f) The Department of General Services shall do both of the following:

(1) During the normal course of coordination and contracting with nearby fueling stations, provide information related to the alternative fuel vehicles in the state fleet and request the stations to provide a fuel supply to meet that demand.

(2) When replacing, retrofitting, or installing a fueling tank or infrastructure at a facility that fuels state vehicles, the Department of General Services shall consider requesting competitive bids for alternative fuel infrastructure that would meet the needs of vehicles used, or planned to be used, in that facility.

(g) Authorized emergency vehicles as defined in Section 165 of the Vehicle Code, that are equipped with emergency lamps or lights described in Section 25252 of the Vehicle Code, are exempt from the requirements of this section.

(h) Each state office, agency, or department seeking to purchase or lease a sport utility vehicle or four-wheel drive vehicle shall demonstrate to the satisfaction of the Director of General Services or the entity that purchases or leases vehicles that the vehicle is required to perform an essential function of the office, agency, or department. If it is so demonstrated, priority consideration shall be given to the purchase or lease of an alternative fuel or hybrid sports utility vehicle or four-wheel drive vehicle.

(i) Pursuant to Article IX of the California Constitution, this section shall not apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make this section applicable.

SEC. 3. Section 25722.8 is added to the Public Resources Code, to read:

25722.8. (a) On or before July 1, 2009, the Secretary of State and Consumer Services, in consultation with the Department of General Services and other appropriate state agencies that maintain or purchase vehicles for the state fleet, including the campuses of the California State

University, shall develop and implement, and submit to the Legislature and the Governor, a plan to improve the overall state fleet's use of alternative fuels, synthetic lubricants, and fuel-efficient vehicles by reducing or displacing the consumption of petroleum products by the state fleet when compared to the 2003 consumption level based on the following schedule:

(1) By January 1, 2012, a 10-percent reduction or displacement.

(2) By January 1, 2020, a 20-percent reduction or displacement.

(b) Beginning April 1, 2010, and annually thereafter, the Department of General Services shall provide to the Department of Finance and the appropriate legislative committees of the Legislature a progress report on meeting the goals specified in subdivision (a). The Department of General Services shall also make the progress report available on its Internet Web site.

SEC. 4. Section 25725 of the Public Resources Code is amended to read:

25725. When awarding a vehicle procurement contract, every city, county, city and county, and special district, including a school district and a community college district may evaluate and score fuel economy, in addition to other life-cycle factors, in choosing passenger cars or light-duty trucks, or both, with the lowest life-cycle costs.

SEC. 5. Section 25726 of the Public Resources Code is amended to read:

25726. (a) When awarding a vehicle procurement contract, every city, county, city and county, and special district, including a school district and a community college district may require that 75 percent of the passenger cars or light-duty trucks, or both, to be acquired be energy-efficient vehicles.

(b) "Energy-efficient vehicle" means either of the following:

(1) A vehicle that meets California's Super Ultra-Low Emission Vehicle (SULEV) standard for exhaust emissions and the federal inherently low-emission vehicle (ILEV) evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations.

(2) A hybrid vehicle or an alternative fuel vehicle that meets California's advanced technology partial zero-emission vehicle (AT PZEV) standard for criteria pollutant emissions.

CHAPTER 594

An act to amend Sections 19410 and 19605.51 of, and to add Sections 19410.7, 19605.25, and 19605.54 to, the Business and Professions Code, relating to horse racing, and making an appropriation therefor.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Although there are over 18,000 lottery outlets, more than 90 gambling establishments, and more than 60 tribal casinos, there are only 33 places to make a wager on a horse race in the State of California. Yet horse racing employs over 45,000 people in the state.

(b) With a population of over 35,000,000 people, the horse racing industry needs many more wagering sites to adequately serve the people of the state.

(c) It is the intent of the Legislature, in enacting this measure, to make the sport of horse racing more accessible to the citizens of this state.

SEC. 2. Section 19410 of the Business and Professions Code is amended to read:

19410. "Inclosure" means all areas of the racing association's or fair's grounds and locations, as designated by the racing association or fair licensed to conduct a live racing meeting and approved by the board.

SEC. 3. Section 19410.7 is added to the Business and Professions Code, to read:

19410.7. "Minisatellite wagering site" means a location where satellite wagering may be conducted, with the approval of the board, provided that the wagering occurs in an area that is restricted to those who are 21 years of age or older.

SEC. 4. Section 19605.25 is added to the Business and Professions Code, to read:

19605.25. (a) The California Horse Racing Board may approve an additional 15 minisatellite wagering sites in each zone, if all of the following conditions are met:

(1) No site is within 20 miles of a racetrack, a satellite wagering facility, or a tribal casino that has a satellite wagering facility. If the proposed facility is within 20 miles of one of the above-referenced satellite facilities, then the consent of each facility within a 20-mile radius must be given before the proposed facility may be approved by the board.

(2) An agreement in accordance with subdivision (a) of Section 19605.3 has been executed and approved by the board. In addition to the requirements set forth in that provision, the agreement shall specify which components of its racing program, including live, out-of-zone, out-of-state, and out-of-country races, an association or fair will make available to the site. The terms and condition of the agreement, including all fees payable pursuant to paragraph (3) of that provision, a portion of which may be paid to horsemen in the form of purses, shall be subject to the approval of the horsemen's organization responsible for negotiating purse agreements with the association or fair.

(3) The site is approved by the board.

(4) The wagers are accepted in an area that is accessible only to those who are at least 21 years of age.

(5) The board has approved the accommodation, equipment used in conducting wagering at the site, communications system, technology, and method used by the site to accept wagers and transmit odds, results, and other data related to wagering.

(b) Parimutuel clerks shall be available to service the self-service tote machines at these locations, and to cash wagering vouchers on a regularly scheduled basis.

(c) Until January 1, 2013, if the proposed minisatellite wagering site is in the northern zone in a fair district where the fair has operated a satellite wagering facility for the previous five years, the approval of the fair must be obtained even if the proposed location is more than 20 miles from the existing satellite wagering facility operated by the fair.

(d) For purposes of commissions, deductions, and distribution of handle, wagers placed at minisatellite sites shall be treated as if they were placed at satellite wagering facilities authorized under Section 19605, 19605.1, or 19605.2. Section 19608.4 shall apply to minisatellite wagering facilities.

(e) The written consent of the San Mateo County Fair shall be obtained prior to the approval of any minisatellite wagering site located within a 20-mile radius of its fairground.

(f) Minisatellite wagering facilities created pursuant to this section are not eligible for satellite wagering commission distributions pursuant to Section 19604.

(g) The board shall adopt emergency regulations to implement these new facilities on or before April 1, 2008. The board, in adopting these regulations, shall minimize the expense to both the operator of the minisatellite facility and the host racetrack.

(h) If there are more than 15 applications for minisatellite wagering facilities in any zone, the board shall determine which facilities will generate the largest handle, and give priority to the approval of those

facilities. The board shall license a minisatellite facility for two years, and then review the operation and the size of the handle, and determine if it is in the best interest of horse racing to relicense the facility or, in the alternative, license another minisatellite facility that might generate a greater handle.

(i) Except as may be provided in the agreement required pursuant to paragraph (2) of subdivision (a), no association or fair shall be required to make all or part of its racing program available to a minisatellite wagering facility. Notwithstanding subdivision (e) of Section 19608.2, all costs incurred by the organization executing that agreement in excess of the amounts distributable to the organization from wagers placed at the site on that racing program, shall be borne by the minisatellite wagering facility.

SEC. 5. Section 19605.51 of the Business and Professions Code is amended to read:

19605.51. Notwithstanding subdivision (a) of Section 19605, and Section 19605.1, any fair that operated a satellite wagering facility on July 1, 2007, may, with the approval of the Department of Food and Agriculture and the authorization of the board, subject to the conditions specified in Section 19605.3, operate a satellite wagering facility on leased premises within the boundaries of that fair. Any fair that did not operate a satellite wagering facility on July 1, 2007, may, subject to Sections 19605 and 19605.1, operate one satellite wagering facility either on the property of the fairgrounds, or on leased premises.

SEC. 6. Section 19605.54 is added to the Business and Professions Code, to read:

19605.54. Any racetrack in the central zone that conducted racing in 2007 but that has since closed may continue to conduct satellite wagering. If the racetrack site is no longer available for use as a satellite wagering facility, then the owner of the racetrack may conduct satellite racing at another location within that city, subject to approval by the board. If the owners of the racetrack which last conducted racing at that facility determine that they do not wish to operate a satellite wagering facility, then any other racetrack conducting racing in that zone may instead be authorized to open a satellite wagering facility. If there is no other racing association that wishes to operate a satellite wagering facility in that city, then any other person or entity may seek the approval of the board to operate a satellite wagering facility in that city. The board, prior to granting its approval, shall conduct a hearing on the issue, and afford parties the opportunity to be heard.

CHAPTER 595

An act to amend Section 4656 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 4656 of the Labor Code is amended to read:

4656. (a) Aggregate disability payments for a single injury occurring prior to January 1, 1979, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(b) Aggregate disability payments for a single injury occurring on or after January 1, 1979, and prior to April 19, 2004, causing temporary partial disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(c) (1) Aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment.

(2) Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury.

(3) Notwithstanding paragraphs (1) and (2), for an employee who suffers from the following injuries or conditions, aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:

(A) Acute and chronic hepatitis B.
(B) Acute and chronic hepatitis C.
(C) Amputations.
(D) Severe burns.
(E) Human immunodeficiency virus (HIV).
(F) High-velocity eye injuries.
(G) Chemical burns to the eyes.
(H) Pulmonary fibrosis.
(I) Chronic lung disease.

CHAPTER 596

An act to amend Section 798.6 of the Civil Code, to amend Sections 65583, 65863.7, 65863.11, and 65863.13 of, to add Section 53583.5 to, and to repeal Section 65584.5 of, the Government Code, to amend Sections 17958.4, 33334.3, 33413, 33413.1, 34278, 50199.21, 50199.50, 50199.55, 50843, 50862.5, 53545, and 115928 of, to add Sections 18210.7, 50409, and 115928.5 to, to repeal Section 19205 of, to repeal Chapter 7 (commencing with Section 33701) of Part 1 of Division 24 of, to repeal Chapter 4 (commencing with Section 50559) of Part 2 of Division 31 of, to repeal Part 2.2 (commencing with Section 18800) and Part 5 (commencing with Section 19950) of Division 13 of, and to repeal Part 3 (commencing with Section 34800) and Part 11 (commencing with Section 37850) of Division 24 of, the Health and Safety Code, and to amend Section 5803 of the Revenue and Taxation Code, relating to housing.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 798.6 of the Civil Code is amended to read:

798.6. "Park" is a manufactured housing community as defined in Section 18210.7 of the Health and Safety Code, or a mobilehome park.

SEC. 1.5. Section 53583.5 is added to the Government Code, to read:

53583.5. If the original bonds to be refunded under this article were issued under Section 33760, 34312, or 52080 of the Health and Safety Code, the refunding bonds shall require a regulatory agreement that complies with subdivision (d) of Section 33760 of, or paragraph (2) of subdivision (d) of Section 34312 of, or subdivision (g) of Section 52080 of, the Health and Safety Code.

SEC. 2. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7) An analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy

programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584,

the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2.

(B) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(7) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:

(1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, where a city, county, or city and county submits a first draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, where the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

SEC. 3. Section 65584.5 of the Government Code is repealed.

SEC. 4. Section 65863.7 of the Government Code is amended to read:

65863.7. (a) Prior to the conversion of a mobilehome park to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a mobilehome park or cessation of use of the land as a mobilehome park, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced mobilehome park residents, the report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at least 15 days prior to the hearing, if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the closure or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at the same time as the notice of the change is provided to the residents pursuant to paragraph (2) of subdivision (g) of Section 798.56 of the Civil Code.

(d) When the impact report is filed prior to the closure or cessation of use, the person or entity filing the report or park resident may request, and shall have a right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a

mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

(f) If the closure or cessation of use of a mobilehome park results from an adjudication of bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Section 66016 to cover any costs incurred by the local agency in implementing this section and Section 65863.8. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

(j) This section is applicable when the closure, cessation, or change of use is the result of a decision by an enforcement agency, as defined in Section 18207 of the Health and Safety Code, to suspend the permit to operate the mobilehome park. In this case, the mobilehome park owner is the person proposing the change in use for purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

SEC. 4.3. Section 65863.11 of the Government Code is amended to read:

65863.11. (a) Terms used in this section shall be defined as follows:

(1) "Assisted housing development" and "development" mean a multifamily rental housing development as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(2) "Owner" means an individual, corporation, association, partnership, joint venture, or business entity that holds title to an assisted housing development.

(3) "Tenant" means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.

(4) "Tenant association" means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing

development and that represents the interest of at least a majority of the tenants in the assisted housing development.

(5) "Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.

(6) "Very low income" means having an income as defined in Section 50105 of the Health and Safety Code.

(7) "Local nonprofit organizations" means not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community based and have a proven track record of local community service.

(8) "Local public agencies" means housing authorities, redevelopment agencies, or any other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(9) "Regional or national organizations" means not-for-profit, charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income.

(10) "Regional or national public agencies" means multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(11) "Use restriction" means any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(12) "Profit-motivated organizations and individuals" means individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section

15001) of Title 2 of, the Corporations Code, that carry on as a business for profit.

(13) "Department" means the Department of Housing and Community Development.

(14) "Offer to purchase" means an offer from a qualified or nonqualified entity that is nonbinding on the owner.

(15) "Expiration of rental restrictions" has the meaning given in paragraph (5) of subdivision (a) of Section 65863.10.

(b) An owner of an assisted housing development shall not terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner of an assisted housing development in which there will be the expiration of rental restrictions must also provide each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(c) An owner of an assisted housing development shall not sell, or otherwise dispose of, the development at any time within the five years prior to the expiration of rental restrictions or at any time if the owner is eligible for prepayment or termination within five years unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with this section. An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(d) The entities to whom an opportunity to purchase shall be provided include only the following:

(1) The tenant association of the development.

(2) Local nonprofit organizations and public agencies.

(3) Regional or national nonprofit organizations and regional or national public agencies.

(4) Profit-motivated organizations or individuals.

(e) For the purposes of this section, to qualify as a purchaser of an assisted housing development, an entity listed in subdivision (d) shall do all of the following:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by itself or through a management agent.

(2) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for either a 30-year period from the date that the purchaser took legal possession of the housing or the

remaining term of the existing federal government assistance specified in subdivision (a) of Section 65863.10, whichever is greater. The development shall be continuously occupied in the approximate percentages that those households who have occupied that development on the date the owner gave notice of intent or the approximate percentages specified in existing use restrictions, whichever is higher. This obligation shall be recorded prior to the close of escrow in the office of the county recorder of the county in which the development is located and shall contain a legal description of the property, indexed to the name of the owner as grantor. An owner that obligates itself to an enforceable regulatory agreement that will ensure for a period of not less than 30 years that rents for units occupied by low- and very low income households or that are vacant at the time of executing a purchase agreement will conform with restrictions imposed by Section 42(f) of the Internal Revenue Code shall be deemed in compliance with this paragraph. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, should they be available, provided that assistance is at a level to maintain the project's fiscal viability.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.

(f) If an assisted housing development is not economically feasible, as defined in paragraph (3) of subdivision (h) of Section 17058 of the Revenue and Taxation Code, a purchaser shall be entitled to remove one or more units from the rent and occupancy requirements as is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(g) (1) If an owner decides to terminate a subsidy contract, or prepay the mortgage pursuant to Section 65863.10, or sell or otherwise dispose of the assisted housing development pursuant to subdivision (b) or (c), or if the owner has an assisted housing development in which there will be the expiration of rental restrictions, the owner shall first give notice of the opportunity to offer to purchase to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (o), as well as to those qualified entities that directly contact the owner. The notice of the opportunity to offer to purchase must be given prior to or concurrently with the notice required pursuant to Section 65863.10 for a period of at least 12 months. The owner shall contact the department

to obtain the list of qualified entities. The notice shall conform to the requirements of subdivision (h) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

(2) If the owner already has a bona fide offer to purchase from an entity prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall not be required to comply with this subdivision. However, the owner shall notify the department of this exemption and provide the department a copy of the offer.

(h) The initial notice of a bona fide opportunity to submit an offer to purchase shall contain all of the following:

(1) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, the terms of assumable financing, if any; the terms of the subsidy contract, if any; and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(2) A statement that each of the type of entities listed in subdivision (d) has the right to purchase the development under this section.

(3) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, itemized lists of monthly operating expenses, capital improvements as determined by the owner made within each of the two preceding calendar years, the amount of project reserves, and copies of the two most recent financial and physical inspection reports on the development, if any, filed with the federal, state, or local agencies.

(4) A statement that the owner will make available to each of the entities listed in subdivision (d), within 15 business days of a request therefor, the most recent rent roll listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date the notice of intent was made pursuant to Section 65863.10, and a statement of the vacancy rate at the development for each of the two preceding calendar years.

(5) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10, unless the notice of opportunity to submit an offer to purchase is delivered more than 12 months prior to the anticipated date of termination, prepayment, or expiration of rental restrictions.

(i) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development. A qualified entity's bona fide offer to purchase shall identify whether it is a tenant association, nonprofit organization, public agency, or

profit-motivated organizations or individuals and shall certify, under penalty of perjury, that it is qualified pursuant to subdivision (e). During the first 180 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, an owner shall accept a bona fide offer to purchase only from a qualified entity. During this 180-day period, the owner shall not accept offers from any other entity.

(j) When a bona fide offer to purchase has been made to an owner, and the offer is accepted, a purchase agreement shall be executed.

(k) Either the owner or the qualified entity may request that the fair market value of the property, as a development, be determined by an independent appraiser qualified to perform multifamily housing appraisals, who shall be selected and paid by the requesting party. All appraisers shall possess qualifications equivalent to those required by the members of the Appraisers Institute. This appraisal shall be nonbinding on either party with respect to the sales price of the development offered in the bona fide offer to purchase, or the acceptance or rejection of the offer.

(*l*) During the 180-day period following the initial 180-day period required pursuant to subdivision (i), an owner may accept an offer from a person or an entity that does not qualify under subdivision (e). This acceptance shall be made subject to the owner providing each qualified entity that made a bona fide offer to purchase the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner shall notify in writing those qualified entities of the terms and conditions of the pending offer to purchase, sent by registered or certified mail, return receipt requested. The qualified entity shall have 30 days from the date the notice is mailed to submit a bona fide offer to purchase and that offer shall be accepted by the owner. The owner shall not be required to comply with the provisions of this subdivision if the person or the entity making the offer during this time period agrees to maintain the development for persons and families of very low, low, and moderate income in accordance with paragraph (2) of subdivision (e). The owner shall notify the department regarding how the buyer is meeting the requirements of paragraph (2) of subdivision (e).

(m) This section shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring

immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (p).

(n) Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of a development to a purchaser who does not qualify under subdivision (e) shall certify under penalty of perjury that the owner has complied with all provisions of this section and Section 65863.10. This certification shall be recorded and shall contain a legal description of the property, shall be indexed to the name of the owner as grantor, and may be relied upon by good faith purchasers and encumbrances for value and without notice of a failure to comply with the provisions of this section.

Any person or entity acting solely in the capacity of an escrow agent for the transfer of real property subject to this section shall not be liable for any failure to comply with this section unless the escrow agent either had actual knowledge of the requirements of this section or acted contrary to written escrow instructions concerning the provisions of this section.

(o) The department shall undertake the following responsibilities and duties:

(1) Maintain a form containing a summary of rights and obligations under this section and make that information available to owners of assisted housing developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

(2) Compile, maintain, and update a list of entities in subdivision (d) that have either contacted the department with an expressed interest in purchasing a development in the subject area or have been identified by the department as potentially having an interest in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. Upon receipt of a notice of intent under Section 65863.10, the department shall make the list available to the owner proposing the termination, prepayment, or removal of government assistance or to the owner of an assisted housing development in which there will be the expiration of rental restrictions. If the department does not make the list available at any time, the owner shall only be required to send a written copy of the opportunity to submit an offer to purchase notice to the qualified entities which directly contact the owner and to post a copy of the notice in the common area pursuant to subdivision (g).

(p) (1) The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the opportunity to purchase and right of first refusal under this section, that has been adversely affected by an owner's failure to comply with this section.

(2) An owner may rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (d), unless the owner has actual knowledge that the purchaser is not a qualified entity.

(3) If the person or entity is not an entity as specified in subdivision (d), that fact, in the absence of actual knowledge as described in paragraph (2), shall not give rise to any claim against the owner for a violation of this section.

(q) It is the intent of the Legislature that the provisions of this section are in addition to, but not preemptive of, applicable federal laws governing the sale, or other disposition of a development that would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination or expiration of any low-income use restrictions that apply to the development.

(r) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

SEC. 4.5. Section 65863.13 of the Government Code is amended to read:

65863.13. (a) An owner shall not be required to provide a notice as required by Section 65863.10 or 65863.11 if all of the following conditions are contained in a regulatory agreement that has been or will be recorded against the property at the close of escrow of the sale of the property and the owner of the property complies with the requirements below during the escrow period:

(1) No low-income tenant whose rent was restricted and or subsidized and who resides in the development within 12 months of the date that the rent restrictions are, or subsidy is, scheduled to expire or terminate shall be involuntarily displaced on a permanent basis as a result of the action by the owner unless the tenant has breached the terms of the lease.

(2) The owner shall accept and fully utilize all renewals of project-based assistance under Section 8 of the United States Housing Act of 1937, if available, and if that assistance is at a level to maintain the project's fiscal viability. The property shall be deemed fiscally viable if the rents permitted under the terms of the assistance are not less than the regulated rent levels established pursuant to paragraph (7).

(3) The owner shall accept all enhanced Section 8 vouchers, if the tenants receive them, and all other Section 8 vouchers for future vacancies.

(4) The owner shall not terminate a tenancy of a low-income household at the end of a lease term without demonstrating a breach of the lease.

(5) The owner may, in selecting eligible applicants for admission, utilize criteria that permit consideration of the amount of income, as long as the owner adequately considers other factors relevant to an applicant's ability to pay rent.

(6) For assisted housing developments described in paragraph (3) of subdivision (a) of Section 65863.10, a new regulatory agreement, consistent with this section, is recorded that restricts the rents and incomes of the previously restricted units, except as provided in paragraph (7), (8), or (9), to an equal or greater level of affordability than previously required so that the units are affordable to households at the same or a lower percentage of area median income.

(7) For housing developments that have units with project-based rental assistance upon the effective date of prepayment and subsequently become unassisted by any form of rental assistance, rents shall not exceed 30 percent of 60 percent of the area median income. If any form of rental assistance is or becomes available, the owner shall apply for and accept, if awarded, the rental assistance. Rent and occupancy levels shall then be set in accordance with federal regulations for the rental assistance program.

(8) For units that do not have project-based rental assistance upon the effective date of prepayment of a federally insured, federally held, or formerly federally insured or held mortgage and subsequently remain unassisted or become unassisted by any form of rental assistance, rents shall not exceed the greater of (i) 30 percent of 50 percent of the area median income, or (ii) for projects insured under Section 241(f) of the National Housing Act, the regulated rents, expressed as a percentage of area median income. If any form of rental assistance is or becomes available, the owner shall apply for and accept, if awarded, the rental assistance. Rent and occupancy levels shall then be set in accordance with federal regulations governing the rental assistance program.

(9) If, upon the recordation of the new regulatory agreement, any unit governed by regulatory agreement is occupied by a household whose income exceeds the applicable limit, the rent for that household shall not exceed 30 percent of that household's adjusted income, provided that household's rent shall not be increased by more than 10 percent annually.

(b) As used in this section, "regulatory agreement" means an agreement with a governmental agency for the purposes of any governmental program, which agreement applies to the development that would be subject to the notice requirement in Section 65863.10 and which obligates the owner and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for the greater of the term of the existing

federal, state, or local government assistance specified in subdivision (a) of Section 65863.10 or 30 years.

(c) Section 65863.11 shall not apply to any development for which the owner is exempt from the notice requirements of Section 65863.10 pursuant to this section.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 5. Section 17958.4 of the Health and Safety Code is amended to read:

17958.4. (a) Any city, county, or city and county, may, by ordinance, establish a date by which all residential real property with security window bars on bedroom windows shall meet current state and local requirements for safety release mechanisms on security window bars consistent with the applicable standards in the 1995 edition of the California Building Standards Code, or, for safety release mechanisms on security window bars installed on or after January 1, 2008, the current edition of the California Building Standards Code, and any changes thereto made by the city, county, or city and county pursuant to Section 17958.

(b) Disclosures of the existence of any safety release mechanism on any security window bar shall be made in writing, and may be included in existing transactional documents, including, but not limited to, a real estate sales contract or receipt for deposit, or a transfer disclosure statement pursuant to Section 1102.6 or 1106.6a of the Civil Code.

(c) Enforcement of an ordinance adopted pursuant to subdivision (a) shall not apply as a condition of occupancy or at the time of any transfer that is subject to the Documentary Transfer Tax Act, Part 6.7 (commencing with Section 11901) of the Revenue and Taxation Code.

SEC. 6. Section 18210.7 is added to the Health and Safety Code, to read:

18210.7. (a) "Manufactured housing community" means any area or tract of land where two or more manufactured home lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, only to accommodate the use of manufactured homes constructed pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 and following) or mobilehomes containing two or more dwelling units for human habitation. The rental paid for a manufactured home shall be deemed to include rental for the lot it occupies.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more manufactured home lots

are rented or leased, held out for rent or lease, or provided as a term or condition of employment to accommodate manufactured homes or mobilehomes used for the purpose of housing 12 or fewer agricultural employees, shall not be deemed a manufactured housing community.

(c) Notwithstanding subdivision (a), an area or tract of land shall not be deemed a mobilehome park if the structures on it consist of residential structures that are rented or leased, or held out for rent or lease, if those residential structures meet both of the following requirements:

(1) The residential structures are manufactured homes constructed pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 and following) or mobilehomes containing two or more dwelling units for human habitation.

(2) Those manufactured homes or mobilehomes have been approved by a city, county, or city and county pursuant to subdivision (d) of Section 17951 as an alternate for which the requirements are at least equivalent to the requirements prescribed in the California Building Standards Code or Part 1.5 (commencing with Section 17910) for performance, safety, and the protection of life and health.

SEC. 7. Part 2.2 (commencing with Section 18800) of Division 13 of the Health and Safety Code is repealed.

SEC. 8. Section 19205 of the Health and Safety Code is repealed.

SEC. 9. Part 5 (commencing with Section 19950) of Division 13 of the Health and Safety Code is repealed.

SEC. 9.2. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds that are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing and improving the community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund and any repayments or other income to the agency for loans, advances, or grants, of any kind from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve the supply of low- and moderate-income housing within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for

planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation of that housing. The agency shall determine annually that the planning and administrative expenses are necessary for the production, improvement, or preservation of low- and moderate-income housing.

(e) (1) Planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund are those expenses incurred by the agency which are directly related to the programs and activities authorized under subdivision (e) of Section 33334.2 and are limited to the following:

(A) Costs incurred for salaries, wages, and related costs of the agency's staff or for services provided through interagency agreements, and agreements with contractors, including usual indirect costs related thereto.

(B) Costs incurred by a nonprofit corporation which are not directly attributable to a specific project.

(2) Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific project which are authorized under subdivision (e) of Section 33334.2 and which are incurred by a nonprofit housing sponsor are not planning and administrative costs for the purposes of this section, but are instead project costs.

(f) (1) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted, with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at affordable housing cost to, and occupied by, persons and families of low or moderate income and very low income and extremely low income households for the longest feasible time, but for not less than the following periods of time:

(A) Fifty-five years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (A) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (B) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(B) Forty-five years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the

45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(C) Fifteen years for mutual self-help housing units that are occupied by and affordable to very low and low-income households. However, the agency may permit sales of mutual self-help housing units prior to expiration of the 15-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that (i) protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy; and (ii) ensures through a recorded regulatory agreement, deed of trust, or similar recorded instrument that if a mutual self-help housing unit is sold at any time after expiration of the 15-year period and prior to 45 years after the date of recording of the covenants or restrictions required pursuant to paragraph (2), the agency recovers, at a minimum, its original principal from the Low and Moderate Income Housing Fund from the proceeds of the sale and deposits those funds into the Low and Moderate Income Housing Fund. The remainder of the excess proceeds of the sale not retained by the seller shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. For the purposes of this subparagraph, "mutual self-help housing unit" means an owner-occupied housing unit for which persons and families of very low and low income contribute no fewer than 500 hours of their own labor in individual or group efforts to provide a decent, safe, and sanitary ownership housing unit for themselves, their families, and others authorized to occupy that unit. Nothing in this subparagraph precludes the agency and the developer of the mutual self-help housing units from agreeing to 45-year deed restrictions.

(D) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(2) The agency shall require the recording in the office of the county recorder of covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision.

Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable, against the original owner and successors in interest, by the agency or the community.

(g) "Housing," as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of "lower income households," "very low income households," and "extremely low income households" in Sections 50079.5, 50105, and 50106 shall apply to this section. "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

(h) "Increasing, improving, and preserving the community's supply of low- and moderate-income housing," as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to, and occupied by, low- and moderate-income households, including extremely low and very low income households, for the longest feasible time, but not less than 55 years, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require that the units remain affordable to, and occupied by, persons and families of low- and moderate-income and extremely low and very low income households for the longest feasible time but not less than 55 years. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (1) the replacement units in another location are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (2) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(i) Agencies that have more than one project area may satisfy the requirements of Sections 33334.2 and 33334.6 and of this section by allocating, in any fiscal year, less than 20 percent in one project area, if the difference between the amount allocated and the 20 percent required is instead allocated, in that same fiscal year, to the Low and Moderate Income Housing Fund from tax increment revenues from other project areas. Prior to allocating funds pursuant to this subdivision, the agency shall make the finding required by subdivision (g) of Section 33334.2.

(j) Funds from the Low and Moderate Income Housing Fund shall not be used to the extent that other reasonable means of private or commercial financing of the new or substantially rehabilitated units at the same level of affordability and quantity are reasonably available to the agency or to the owner of the units. Prior to the expenditure of funds from the Low and Moderate Income Housing Fund for new or substantially rehabilitated housing units, where those funds will exceed

50 percent of the cost of producing the units, the agency shall find, based on substantial evidence, that the use of the funds is necessary because the agency or owner of the units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity.

SEC. 9.3. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds that are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund and any repayments or other income to the agency for loans, advances, or grants, of any kind from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve the supply of low- and moderate-income housing within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation of that housing. The agency shall determine annually that the planning and administrative expenses are necessary for the production, improvement, or preservation of low- and moderate-income housing.

(e) (1) Planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund are those expenses incurred by the agency which are directly related to the programs and activities authorized under subdivision (e) of Section 33334.2 and are limited to the following:

(A) Costs incurred for salaries, wages, and related costs of the agency's staff or for services provided through interagency agreements, and agreements with contractors, including usual indirect costs related thereto.

(B) Costs incurred by a nonprofit corporation which are not directly attributable to a specific project.

(2) Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific project that are authorized under subdivision (e) of Section 33334.2 and that are incurred by a nonprofit housing sponsor are not planning and administrative costs for the purposes of this section, but are instead project costs.

(f) (1) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent that a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at affordable housing cost to, and occupied by, persons and families of low or moderate income, and very low income and extremely low income households, for the longest feasible time, but for not less than the following periods of time:

(A) Fifty-five years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (i) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (ii) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(B) Forty-five years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(C) Fifteen years for mutual self-help housing units that are occupied by and affordable to very low and low-income households. However, the agency may permit sales of mutual self-help housing units prior to expiration of the 15-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that (i) protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits

retention by the seller of a portion of those excess proceeds based on the length of occupancy; and (ii) ensures through a recorded regulatory agreement, deed of trust, or similar recorded instrument that if a mutual self-help housing unit is sold at any time after expiration of the 15-year period and prior to 45 years after the date of recording of the covenants or restrictions required pursuant to paragraph (2), the agency recovers, at a minimum, its original principal from the Low and Moderate Income Housing Fund from the proceeds of the sale and deposits those funds into the Low and Moderate Income Housing Fund. The remainder of the excess proceeds of the sale not retained by the seller shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. For the purposes of this subparagraph, "mutual self-help housing unit" means an owner-occupied housing unit for which persons and families of very low and low income contribute no fewer than 500 hours of their own labor in individual or group efforts to provide a decent, safe, and sanitary ownership housing unit for themselves, their families, and others authorized to occupy that unit. Nothing in this subparagraph precludes the agency and the developer of the mutual self-help housing units from agreeing to 45-year deed restrictions.

(2) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(3) The agency shall require the recording in the office of the county recorder of the following documents:

(A) The covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision. The agency shall obtain and maintain a copy of the recorded covenants or restrictions for not less than the life of the covenant or restriction.

(B) For all new or substantially rehabilitated units developed or otherwise assisted with moneys from the Low and Moderate Income Housing Fund on or after January 1, 2008, a separate document called the "Notice of Affordability Restrictions on Transfer of Property," set forth in 14-point type or larger. This document shall contain all of the following information:

(i) A recitation of the affordability covenants or restrictions. If the document recorded under this subparagraph is recorded concurrently with the covenants or restrictions recorded under subparagraph (A), the recitation of the affordability covenants or restrictions shall also reference the concurrently recorded document. If the document recorded under this subparagraph is not recorded concurrently with the covenants or restrictions recorded under subparagraph (A), the recitation of the affordability covenants or restrictions shall also reference the recorder's

identification number of the document recorded under subparagraph (A).

(ii) The date the covenants or restrictions expire.

(iii) The street address of the property, including, if applicable, the unit number.

(iv) The assessor's parcel number for the property.

(v) The legal description of the property.

(4) The agency shall require the recording of the document required under subparagraph (B) of paragraph (3) not more than 30 days after the date of recordation of the covenants or restrictions required under subparagraph (A) of paragraph (3).

(5) The county recorder shall index the documents required to be recorded under paragraph (3) by the agency and current owner.

(6) Notwithstanding Section 27383 of the Government Code, a county recorder may charge all authorized recording fees to any party, including a public agency, for recording the document specified in subparagraph (B) of paragraph (3).

(7) Notwithstanding any other provision of law, the covenants or restrictions implementing this subdivision shall run with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the following:

(A) The agency.

(B) The community, as defined in Section 33002.

(C) A resident of a unit subject to this subdivision.

(D) A residents' association with members who reside in units subject to this subdivision.

(E) A former resident of a unit subject to this subdivision who last resided in that unit.

(F) An applicant seeking to enforce the covenants or restrictions for a particular unit that is subject to this subdivision, if the applicant conforms to all of the following:

(i) Is of low or moderate income, as defined in Section 50093.

(ii) Is able and willing to occupy that particular unit.

(iii) Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing this subdivision.

(G) A person on an affordable housing waiting list who is of low or moderate income, as defined in Section 50093, and who is able and willing to occupy a unit subject to this subdivision.

(8) A dwelling unit shall not be counted as satisfying the affordable housing requirements of this part, unless covenants for that dwelling unit are recorded in compliance with subparagraph (A) of paragraph (3).

(9) Failure to comply with the requirements of subparagraph (B) of paragraph (3) shall not invalidate any covenants or restrictions recorded pursuant to subparagraph (A) of paragraph (3).

(g) "Housing," as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of "lower income households," "very low income households," and "extremely low income households" in Sections 50079.5, 50105, and 50106 shall apply to this section. "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

(h) "Increasing, improving, and preserving the community's supply of low- and moderate-income housing," as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to, and occupied by, low- and moderate-income households, including extremely low and very low income households, for the longest feasible time, but not less than 55 years, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require that the units remain affordable to, and occupied by, persons and families of low- and moderate-income and extremely low and very low income households for the longest feasible time but not less than 55 years. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (1) the replacement units in another location are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (2) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(i) Agencies that have more than one project area may satisfy the requirements of Sections 33334.2 and 33334.6 and of this section by allocating, in any fiscal year, less than 20 percent in one project area, if the difference between the amount allocated and the 20 percent required is instead allocated, in that same fiscal year, to the Low and Moderate Income Housing Fund from tax increment revenues from other project areas. Prior to allocating funds pursuant to this subdivision, the agency shall make the finding required by subdivision (g) of Section 33334.2.

(j) Funds from the Low and Moderate Income Housing Fund shall not be used to the extent that other reasonable means of private or commercial financing of the new or substantially rehabilitated units at the same level of affordability and quantity are reasonably available to the agency or to the owner of the units. Prior to the expenditure of funds from the Low and Moderate Income Housing Fund for new or substantially rehabilitated housing units, where those funds will exceed

50 percent of the cost of producing the units, the agency shall find, based on substantial evidence, that the use of the funds is necessary because the agency or owner of the units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity.

SEC. 9.4. Section 33413 of the Health and Safety Code is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same or a lower income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons

and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost, to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have been required to be available inside a project area.

(iii) On or after January 1, 2002, as used in this paragraph and in paragraph (1), "substantially rehabilitated dwelling units" means all units substantially rehabilitated, with agency assistance. Prior to January 1, 2002, "substantially rehabilitated dwelling units" shall mean substantially rehabilitated multifamily rented dwelling units with three or more units regardless of whether there is agency assistance, or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), "substantial rehabilitation" means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons

and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(D) To satisfy the requirements of paragraph (1) and subparagraph (A), each mutual self-help housing unit, as defined in subparagraph (C) of paragraph (1) of subdivision (f) of Section 33334.3, that is subject to a 15-year deed restriction shall count as one-third of a unit.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2), (3), and (4) of subdivision (a) of Section 33490.

(c) (1) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units, 45 years for home ownership units, and 15 years for mutual self-help housing units, as defined in

subparagraph (C) of paragraph (1) of subdivision (f) of Section 33334.3, except as set forth in paragraph (2). Nothing in this paragraph precludes the agency and the developer of the mutual self-help housing units from agreeing to 45-year deed restrictions.

(2) Notwithstanding paragraph (1), the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period, and mutual self-help housing units prior to the expiration of the 15-year period, established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale pursuant to this paragraph of each home ownership or mutual self-help housing unit subject to a 45-year deed restriction, and every third mutual self-help housing unit subject to a 15-year deed restriction, expend funds to make affordable an equal number of units at the same or lowest income level as the unit or units sold pursuant to this paragraph, for a period not less than the duration of the original deed restrictions. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(3) The requirements of this section shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

(4) If land on which the dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In

addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 9.5. Section 33413 of the Health and Safety Code is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units

available at affordable housing cost in the same or a lower income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost, to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have been required to be available inside a project area.

(iii) On or after January 1, 2002, as used in this paragraph and in paragraph (1), "substantially rehabilitated dwelling units" means all units substantially rehabilitated, with agency assistance. Prior to January 1, 2002, "substantially rehabilitated dwelling units" shall mean substantially rehabilitated multifamily rented dwelling units with three or more units regardless of whether there is agency assistance, or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), "substantial rehabilitation" means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(D) To satisfy the requirements of paragraph (1) and subparagraph (A), each mutual self-help housing unit, as defined in subparagraph (C) of paragraph (1) of subdivision (f) of Section 33334.3, that is subject to a 15-year deed restriction shall count as one-third of a unit.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2), (3), and (4) of subdivision (a) of Section 33490.

(c) (1) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units, 45 years for home ownership units, and 15 years for mutual self-help housing units, as defined in subparagraph (C) of paragraph (1) of subdivision (f) of Section 33334.3, except as set forth in paragraph (2). Nothing in this paragraph precludes the agency and the developer of the mutual self-help housing units from agreeing to 45-year deed restrictions.

(2) Notwithstanding paragraph (1), the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period, and mutual self-help housing units prior to the expiration of the 15-year period, established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale pursuant to this paragraph of each home ownership or mutual self-help housing unit subject to a 45-year deed restriction, and every third mutual self-help housing unit subject to a 15-year deed

restriction, expend funds to make affordable an equal number of units at the same or lowest income level as the unit or units sold pursuant to this paragraph, for a period not less than the duration of the original deed restrictions. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(3) The requirements of this section shall be made enforceable in the same manner as provided in paragraph (7) of subdivision (f) of Section 33334.3.

(4) If land on which the dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(5) For each unit counted towards the requirements of subdivisions (a) and (b), the agency shall require the recording in the office of the county recorder of covenants or restrictions that ensure compliance with this subdivision. With respect to covenants or restrictions that are recorded on or after January 1, 2008, the agency shall comply with the requirements of paragraphs (3) and (4) of subdivision (f) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each

dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 9.6. Section 33413.1 of the Health and Safety Code is amended to read:

33413.1. (a) For only the Mt. Eden Sub-Area of the Eden Redevelopment Project Area, the Redevelopment Agency of the County of Alameda may count, towards satisfaction of the housing production requirements of subdivision (b) of Section 33413, the construction of units outside the project area but within the City of Hayward if all of the following conditions are met:

(1) The units shall be available at affordable housing cost to, and occupied by, persons and families of very low or low income.

(2) The units shall comply with subdivision (c) of Section 33413, except that the requirements of that subdivision shall be deemed satisfied if the recorded covenants or restrictions are enforceable by the City of Hayward.

(3) The units shall be located on a parcel or parcels immediately contiguous to the Mt. Eden Sub-Area of the Eden Redevelopment Project Area.

(4) The Redevelopment Agency of the City of Hayward shall provide to the Redevelopment Agency of the County of Alameda written consent to the measures taken pursuant to this section and shall not count any units credited to the Redevelopment Agency of Alameda County pursuant to this section towards its own production or replacement requirements under Section 33413.

(b) The Redevelopment Agency of the County of Alameda shall cause to be made available, at affordable housing cost to, and occupied by, persons and families of very low, low-, or moderate-income households, as applicable, two units outside the project area for each unit that

otherwise would have been required to be available inside the project area as required by clause (ii) of subparagraph (A) of paragraph (2) of subdivision (b) of Section 33413.

(c) This section does not apply to a housing unit for which construction commences on or after January 1, 2012.

SEC. 10. Chapter 7 (commencing with Section 33701) of Part 1 of Division 24 of the Health and Safety Code is repealed.

SEC. 10.5. Section 34278 of the Health and Safety Code is amended to read:

34278. (a) An authority shall select from among its commissioners a vice chairman. It also may employ a secretary, who shall be executive director, technical experts, and any other officers, agents, and employees that it requires, and shall determine their qualifications, duties, terms of employment, and compensation. The authority shall adopt personnel rules and regulations applying to all employees. Those rules shall contain procedures affecting conflicts of interest, use of funds, and personnel procedures on hiring and firing, including removal of personnel for inefficiency, neglect of duties, or misconduct in office. Those rules and regulations shall be of public record.

(b) An authority may contract with the Department of Housing and Community Development, any city, any county, or any other authority, for the furnishing by the department, city, county, or authority of any necessary staff services associated with or required by an authority and which could be performed by the staff of an authority.

SEC. 11. Part 3 (commencing with Section 34800) of Division 24 of the Health and Safety Code is repealed.

SEC. 12. Part 11 (commencing with Section 37850) of Division 24 of the Health and Safety Code is repealed.

SEC. 12.5. Section 50199.21 of the Health and Safety Code is amended to read:

50199.21. "Rural area" for the purpose of this chapter and Sections 17058 and 23610.5 of the Revenue and Taxation Code, means an area, which, on January 1 of any calendar year satisfies any of the following criteria:

(a) The area is eligible for financing under the Section 515 program, or successor program, of the Rural Development Administration of the United States Department of Agriculture.

(b) The area is located in a nonmetropolitan area as defined in Section 50090.

(c) The area is either (1) an incorporated city having a population of 40,000 or less as identified in the most recent Report E-1 published by the Demographic Research Unit of the Department of Finance, or (2) an unincorporated area which adjoins a city having a population of 40,000

or less, provided that the city and its adjoining unincorporated area are not located within a census tract designated as an urbanized area by the United States Census Bureau. The department shall assist in determinations of eligibility pursuant to this subdivision upon request. With respect to areas eligible under subdivision (b) and this subdivision, the committee may rely upon the recommendations made by the department. Any inconsistencies between areas eligible under subdivisions (a) and (b), and this subdivision, shall be resolved in favor of considering the area a rural area. Eligible and ineligible areas need not be established by regulation.

SEC. 13. Section 50199.50 of the Health and Safety Code is amended to read:

50199.50. For the purposes of this chapter, the following terms shall have the following meanings:

(a) "Agricultural worker" or "farmworker" shall have the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code.

(b) "Compliance period" means, with respect to any farmworker housing, the period of 30 consecutive taxable or income years, beginning with the taxable or income year in which the credit is allowable.

(c) "Eligible costs" shall have the same meaning as "eligible basis," as defined in Section 42 of the Internal Revenue Code.

(d) "Farmworker housing" means housing for agricultural workers and may include, but need not be limited to, conventionally constructed units and manufactured housing.

(e) "Farmworker housing tax credits" means the tax credits authorized by Sections 17053.14, 23608.2, and 23608.3 of the Revenue and Taxation Code.

(f) "Household" has the same meaning as defined in Section 7602 of Title 25 of the California Code of Regulations.

(g) "Committee" means the California Tax Credit Allocation Committee as defined in Section 50199.7.

SEC. 14. Section 50199.55 of the Health and Safety Code is amended to read:

50199.55. (a) The committee shall allocate farmworker housing tax credits on a regular basis in each calendar year during which applications may be filed and considered. The committee shall establish application forms and instructions, application filing deadlines, and the approximate date on which allocations shall be made. As a condition of submitting an application, or as a condition of receiving an allocation or reservation of tax credits, the committee may charge a fee to a tax credit applicant to defray the committee's costs in administering this chapter. In review

of applications, the committee shall require the following criteria in order to ensure compliance with all provisions of this chapter:

(1) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project.

(2) The proposed operating budget shall be adequate to operate the project for the compliance period.

(3) The recipient or owner shall have sufficient expertise and the financial capacity to ensure project completion and operation for the compliance period.

(4) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(5) Development fees included in subdivision (c) of Section 50199.52 shall not exceed a percentage of the total project cost, excluding land costs, prior to the inclusion of the fees in the total project cost, as determined by the committee. The amount of development fees determined by the committee shall be consistent with the amount of development fees allowed by the committee under the low-income housing tax credit program (Chapter 3.6 (commencing with Section 50199.4)).

(b) Following approval, the committee shall issue a certificate to the taxpayer that states the total amount of the allocated tax credit to which the taxpayer is entitled for each income or taxable year.

SEC. 15. Section 50409 is added to the Health and Safety Code, to read:

50409. Except where the department is specifically vested by this part or by any other provision of law with the authority to adopt rules and regulations, and except as provided in Section 18930, the commission may adopt, amend, and repeal rules and regulations reasonably necessary to carry out this part or by any other provision of law. Any rules and regulations of the commission in effect on September 26, 1975, shall remain in effect until amended or repealed except that building standards, as defined in Section 18909, shall remain in effect only until January 1, 1985, or until adopted, amended, repealed, or superseded by building standards adopted and published in the California Building Standards Code pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13, whichever occurs sooner.

SEC. 16. Chapter 4 (commencing with Section 50559) of Part 2 of Division 31 of the Health and Safety Code is repealed.

SEC. 17. Section 50843 of the Health and Safety Code is amended to read:

50843. (a) This section applies only to grants awarded pursuant to this chapter from funds made available pursuant to Part 11 (commencing with Section 53500).

(b) The department may make matching grants available to cities and counties, or a city and county, that have created, funded, and operated housing trust funds prior to January 1, 2003, and to existing charitable nonprofit organizations described in Section 501(c)(3) of the Internal Revenue Code that have created, funded, and operated housing trust funds prior to January 1, 2003. These funds shall be awarded through the issuance of a Notice of Funding Availability (NOFA). The department may establish competitive criteria consistent with the funding priorities used in the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675)) to be used in the event that applications exceed the funds available. Applicants that provide matching funds from a source or sources other than impact fees on residential development shall receive a priority for funding.

(c) The department may make matching grants available to new local housing trusts created by cities and counties, or a city and county, and to fund new housing trusts created by charitable nonprofit organizations described in Section 501(c)(3) of the Internal Revenue Code that provide low-income housing assistance. As used in this section, "new housing trust" means a housing trust that was not in existence prior to January 1, 2003. The department may consider grant applications, submitted pursuant to this subdivision, and determine their eligibility for funding, in the order in which they are received.

(d) Housing trusts eligible for funding under this section shall have the following characteristics:

(1) They utilize a public or joint public and private fund established by legislation, ordinance, resolution, or a public-private partnership to receive specific revenue to address local housing needs.

(2) They receive ongoing revenues from dedicated sources of funding such as taxes, fees, loan repayments, or private contributions.

(e) The minimum allocation to an applicant shall be one million dollars ($1,000,000), and no applicant may receive an allocation in excess of two million dollars ($2,000,000). All funds provided pursuant to this section shall be matched on a dollar-for-dollar basis. No application shall be considered unless the department has received adequate documentation of the deposit in the local housing trust fund of the local match and the identity of the source of matching funds. Applicants shall be required to continue funding the local housing trust fund from these identified local sources, and continue the trust in operation, for a period of no less than five years from the date of award. If the funding is not continued for a five-year period, then (1) the amount of the department's grant to

the local housing trust fund, to the extent that the trust fund has unencumbered funds available, shall be immediately repaid, and (2) any payments from any projects funded by the local housing trust fund that would have been paid to the local housing trust fund shall be paid instead to the department and used to fund projects under the Multifamily Housing Program, or its successor. The total amount paid to the department pursuant to (1) and (2), combined, shall not exceed the amount of the department's grant.

(f) Funds shall be used to provide loans for the construction of rental housing projects, or for construction of units within rental housing projects, affordable to, and restricted for, very low income persons and families earning less than 60 percent of the area median income. All assisted units shall be restricted for not less than 55 years. Loan repayments shall accrue to the grantee housing trust, or to the department if the trust is no longer in existence.

(g) In order for a city, county, or city and county to be eligible for funding, the applicant shall have, at the time of application, an adopted housing element that the department has determined, pursuant to Section 65585 of the Government Code, is in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code. In order for a nonprofit organization applicant to be eligible for funding, the applicant shall agree to utilize funds provided under this chapter only for projects located in cities, counties, or a city and county that have, at the time of application, an adopted housing element that the department has determined, pursuant to Section 65585 of the Government Code, to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code. For the purposes of this section, eligible local housing trust funds may not include any ongoing restricted fund that is required to be established pursuant to federal or state law.

(h) Recipients shall have held, or shall agree to hold, a public hearing or hearings to discuss and describe the project or projects that will be financed with funds provided pursuant to this section. As a condition of receiving a grant pursuant to this section, any nonprofit organization shall agree that it will hold one public meeting a year to discuss the criteria that will be used to select projects to be funded. That meeting shall be open to the public, and public notice of this meeting shall be provided, except to the extent that any similar meeting of a city or county would be permitted to be held in closed session.

(i) No more than 5 percent of the funds appropriated to the department pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of

Section 53533 shall be used to pay the costs of administration of this section.

(j) A local housing trust fund shall encumber funds provided pursuant to this section no later than 54 months after receipt. Any funds not encumbered within that period shall revert to the department for use in the Multifamily Housing Program.

(k) Recipients shall be required to file periodic reports with the department regarding the use of funds provided pursuant to this section. No later than December 31, 2005, the department shall provide a report to the Legislature regarding the number of trust funds created, a description of the projects supported, the number of units assisted, and the amount of matching funds.

(*l*) This program shall be operated under guidelines adopted by the department and 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. 17.5. Section 50862.5 of the Health and Safety Code is amended to read:

50862.5. Downpayment assistance provided pursuant to this chapter shall be in the form of a second mortgage loan. The maximum amount of the loan shall be set in the current Notice of Funding Availability (NOFA), but in no case shall the loan exceed 20 percent of the sale price of the residence. The loan shall accrue simple interest.

SEC. 18. Section 53545 of the Health and Safety Code is amended to read:

53545. The Housing and Emergency Shelter Trust Fund of 2006 is hereby created in the State Treasury. The Legislature intends that the proceeds of bonds deposited in the fund shall be used to fund the housing-related programs described in this chapter over the course of the next decade. The proceeds of bonds issued and sold pursuant to this part for the purposes specified in this chapter shall be allocated in the following manner:

(a) (1) One billion five hundred million dollars ($1,500,000,000) to be deposited in the Affordable Housing Account, which is hereby created in the fund. Notwithstanding Section 13340 of the Government Code, the money in the account shall be continuously appropriated in accordance with the following schedule:

(A) (i) Three hundred forty-five million dollars ($345,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2. The priorities specified in Section 50675.13 shall apply to the expenditure of funds pursuant to this clause.

(ii) Fifty million dollars ($50,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended under the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2 for housing meeting the definitions in paragraphs (2) and (3) of subdivision (e) of Section 11139.3 of the Government Code. The department may provide higher per-unit loan limits as necessary to achieve affordable housing costs to the target population. Any funds not encumbered for the purposes of this clause within 30 months of availability shall revert for general use in the Multifamily Housing Program.

(B) One hundred ninety-five million dollars ($195,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2, to be used for supportive housing for individuals and households moving from emergency shelters or transitional housing or those at risk of homelessness. The Department of Housing and Community Development shall provide for higher per-unit loan limits as reasonably necessary to achieve housing costs affordable to those individuals and households. For purposes of this subparagraph, "supportive housing" means housing with no limit on length of stay, that is occupied by the target population, as defined in subdivision (d) of Section 53260, and that is linked to onsite or offsite services that assist the tenant to retain the housing, improve his or her health status, maximize his or her ability to live, and, when possible, work in the community. The criteria for selecting projects shall give priority to:

(i) Supportive housing for people with disabilities who would otherwise be at high risk of homelessness where the applications represent collaboration with programs that meet the needs of the person's disabilities.

(ii) Projects that demonstrate funding commitments from local governments for operating subsidies or services funding, or both, for five years or longer.

(C) One hundred thirty-five million dollars ($135,000,000) shall be transferred to the fund created by subdivision (b) of Section 50517.5 to be expended for the programs authorized by Chapter 3.2 (commencing with Section 50517.5) of Part 2.

(D) Three hundred million dollars ($300,000,000) shall be transferred to the Self-Help Housing Fund created by Section 50697.1. These funds shall be available to the Department of Housing and Community Development, to be expended for the purposes of enabling households to become or remain homeowners pursuant to the CalHome Program authorized by Chapter 6 (commencing with Section 50650) of Part 2,

except ten million dollars ($10,000,000) shall be expended for construction management under the California Self-Help Housing Program pursuant to subdivision (b) of Section 50696.

(E) Two hundred million dollars ($200,000,000) shall be transferred to the Self-Help Housing Fund created by Section 50697.1. These funds shall be available to the California Housing Finance Agency, to be expended for the purposes of the California Homebuyer's Downpayment Assistance Program authorized by Chapter 11 (commencing with Section 51500) of Part 3. Up to one hundred million dollars ($100,000,000) of these funds may be expended pursuant to subdivision (b) of Section 51504.

(F) One hundred million dollars ($100,000,000) shall be transferred to the Affordable Housing Innovation Fund, which is hereby created in the State Treasury, to be administered by the Department of Housing and Community Development. Funds shall be expended for competitive grants or loans to sponsoring entities that develop, own, lend, or invest in affordable housing and used to create pilot programs to demonstrate innovative, cost-saving approaches to creating or preserving affordable housing. Specific criteria establishing eligibility for and use of the funds shall be established in statute as approved by a ⅔ vote of each house of the Legislature. Any funds not encumbered for the purposes set forth in this subparagraph within 30 months of availability shall revert to the Self-Help Housing Fund created by Section 50697.1 and shall be available for the purposes described in subparagraph (D).

(G) One hundred twenty-five million dollars ($125,000,000) shall be transferred to the Building Equity and Growth in Neighborhoods Fund to be used for the Building Equity and Growth in Neighborhoods (BEGIN) Program pursuant to Chapter 14.5 (commencing with Section 50860) of Part 1. Any funds not encumbered for the purposes set forth in this subparagraph within 30 months of availability shall revert for general use in the CalHome Program.

(H) Fifty million dollars ($50,000,000) shall be transferred to the Emergency Housing and Assistance Fund to be distributed in the form of capital development grants under the Emergency Housing and Assistance Program authorized by Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31. The funds shall be administered by the Department of Housing and Community Development in a manner consistent with the restrictions and authorizations contained in Provision 3 of Item 2240-105-0001 of the Budget Act of 2000, except that any appropriations in that item shall not apply. The competitive system used by the department shall incorporate priorities set by the designated local boards and their input as to the relative merits of submitted applications from within the designated local board's county in relation to those

priorities. In addition, the funding limitations contained in this section shall not apply to the appropriation in that budget item.

(2) The Legislature may, from time to time, amend the provisions of law related to programs to which funds are, or have been, allocated pursuant to this subdivision for the purpose of improving the efficiency and effectiveness of the program, or for the purpose of furthering the goals of the program.

(3) The Bureau of State Audits shall conduct periodic audits to ensure that bond proceeds are awarded in a timely fashion and in a manner consistent with the requirements of this subdivision, and that awardees of bond proceeds are using funds in compliance with applicable provisions of this subdivision. The first audit shall be conducted no later than one year from voter approval of this part.

(4) In its annual report to the Legislature, the Department of Housing and Community Development shall report how funds that were made available pursuant to this subdivision and allocated in the prior year were expended. The department shall make the report available to the public on its Internet Web site.

(b) Eight hundred fifty million dollars ($850,000,000) shall be deposited in the Regional Planning, Housing, and Infill Incentive Account, which is hereby created in the fund. Funds in the account shall be available, upon appropriation by the Legislature, and subject to such other conditions and criteria as the Legislature may provide in statute, for the following purposes:

(1) For infill incentive grants for capital outlay related to infill housing development and other related infill development, including, but not limited to, all of the following:

(A) No more than two hundred million dollars ($200,000,000) for park creation, development, or rehabilitation to encourage infill development.

(B) Water, sewer, or other public infrastructure costs associated with infill development.

(C) Transportation improvements related to infill development projects.

(D) Traffic mitigation.

(2) For brownfield cleanup that promotes infill housing development and other related infill development consistent with regional and local plans.

(c) Three hundred million dollars ($300,000,000) to be deposited in the Transit-Oriented Development Account, which is hereby created in the fund, for transfer to the Transit-Oriented Development Implementation Fund, for expenditure, upon appropriation by the Legislature, pursuant to the Transit-Oriented Development

Implementation Program authorized by Part 13 (commencing with Section 53560).

(d) Two hundred million dollars ($200,000,000) shall be deposited in the Housing Urban-Suburban-and-Rural Parks Account, which is hereby created in the fund. Funds in the account shall be available upon appropriation by the Legislature for housing-related parks grants in urban, suburban, and rural areas, subject to the conditions and criteria that the Legislature may provide in statute.

SEC. 19. Section 115928 of the Health and Safety Code is amended to read:

115928. Whenever a building permit is issued for the construction of a new swimming pool or spa, the pool or spa shall meet all of the following requirements:

(a) (1) The suction outlet of the pool or spa for which the permit is issued shall be equipped to provide circulation throughout the pool or spa as prescribed in paragraph (2).

(2) The swimming pool or spa shall have at least two circulation drains per pump that shall be hydraulically balanced and symmetrically plumbed through one or more "T" fittings, and that are separated by a distance of at least three feet in any dimension between the drains.

(b) Suction outlets that are less than 12 inches across shall be covered with antientrapment grates, as specified in the ASME/ANSI Standard A 112.19.8, that cannot be removed except with the use of tools. Slots or openings in the grates or similar protective devices shall be of a shape, area, and arrangement that would prevent physical entrapment and would not pose any suction hazard to bathers.

(c) Any backup safety system that an owner of a new swimming pool or spa may choose to install in addition to the requirements set forth in subdivisions (a) and (b) shall meet the standards as published in the document, "Guidelines for Entrapment Hazards: Making Pools and Spas Safer," Publication Number 363, March 2005, United States Consumer Product Safety Commission.

SEC. 20. Section 115928.5 is added to the Health and Safety Code, to read:

115928.5. Whenever a building permit is issued for the remodel or modification of an existing swimming pool, toddler pool, or spa, the permit shall require that the suction outlet of the existing swimming pool, toddler pool, or spa be upgraded so as to be equipped with an antientrapment cover meeting current standards of the American Society for Testing and Materials (ASTM) or the American Society of Mechanical Engineers (ASME).

SEC. 21. Section 5803 of the Revenue and Taxation Code is amended to read:

5803. (a) "Full cash value" means the "full cash value" or the "fair market value," as determined pursuant to Section 110, of a manufactured home similarly equipped and installed, including any value attributable to a manufactured home accessory building or structure as defined in Section 18008.5 of the Health and Safety Code which is sold along with the manufactured home, giving recognition, however, to the exemption provided in subdivision (m) of Section 3 of Article XIII of the Constitution.

(b) The Legislature finds and declares that, because owners of manufactured homes subject to property taxation on rented or leased land do not own the land on which the manufactured home is located and are subject to having the manufactured home removed upon termination of tenancy, "full cash value" for purposes of subdivision (a) does not include any value attributable to the particular site where the manufactured home is located on rented or leased land which would make the sale price of the manufactured home at that location different from its price at some other location on rented or leased land. In determining the "full cash value" of a manufactured home on rented or leased land, the assessor shall take into consideration, among other relevant factors, cost data issued pursuant to Section 401.5 or sales prices listed in recognized value guides for manufactured homes, including, but not limited to, the National Automobile Dealers Association's Manufactured Housing Appraisal Guide.

SEC. 22. Section 2 of this act shall not become operative if SB 2 of the 2007–08 Regular Session is enacted and becomes effective on or before January 1, 2008, and amends Section 65583 of the Government Code.

SEC. 23. Sections 13 and 14 of this act shall not become operative if SB 713 of the 2007–08 Regular Session is enacted and becomes effective on or before January 1, 2008, and repeals Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

SEC. 24. Section 9.3 of this bill incorporates amendments to Section 33334.3 of the Health and Safety Code proposed by both this bill and AB 987. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 33334.3 of the Health and Safety Code, and (3) this bill is enacted after AB 987, in which case Section 9.2 of this bill shall not become operative.

SEC. 25. Section 9.5 of this bill incorporates amendments to Section 33413 of the Health and Safety Code proposed by both this bill and AB 987. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends

Section 33413 of the Health and Safety Code, and (3) this bill is enacted after AB 987, in which case Section 9.4 of this bill shall not become operative.

CHAPTER 597

An act to amend Section 25356.1.5 of the Health and Safety Code, and to add Section 13304.2 to the Water Code, relating to hazardous substances.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 25356.1.5 of the Health and Safety Code is amended to read:

25356.1.5. (a) Any response action taken or approved pursuant to this chapter shall be based upon, and no less stringent than, all of the following requirements:

(1) The requirements established under federal regulation pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended.

(2) The regulations established pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent that the department or the regional board determines that those regulations, plans, and policies do not require a less stringent level of remediation than the federal regulations specified in paragraph (1) and to the degree that those regulations, plans, and policies do not authorize decisionmaking procedures that may result in less stringent response action requirements than those required by the federal regulations specified in paragraph (1).

(3) Any applicable provisions of this chapter, to the extent those provisions are consistent with the federal regulations specified in paragraph (1) and do not require a less stringent level of remediation than, or decisionmaking procedures that are at variance with, the federal regulations set forth in paragraph (1).

(b) Any health or ecological risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall be based upon Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), the policies, guidelines, and practices of the United States Environmental Protection Agency developed pursuant to the federal act, and the most current sound scientific methods, knowledge, and practices of public health and environmental professionals who are experienced practitioners in the fields of epidemiology, risk assessment, environmental contamination, ecological risk, fate and transport analysis, and toxicology. Risk assessment practices shall include the most current sound scientific methods for data evaluation, exposure assessment, toxicity assessment, and risk characterization, documentation of all assumptions, methods, models, and calculations used in the assessment, and any health risk assessment shall include all of the following:

(1) Evaluation of risks posed by acutely toxic hazardous substances based on levels at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety.

(2) Evaluation of risks posed by carcinogens or other hazardous substances that may cause chronic disease based on a level that does not pose any significant risk to health.

(3) Consideration of possible synergistic effects resulting from exposure to, or interaction with, two or more hazardous substances.

(4) Consideration of the effect of hazardous substances upon subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations, that are identifiable as being at greater risk of adverse health effects due to exposure to hazardous substances than the general population.

(5) Consideration of exposure and body burden level that alter physiological function or structure in a manner that may significantly increase the risk of illness and of exposure to hazardous substances in all media, including, but not limited to, exposures in drinking water, food, ambient and indoor air, and soil.

(c) If currently available scientific data are insufficient to determine the level of a hazardous substance at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety, or the level that poses no significant risk to public health, the risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall be based on the level that is protective of public health, with an adequate margin of safety. This level shall be based exclusively on public health considerations, shall, to the

extent scientific data are available, take into account the factors set forth in paragraphs (1) to (5), inclusive, of subdivision (b), and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, fate and transport analysis, and toxicology.

(d) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall include the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.

(e) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall include the development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and may cause exposure due to accumulation of those volatile organic compounds in the indoor air of those structures.

SEC. 2. Section 13304.2 is added to the Water Code, to read:

13304.2. (a) For purposes of this section, "brownfield site" means a real estate parcel or improvements located on the parcel, or both that parcel and the improvements, that is abandoned, idled, or underused, due to environmental contamination and that is proposed to be redeveloped.

(b) The state board or a regional board may require a person conducting cleanup, abatement, or other remedial action pursuant to Section 13304 for a brownfield site to assess the potential human health or ecological risks caused or created by the discharge, using human health and environmental screening levels or a site-specific assessment of risks.

(c) In conducting a site-specific assessment of human health or ecological risks, the discharger shall address all of the following factors to the extent relevant based on site-specific conditions:

(1) An evaluation of risks posed by acutely toxic hazardous substances.

(2) An evaluation of risks posed by carcinogenic or other hazardous substances that may cause chronic disease.

(3) Consideration of possible synergistic effects resulting from exposure to, or interaction with, two or more hazardous substances.

(4) Consideration of the effect of hazardous substances upon subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, or other subpopulations that are identifiable as being at greater risk than the

general population of adverse health effects due to exposure to hazardous substances.

(5) Consideration of exposure level and body burden level that alter physiological function or structure in a manner that may significantly increase the risk of illness and of exposure to hazardous substances in all media, including, but not limited to, exposures in drinking water, food, ambient and indoor air, or soil.

(6) The development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land uses at the site.

(7) The development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and that may cause exposure due to accumulation of these volatile organic compounds in the indoor air of those structures.

(d) The state board or a regional board may document its decision to require a site-specific assessment of human health or ecological risks in a letter issued to the discharger pursuant to Section 13267, through amendment of the cleanup and abatement order issued pursuant to Section 13304, or through other written means that the board deems appropriate.

(e) (1) Except as provided in paragraph (2), this section applies only to an order issued by the state board or a regional board issued pursuant to Section 13304 on or after January 1, 2008.

(2) The state board or a regional board may require a site-specific assessment of human health or ecological risks at a brownfield site that is subject to an order issued before January 1, 2008, only if the state board or a regional board makes a determination that site-specific circumstances demonstrate the need for that assessment. A site-specific assessment pursuant to this paragraph shall be done in accordance with the authority granted to the state board or a regional board pursuant to this division, as it read on December 31, 2007.

CHAPTER 598

An act to amend Section 14684.1 of the Government Code, relating to state property.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 14684.1 of the Government Code is amended to read:

14684.1. (a) The department, in consultation with the State Energy Resources Conservation and Development Commission, shall ensure that solar energy equipment is installed, no later than January 1, 2009, on all state buildings, state parking facilities, and state-owned swimming pools that are heated with fossil fuels or electricity, where feasible. The department shall establish a schedule designating when solar energy equipment will be installed on each building and facility, with priority given to buildings and facilities where installation is most feasible.

(b) Solar energy equipment shall be installed, where feasible, as part of the construction of all state buildings and state parking facilities for which construction commences on or after January 1, 2008.

(c) For purposes of this section, it is feasible to install solar energy equipment if adequate space on or adjacent to a building is available, if the solar energy equipment is cost-effective, and if funding is available from the state or another source.

(d) Any solar energy equipment installed pursuant to this section shall meet applicable standards and requirements imposed by state and local permitting authorities, including, but not limited to, all of the following:

(1) Certification by the Solar Rating Certification Corporation, which is a nonprofit third party supported by the Department of Energy, or any other nationally recognized certification agency.

(2) 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 the Underwriters Laboratories.

(3) Where applicable, the regulations adopted by the Public Utilities Commission regarding safety and reliability.

(e) This section does not exempt the state from the payment of any applicable fee or requirement imposed by the Public Utilities Commission.

(f) The department may adopt regulations for the purposes of this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1. For purposes of that chapter, including, but not limited to, Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding the 120-day limit specified in subdivision (e) of Section 11346.1, the regulations shall be repealed

180 days after their effective date, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

(g) Any solar energy equipment installed pursuant to this section shall be subject to the provisions of the California Solar Rights Act of 1978 (Chapter 1154 of the Statutes of 1978), as amended.

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

(1) "Cost-effective" means that the present value of the savings generated over the life of the solar energy system, including consideration of the value of the energy produced during peak and off-peak demand periods and the value of a reliable energy supply not subject to price volatility, shall exceed the present value cost of the solar energy equipment by not less than 10 percent. The present value cost of the solar energy equipment does not include the cost of unrelated building components. The department, in making the present value assessment, shall obtain interest rates, discount rates, and consumer price index figures from the Treasurer, and shall take into consideration air emission reduction benefits and the value of stable energy costs.

(2) "Local publicly owned electric utility" means a local publicly owned electric utility as defined in subdivision (d) of Section 9604 of the Public Utilities Code.

(3) "Solar energy equipment" means equipment whose primary purpose is to provide for the collection, conversion, storage, or control of solar energy for the purpose of heat production, electricity production, or simultaneous heat and electricity production.

CHAPTER 599

An act to amend Section 1941.1 of the Civil Code, and to add Section 17958.3 to the Health and Safety Code, relating to locking mail receptacles at residential hotels.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 1941.1 of the Civil Code is amended to read:

1941.1. A dwelling shall be deemed untenantable for purposes of Section 1941 if it substantially lacks any of the following affirmative

standard characteristics or is a residential unit described in Section 17920.3 or 17920.10 of the Health and Safety Code:

(a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.

(b) Plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order.

(c) A water supply approved under applicable law that is under the control of the tenant, capable of producing hot and cold running water, or a system that is under the control of the landlord, that produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.

(d) Heating facilities that conformed with applicable law at the time of installation, maintained in good working order.

(e) Electrical lighting, with wiring and electrical equipment that conformed with applicable law at the time of installation, maintained in good working order.

(f) Building, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.

(g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter and being responsible for the clean condition and good repair of the receptacles under his or her control.

(h) Floors, stairways, and railings maintained in good repair.

(i) A locking mail receptacle for each residential unit in a residential hotel, as required by Section 17958.3 of the Health and Safety Code. This subdivision shall become operative on July 1, 2008.

SEC. 2. Section 17958.3 is added to the Health and Safety Code, to read:

17958.3. (a) All residential hotels, as defined by paragraph (1) of subdivision (b) of Section 50519, shall provide a locking mail receptacle for each residential unit, consistent with the applicable standards for apartment housing mail receptacles in the United States Postal Service Domestic Mail Manual. Installation and maintenance of each mail receptacle shall meet all of the specifications and requirements of the United States Postal Service.

(b) Notwithstanding the date of construction of the residential hotel, each mail receptacle shall comply with the requirements of the Fair Housing Act (42 U.S.C. Sec. 3601).

(c) Notwithstanding Sections 17922, 17958, and 17958.5, a city, county, or city and county may enact and enforce ordinances which provide greater protections, additional standards, and increased remedies with respect to the provision of a locking mail receptacle for each residential unit in a residential hotel.

(d) This section shall become operative on July 1, 2008.

CHAPTER 600

An act to amend Section 15814.12 of the Government Code, relating to state buildings.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 15814.12 of the Government Code is amended to read:

15814.12. (a) Without obtaining the authorization required by Section 15808, the board may acquire, and engage in the construction of, cogeneration equipment, alternative energy equipment, or conservation measures, and any combination thereof, and enter into energy service contracts, at any structure, building, facility, site, or work used, owned or hereafter acquired by the state agency, including, but not limited to, the facilities of the California State University and Colleges, the Department of General Services, state prisons, hospitals, and other agencies and the community colleges, but only with the consent of the state agency.

(b) No cogeneration equipment or alternative energy equipment or water conservation equipment shall be acquired or constructed, and no energy service contract shall be entered into, by the board unless it determines that the anticipated cost to the state agency purchasing thermal or electrical energy or water provided by the equipment or under an energy service contract has been found through life-cycle cost analysis to be cost effective over the life of the equipment installed or over the term of the energy service contract. Equipment, conservation measures, or energy service contracts shall be anticipated to provide cost savings to the state during the useful life of the equipment or conservation measures under Section 14684, Sections 14710 to 14713, inclusive, or Section 15814.30 of this code, under Section 25008 of the Public Resources Code, or under Section 388 of the Public Utilities Code.

(c) Alternatively, the board may execute agreements to finance the construction of cogeneration equipment, alternative energy equipment, water conservation equipment, or conservation measures, and any combination thereof, by the state agency, including the University of California, to be owned by the state agency, in exchange for repayment of the financing and all costs and expenses related thereto from revenues resulting from sales of electricity or thermal energy or water from the facilities and measures or from funding which otherwise would have been used for purchase of electricity, water, and thermal energy required by the state agency but which is derived from the facilities and measures.

(d) This section shall not prohibit, limit, or supersede more stringent green building requirements for any structure, building, facility, site, or work.

CHAPTER 601

An act to amend, repeal, and add Sections 14030, 14037, 14070, and 14076 of the Corporations Code, relating to small businesses.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 14030 of the Corporations Code is amended to read:

14030. (a) There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed five times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2. Section 14030 is added to the Corporations Code, to read:

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

(b) This section shall become operative on January 1, 2013.

SEC. 3. Section 14037 of the Corporations Code is amended to read:

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

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

(c) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 4. Section 14037 is added to the Corporations Code, to read:

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

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

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

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

(c) This section shall become operative on January 1, 2013.

SEC. 5. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's trust fund account, or by receivables due from funds loaned from the corporation's trust fund account to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature.

(b) Loan guarantees shall be secured by a reserve of at least 20 percent to be determined by the director.

(c) The expansion fund and trust fund accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Department of Agriculture. The amount of funds available for direct farm lending shall be determined by the director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the trust funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the director may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan authorized by the director to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the agency loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the agency and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the agency. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the agency is limited to the repayment received by the corporation from the borrower except in a case where the United States Department of Agriculture requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the agency if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the agency from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the agency for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund account shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the agency that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount

determined by the director pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

(g) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 6. Section 14070 is added to the Corporations Code, to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's trust fund account, or by receivables due from funds loaned from the corporation's trust fund account to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director, unless the director authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037.

(c) The expansion fund and trust fund accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Department of Agriculture. The amount of funds available for direct farm lending shall be determined by the director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the trust funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the director may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan authorized by the director to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the agency loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the agency and the corporation shall be evidenced by a credit agreement. In the event that any loan

between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the agency. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the agency is limited to the repayment received by the corporation from the borrower except in a case where the United States Department of Agriculture requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the agency if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the agency from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the agency for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund account shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the agency that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the director pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

(g) This section shall become operative on January 1, 2013.

SEC. 7. Section 14076 of the Corporations Code is amended to read:

14076. (a) It is the intent of the Legislature that the corporations make maximal use of their statutory authority to guarantee loans and surety bonds, including the authority to secure loans with a minimum loan loss reserve of only 20 percent, so that the financing needs of small business may be met as fully as possible within the limits of corporations' loan loss reserves. The agency shall report annually to the Legislature

on the financial status of the corporations and their portfolio of loans and surety bonds guaranteed.

(b) Any corporation that serves an area declared to be in a state of emergency by the Governor or a disaster area by the President of the United States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture shall increase the portfolio of loan guarantees where the dollar amount of the loan is less than one hundred thousand dollars ($100,000), so that at least 15 percent of the dollar value of loans guaranteed by the corporation is for those loans. The corporation shall comply with this requirement within one year of the date the emergency or disaster is declared. Upon application of a corporation, the director may waive or modify the rule for the corporation if the corporation demonstrates that it made a good faith effort to comply and failed to locate lending institutions in the region that the corporation serves that are willing to make guaranteed loans in that amount.

(c) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 8. Section 14076 is added to the Corporations Code, to read:

14076. (a) It is the intent of the Legislature that the corporations make maximal use of their statutory authority to guarantee loans and surety bonds, including the authority to secure loans with a minimum loan loss reserve of only 25 percent, unless the agency authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037, so that the financing needs of small business may be met as fully as possible within the limits of corporations' loan loss reserves. The agency shall report annually to the Legislature on the financial status of the corporations and their portfolio of loans and surety bonds guaranteed.

(b) Any corporation that serves an area declared to be in a state of emergency by the Governor or a disaster area by the President of the United States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture shall increase the portfolio of loan guarantees where the dollar amount of the loan is less than one hundred thousand dollars ($100,000), so that at least 15 percent of the dollar value of loans guaranteed by the corporation is for those loans. The corporation shall comply with this requirement within one year of the date the emergency or disaster is declared. Upon application of a corporation, the director may waive or modify the rule for the corporation if the corporation demonstrates that it made a good faith effort to comply and failed to locate lending institutions in the

region that the corporation serves that are willing to make guaranteed loans in that amount.

(c) This section shall become operative on January 1, 2013.

CHAPTER 602

An act to add Division 120 (commencing with Section 151000) to the Health and Safety Code, relating to sex education funding.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Division 120 (commencing with Section 151000) is added to the Health and Safety Code, to read:

DIVISION 120. SEXUAL HEALTH EDUCATION ACCOUNTABILITY ACT

151000. This division shall be known, and may be cited, as the Sexual Health Education Accountability Act.

151001. For purposes of this division, the following definitions shall apply:

(a) "Age appropriate" means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

(b) A "sexual health education program" means a program that provides instruction or information to prevent adolescent pregnancy, unintended pregnancy, or sexually transmitted diseases, including HIV, that is conducted, operated, or administered by any state agency, is funded directly or indirectly by the state, or receives any financial assistance from state funds or funds administered by a state agency, but does not include any program offered by a school district, a county superintendent of schools, or a community college district.

(c) "Medically accurate" means verified or supported by research conducted in compliance with scientific methods and published in peer review journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, including, but not limited to, the federal Centers for Disease Control and Prevention, the American Public Health Association,

the Society for Adolescent Medicine, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

151002. (a) Every sexual health education program shall satisfy all of the following requirements:

(1) All information shall be medically accurate, current, and objective.

(2) Individuals providing instruction or information shall know and use the most current scientific data on human sexuality, human development, pregnancy, and sexually transmitted diseases.

(3) The program content shall be age appropriate for its targeted population.

(4) The program shall be culturally and linguistically appropriate for its targeted populations.

(5) The program shall not teach or promote religious doctrine.

(6) The program shall not reflect or promote bias against any person on the basis of disability, gender, nationality, race or ethnicity, religion, or sexual orientation, as defined in Section 422.56 of the Penal Code.

(7) The program shall provide information about the effectiveness and safety of at least one or more drug or device approved by the federal Food and Drug Administration for preventing pregnancy and for reducing the risk of contracting sexually transmitted diseases.

(b) A sexual health education program that is directed at minors shall comply with all of the criteria in subdivision (a) and shall also comply with both the following requirements:

(1) It shall include information that the only certain way to prevent pregnancy is to abstain from sexual intercourse, and that the only certain way to prevent sexually transmitted diseases is to abstain from activities that have been proven to transmit sexually transmitted diseases.

(2) If the program is directed toward minors under the age of 12 years, it may, but is not required to, include information otherwise required pursuant to paragraph (7) of subdivision (a).

(c) A sexual health education program conducted by an outside agency at a publicly funded school shall comply with the requirements of Section 51934 of the Education Code if the program addresses HIV/AIDS and shall comply with Section 51933 of the Education Code if the program addresses pregnancy prevention and sexually transmitted diseases other than HIV/AIDS.

(d) An applicant for funds to administer a sexual health education program shall attest in writing that its program complies with all conditions of funding, including those enumerated in this section. A publicly funded school receiving only general funds to provide comprehensive sexual health instruction or HIV/AIDS prevention instruction shall not be deemed an applicant for the purposes of this subdivision.

(e) If the program is conducted by an outside agency at a publicly funded school, the applicant shall indicate in writing how the program fits in with the school's plan to comply fully with the requirements of the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act, Chapter 5.6 (commencing with Section 51930) of the Education Code. Notwithstanding Section 47610 of the Education Code, "publicly funded school" includes a charter school for the purposes of this subdivision.

(f) Monitoring of compliance with this division shall be integrated into the grant monitoring and compliance procedures. If the agency knows that a grantee is not in compliance with this section, the agency shall terminate the contract or take other appropriate action.

(g) This section shall not be construed to limit the requirements of the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act (Chapter 5.6 (commencing with Section 51930) of Part 28 of the Education Code).

(h) This section shall not apply to one-on-one interactions between a health practitioner and his or her patient in a clinical setting.

151003. This division shall apply only to grants that are funded pursuant to contracts entered into or amended on or after January 1, 2008.

CHAPTER 603

An act to amend Section 66007 of the Government Code, relating to land use.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling,

the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) (1) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (A) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (B) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(2) (A) Paragraph (1) does not apply to units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least 49 percent of the total units are reserved for occupancy by lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable rent, as defined in Section 50053 of the Health and Safety Code. In addition to the contract that may be required under subdivision (c), a city, county, or city and county may require the posting of a performance bond or a letter of credit from a federally insured, recognized depository institution to guarantee payment of any fees or charges that are subject to this paragraph. Fees and charges exempted from paragraph (1) under this paragraph shall become immediately due and payable when the residential development no longer meets the requirements of this paragraph.

(B) The exception provided in subparagraph (A) does not apply to fees and charges levied pursuant to Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a).

If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

CHAPTER 604

An act to amend Section 2715.5 of the Public Resources Code, relating to public resources.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

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

SECTION 1. Section 2715.5 of the Public Resources Code is amended to read:

2715.5. (a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, until December 31, 2012, shall be considered to be a functional equivalent of a reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan, and the standards specified in that plan governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.

(b) For purposes of this section, the board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall prepare and file the annual report required to be prepared pursuant to Section 2207.

(c) Nothing in this section precludes an enforcement action by the board or the department brought pursuant to this chapter or Section 2207 if the lead agency or the director determines that a surface mining operator, acting under the authority of the Cache Creek Resource Management Plan, is not in compliance with the requirements of this chapter or Section 2207.

(d) "Site specific plan," for the purposes of this section, means an individual project plan approved by the lead agency that is consistent with the Cache Creek Resource Management Plan. Site specific plans prepared in conformance with the Cache Creek Resource Management Plan shall, at a minimum, include the information required pursuant to subdivision (c) of Section 2772, shall comply with the requirements of Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and shall be provided along with a financial assurance estimate to the department for review and comment pursuant to Section 2774. Notwithstanding the number of days authorized by paragraph (1) of subdivision (d) of Section 2774, the department shall review the site specific plan and the financial assurance estimate and prepare any written

comments within 15 days from the date of receipt of the plan and the estimate.

(e) Prior to engaging in an excavation activity in conformance with the Cache Creek Resource Management Plan, a surface mining operation shall be required to obtain financial assurances that meet the requirements of Section 2773.1.

(f) This section shall not become operative until the date the State Mining and Geology Board notifies the Secretary of State in writing that the board has approved an ordinance adopted by the Board of Supervisors for the County of Yolo that governs in-channel noncommercial extraction activities carried out pursuant to the Cache Creek Resources Management Plan.

(g) This section shall remain in effect only until December 31, 2012, and as of that date is repealed, unless a later enacted statute that is enacted before December 31, 2012, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 605

An act to add Sections 19501 and 19619.7 to the Business and Professions Code, relating to horse racing.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 19501 is added to the Business and Professions Code, to read:

19501. (a) The Legislature finds and declares the following:

(1) Professional jockeys are vital to the horse racing industry and the work they perform is very dangerous.

(2) The minimum wage that jockeys receive in a horse race is established by the California Horse Racing Board as a minimum jockey riding fee. Jockeys may earn additional compensation if the horse they are racing is a winning mount, a second place mount, or a third place mount.

(3) The minimum jockey riding fee has not kept up with inflation or the cost of living. Since 1970, the state minimum wage has increased at more than twice the rate that the average jockey riding fee increased over the same period.

(4) The riding fee should be increased at least as much on a percentage basis as the state minimum wage, so that the average full-time jockey can earn an income sufficient to provide for the basic necessities of life.

(b) (1) Effective January 1, 2008, the scale of minimum jockey riding fees for losing mounts established by the board shall be increased by ten dollars ($10) per mount from the rate in effect on December 31, 2007, except that this increase shall not be applicable to the two highest fees on the scale. Effective January 1, 2010, the scale of minimum jockey riding fees for losing mounts established by the board shall be increased by ten dollars ($10) per mount from the rate in effect on December 31, 2009. Effective January 1, 2012, the scale of minimum jockey riding fees for losing mounts established by the board shall be increased by ten dollars ($10) per mount from the rate in effect on December 31, 2011, except the three lowest fees on the scale shall be increased by five dollars ($5) per mount. Thereafter the scale of minimum jockey riding fees for losing mounts shall be increased whenever the state minimum wage is increased by the percentage of that increase.

(2) Effective January 1, 2008, the minimum amount awarded to the jockey who finishes second or third in a race shall be increased by ten dollars ($10) per race over the amount required to be paid on December 31, 2007. Effective January 1, 2010, the minimum amount awarded to the jockey who finishes second or third in a race shall be increased by ten dollars ($10) over the amount required to be paid on December 31, 2009. Effective January 1, 2012, the minimum amount awarded to the jockey who finishes second or third in a race shall be increased by five dollars ($5) over the amount required to be paid on December 31, 2011. This subdivision shall apply to races in which the purse is nine thousand nine hundred ninety-nine dollars ($9,999) or less.

(c) No jockey shall be paid less than the minimum jockey riding fees established pursuant to this section.

(d) Nothing in this section prohibits the board from increasing the minimum jockey riding fee above the minimum level required by this section.

SEC. 2. Section 19619.7 is added to the Business and Professions Code, to read:

19619.7. Notwithstanding any other provision of this chapter, no later than July 1, 2008, the board shall provide that the jockey who rides the horse that finishes in fourth place in a thoroughbred horse race shall be entitled to a reasonable riding fee, not to exceed 2 percent of the

owner's share of the purse, provided that the riding fee is no greater than that earned by the jockeys whose horses finish second and third in the same race.

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 606

An act to add Part 10.3 (commencing with Section 19850) to Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Part 10.3 (commencing with Section 19850) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 10.3. EARNED INCOME TAX CREDIT INFORMATION ACT

19850. This act shall be known and may be cited as the Earned Income Tax Credit Information Act.

19851. The Legislature finds and declares as follows:

(a) Congress created the federal earned income tax credit (EITC) in 1975 to offset the adverse effects of the Medicare and social security payroll taxes on working poor families and to encourage low-income workers to seek employment rather than welfare.

(b) Due to a relatively low percentage of federal earned income tax credit eligible persons that participate in the federal Earned Income Tax Credit program, hundreds of millions of federal dollars go unclaimed by the working poor in California.

(c) In order to alleviate the tax burden on working poor persons and families, to enhance the wages and income of working poor persons and families, to ensure that California receives its share of the federal money available in the federal Earned Income Tax Credit program, and to inject

additional federal money into the California economy, the state shall facilitate the furnishing of information to working poor persons and families regarding the availability of the federal earned income tax credit so that they may claim that credit on their federal income tax returns.

(d) It is the intent of this act to offer the most cost-effective assistance to eligible taxpayers through notices provided by their employers.

19852. For purposes of this part, the following terms have the following meanings:

(a) "Employer" means any California employer who is subject to, and is required to provide, unemployment insurance to his or her employees, under the Unemployment Insurance Code.

(b) "Employee" means any person who is covered by unemployment insurance by his or her employer, pursuant to the Unemployment Insurance Code.

(c) "EITC" means the federal earned income tax credit, as defined in Section 32 of the Internal Revenue Code.

19853. (a) An employer shall notify all employees that they may be eligible for the EITC within one week before or after, or at the same time, that the employer provides an annual wage summary, including, but not limited to, a Form W-2 or a Form 1099, to any employee.

(b) The employer shall provide the notification required by subdivision (a) by handing directly to the employee or mailing to the employee's last known address either of the following:

(1) Instructions on how to obtain any notices available from the Internal Revenue Service for this purpose, including, but not limited to, the IRS Notice 797 and Form W-5, or any successor notice or form.

(2) Any notice created by the employer, as long as it contains substantially the same language as the notice described in paragraph (1) or in subdivision (a) of Section 19854.

(c) The employer shall not satisfy the notification required by subdivision (a) by posting a notice on an employee bulletin board or sending it through office mail. However, these methods of notification are encouraged to help inform all employees of the EITC.

(d) Every employer shall process, in accordance with federal law, Form W-5 for advance payments of the EITC, upon the request of the employee.

19854. The notice furnished to employees regarding the availability of the EITC shall state as follows:

BASED ON YOUR ANNUAL EARNINGS, YOU MAY BE ELIGIBLE TO RECEIVE THE EARNED INCOME TAX CREDIT FROM THE FEDERAL GOVERNMENT. THE EARNED INCOME TAX CREDIT IS A REFUNDABLE FEDERAL

INCOME TAX CREDIT FOR LOW-INCOME WORKING INDIVIDUALS AND FAMILIES. THE EARNED INCOME TAX CREDIT HAS NO EFFECT ON CERTAIN WELFARE BENEFITS. IN MOST CASES, EARNED INCOME TAX CREDIT PAYMENTS WILL NOT BE USED TO DETERMINE ELIGIBILITY FOR MEDICAID, SUPPLEMENTAL SECURITY INCOME, FOOD STAMPS, LOW-INCOME HOUSING OR MOST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PAYMENTS. EVEN IF YOU DO NOT OWE FEDERAL TAXES, YOU MUST FILE A TAX RETURN TO RECEIVE THE EARNED INCOME TAX CREDIT. BE SURE TO FILL OUT THE EARNED INCOME TAX CREDIT FORM IN THE FEDERAL INCOME TAX RETURN BOOKLET. FOR INFORMATION REGARDING YOUR ELIGIBILITY TO RECEIVE THE EARNED INCOME TAX CREDIT, INCLUDING INFORMATION ON HOW TO OBTAIN THE IRS NOTICE 797 OR FORM W-5, OR ANY OTHER NECESSARY FORMS AND INSTRUCTIONS, CONTACT THE INTERNAL REVENUE SERVICE BY CALLING 1-800-829-3676 OR THROUGH ITS WEB SITE AT WWW.IRS.GOV.

CHAPTER 607

An act to add Article 4.5 (commencing with Section 76070) to Chapter 1 of Part 47 of Division 7 of Title 3 of the Education Code, relating to student financial aid.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Article 4.5 (commencing with Section 76070) is added to Chapter 1 of Part 47 of Division 7 of Title 3 of the Education Code, to read:

Article 4.5. California Community College Student Federal and State Financial Aid Opportunity Act

76070. (a) The Legislature finds and declares all of the following:

(1) Students of the California Community Colleges (CCC) receive federal Pell Grants at a rate significantly below the national community college average, and yet there is no indication that CCC students are less needy.

(2) California taxpayers pay into the federal Pell Grant program through federal taxes, but California students do not receive the benefits of the federal Pell Grant program at equal levels.

(3) California Community Colleges students receive federal Pell Grant funds at a rate significantly below undergraduate students at the University of California and the California State University, and again, there is no indication that CCC students are less needy.

(4) California maintains a low fee for CCC students, significantly lower than for University of California and California State University students and lower than the fee for other community college students in the nation, but this does not mean these students need fewer funds from the federal Pell Grant program. Federal Pell Grant funds do not pay community college fees; instead, federal Pell Grant funds are directed toward the remaining costs of attendance, called "indirect expenses" such as books, supplies, and room and board, which are just as high, and sometimes higher, for CCC students as for those other students in the nation and in other California colleges.

(5) Textbook prices are soaring, many CCC students live in high-cost urban areas, many CCC students support children, and financially needy CCC students struggle to make ends meet. A low participation rate in the largest federal grant program in California's largest system of postsecondary education is unacceptable.

(6) The University of California (UC) and the California State University (CSU) conduct annual one-day conferences to educate California high school counselors about the policies, procedures, and services available in their respective systems. The California Community Colleges have not been funded to conduct similar statewide conferences, and must rely on local relationships that do not give all high schools access to consistent information. It is critical for student success in the community colleges that high school counselors are full partners in outreach and preparation, particularly as California is poised to hire and train many new counselors. This training will help counselors understand that all students need encouragement, information, and support services to pursue postsecondary education, not just those who are the most successful and traditionally viewed as headed to four-year colleges and universities.

(7) California Community Colleges financial aid programs received a major infusion of administrative allowances in the Budget Act of 2003 (Chapter 157 of the Statutes of 2003), which has resulted in substantial

progress in assisting more students to receive federal Pell Grants; however, the average financial aid administrative support per student in the CCC segment, as compared to support for undergraduates in the UC and CSU systems is still significantly lower, while the administrative function is no less demanding, and in some aspects, more demanding, than the challenges faced by financial aid administrators in the UC and CSU systems.

(8) Some CCC students fail to receive federal Pell Grants because they do not enroll directly from high school or drop out after beginning attendance, or take very few units and work to support themselves and often to help their families. The income from these jobs, which cannot be sustained if a student desires to be a full-time student, causes students to become ineligible for federal Pell Grants. The colleges have the discretion, under federal law, to work with individuals to document the changes in their circumstances and justify eligibility, but to do so is labor-intensive and, thus, not a service that can be widely provided.

(9) Some CCC students are not able to secure financial information from their parents, or are reluctant to approach parents who live in poverty, and give up when they discover the financial aid application process involves their parents. The counseling and assistance necessary to make these highly needy students eligible is also labor-intensive and is, thus, difficult to provide without sufficient professional staff.

(10) Some students fail to qualify for federal Pell Grants because they have not yet declared an "eligible program" as their objective, and scarce counseling resources in the community colleges exacerbate this problem.

(11) Efforts to improve participation in federal student aid will also have a beneficial effect on participation in the Cal Grant Program, which currently provides only 10 percent of the financial aid funding in the community colleges. While there are participation barriers in the Cal Grant Program, such as early deadlines and limited funds for older students, that cannot be addressed by increased support services, some students will be reached who might not otherwise qualify for the Cal Grant Program.

(12) Efforts to improve participation in federal student aid will additionally have a beneficial effect on participation in the Board of Governors Enrollment Fee Waiver Program, which is critical to community college access.

(13) The CCC Chancellor's Office maintains a financial aid unit, but it does not have the staffing capacity to undertake a wide range of systemwide initiatives and support. These initiatives could leverage millions of dollars in federal student assistance.

(b) It is the intent of the Legislature to support an array of initiatives to increase the number of CCC students receiving awards from the federal

Pell Grant program, thereby helping to improve access to college for low-income students, helping improve their chances of success by having improved financial means to pay for escalating college costs, and the ability to devote more time to their education, improving the participation rate in other federal and state student aid programs, and helping Californians receive their fair share of the federal taxes paid to support federal financial aid programs.

76071. (a) The CCC Chancellor's Office shall develop a statement that individual students will be asked to sign, which acknowledges that federal and state funds are available to assist with the costs of college and that information regarding these programs, and assistance in applying for those funds can be obtained at the financial aid office. The chancellor shall request the colleges to require students to sign this acknowledgment in the application for enrollment at all campuses of the California Community Colleges in the next regular local cycle in which those forms are printed and the next regular cycle in which electronic applications are updated.

(b) The CCC Chancellor's Office shall develop a statement to individual students receiving the Board of Governors Enrollment Fee Waiver, who did not apply for federal student aid, informing them about the benefits of the federal programs, the application process, and the availability of assistance to apply. The chancellor shall request colleges to provide this statement to all students who meet this description.

CHAPTER 608

An act to add Section 14670.11 to the Government Code, relating to state property.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 14670.11 is added to the Government Code, to read:

14670.11. Notwithstanding Section 14670, the Director of General Services, with the concurrence of the Department of Forestry and Fire Protection, may lease to the County of Shasta for a period not to exceed 20 years, approximately 29 acres of real property with improvements thereon, located in the Whiskeytown National Recreation Area,

approximately 25 miles west of the City of Redding, in the County of Shasta, known as the Crystal Creek Regional Boys' Camp.

(b) The lease shall be entered into for the purposes of operating a regional rehabilitative juveniles camp, upon the terms and conditions deemed by the director to be in the best interest of the state.

(c) The director may negotiate the provision of maintenance or other services as compensation for the lease of the property, but shall negotiate a lease condition that precludes unilateral termination of the lease by the state prior to the county fully recovering its investment in the property.

SEC. 2. The Legislature finds and declares that the lease of state property authorized by Section 1 of this act does not constitute a lease or other disposition of surplus state property within the meaning of subdivision (g) of Section 11011 of the Government Code.

CHAPTER 609

An act to add Sections 9852.9, 9853.7, and 9853.8 to the Vehicle Code, relating to vessels.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 9852.9 is added to the Vehicle Code, to read:

9852.9. (a) On and after July 1, 2008, the form for an initial application for a number prepared by the department pursuant to Section 9853 shall include both of the following:

(1) Checkoff boxes or line alternatives for the retail seller of an undocumented vessel to certify that a sterndrive or inboard vessel that contains a spark-ignition marine engine below 373 kW (500 hp) rated power output that was manufactured on or after January 1, 2008, and a sterndrive or inboard vessel that contains a spark-ignition marine engine with any rated power output that was manufactured on or after January 1, 2009, has a permanently affixed label indicating that the engine meets or exceeds the 2008 California emissions standards required by Section 2442 of Title 13 of the California Code of Regulations.

(2) A line requiring that an initial application for a vessel described in paragraph (1) be accompanied by the hang tag required by Section 2443.3 of Title 13 of the California Code of Regulations for the engine described in paragraph (1).

(b) As used in this section, "spark-ignition marine engine" has the same meaning as that term is defined in Section 9853.7.

SEC. 2. Section 9853.7 is added to the Vehicle Code, to read:

9853.7. (a) (1) When the retail seller of an undocumented sterndrive or inboard vessel, that contains a spark-ignition marine engine below 373 kW (500 hp) rated power output that was manufactured on or after January 1, 2008, or contains a spark-ignition marine engine with any rated power output that was manufactured on or after January 1, 2009, files for the purchaser of the vessel the initial application for a number for the vessel, the retail seller shall do both of the following:

(A) Certify on that application, by marking in indelible ink the affirmative checkoff boxes or line alternatives described in subdivision (a) of Section 9852.9, that the spark-ignition marine engine has a permanently affixed label indicating that the engine meets or exceeds the 2008 California emissions standards required by Section 2442 of Title 13 of the California Code of Regulations. The retail seller shall make that certification only after examining the permanently affixed label for the engine and only if the label indicates compliance with Section 2442 of Title 13 of the California Code of Regulations.

(B) Submit with the application, the hang tag required by Section 2443.3 of Title 13 of the California Code of Regulations for the engine, after including on the reserved white space of the hang tag, the engine family name, from the permanently affixed engine label, and the serial number of the engine.

(2) If the retail seller does not file for the purchaser of a vessel described in paragraph (1) the initial application for a number for the vessel, the applicant, upon filing an initial application for a number, shall submit the hang tag required by Section 2443.3 of Title 13 of the California Code of Regulations for the engine. The hang tag shall contain the engine family name, from the permanently affixed engine label, and the serial number of the engine, as inserted by the retail seller of the vessel.

(b) Subdivision (a) does not apply to a vessel originally purchased in another state by a resident of that state who subsequently establishes residence in this state and who provides satisfactory evidence to the department, or the department's agent authorized pursuant to Section 9858, of the previous residence.

(c) The department, and the department's agent authorized pursuant to Section 9858, shall not number a vessel subject to subdivision (a), unless the retail seller certifies on the initial application for a number filed for the purchaser of the vessel that the spark-ignition marine engine has the label described in paragraph (1) of subdivision (a) permanently

affixed to the engine, or the applicant submits an application that is accompanied by the hang tag required by subdivision (a).

(d) For the purposes of this section, "spark-ignition marine engine" has the same meaning as that term is defined in paragraph (48) of subdivision (a) of Section 2441 of Title 13 of the California Code of Regulations.

SEC. 3. Section 9853.8 is added to the Vehicle Code, to read:

9853.8. (a) This section applies only to a sterndrive or inboard vessel that contains a spark-ignition marine engine below 373 kW (500 hp) rated power output that was manufactured on or after January 1, 2008, or contains a spark-ignition marine engine with any rated power output that was manufactured on or after January 1, 2009.

(b) It is an infraction, punishable by a fine of two hundred fifty dollars ($250), for a person to operate an undocumented vessel, requiring numbering by the state, that is not currently numbered by the state, and that does not comply with the emissions standards required by Section 2442 of Title 13 of the California Code of Regulations.

(c) As used in this section, "spark-ignition marine engine" has the same meaning as that term is defined in Section 9853.7.

SEC. 4. This act shall become operative on July 1, 2008.

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 610

An act to amend Section 11352 of the Government Code, to add Sections 5096.827.2, 5096.827.3, 75050.2, and 75050.4 to the Public Resources Code, and to add Sections 13383.7 and 13383.8 to the Water Code, relating to water.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) The federal Clean Water Act requires the regulation of stormwater discharges under the national pollutant discharge elimination system (NPDES) permit program. The State Water Resources Control Board and the California regional water quality control boards have been designated by the United States Environmental Protection Agency to implement the NPDES stormwater program.

(b) Polluted runoff, including stormwater discharges, is generated by runoff from land and impervious areas such as paved streets, parking lots, and building rooftops during both dry and wet months. Stormwater discharges often contain pollutants in quantities that could adversely affect water quality. Stormwater discharges can also accelerate stream erosion, causing increased sedimentation downstream, loss of flood conveyance capacity, and increased flood damage risk.

(c) The State Water Resources Control Board and the California regional water quality control boards, in their 2001 strategic plan, indicate that polluted runoff is the leading cause of water quality problems in the state. The United States Environmental Protection Agency considers urban stormwater pollution a serious source of pollution in the waters of the United States.

(d) The State Water Resources Control Board's Resolution No. 2000-0006, dated January 2005, which adopted sustainability as a core value for all activities and programs, supports sustainable practices related to water quality and water supply, including, but not limited to, low-impact development that seeks to maintain predevelopment runoff rates and volumes. Low-impact development includes specific techniques such as reducing the amount of impermeable surfaces and increasing infiltration.

(e) The State Water Resources Control Board and the Department of Water Resources should coordinate applicable financial assistance programs to maximize public benefits and leverage local and federal funding.

(f) The State Water Resources Control Board should provide state oversight regarding the NPDES stormwater program, including guidance, priorities, policy direction, technical assistance, and evaluation of program effectiveness.

SEC. 1.5. Section 11352 of the Government Code is amended to read:

11352. The following actions are not subject to this chapter:

(a) The issuance, denial, or waiver of any water quality certification as authorized under Section 13160 of the Water Code.

(b) The issuance, denial, or revocation of waste discharge requirements and permits pursuant to Sections 13263 and 13377 of the Water Code and waivers issued pursuant to Section 13269 of the Water Code.

(c) The development, issuance, and use of the guidance document pursuant to Section 13383.7 of the Water Code.

SEC. 2. Section 5096.827.2 is added to the Public Resources Code, to read:

5096.827.2. (a) The department shall develop project selection and evaluation guidelines to implement Section 5096.827. The State Water Resources Control Board shall advise the department on the water quality portions of the guidelines, relying as appropriate on the stormwater guidelines developed by the State Water Resources Control Board pursuant to Section 75050.2.

(b) The guidelines shall include a provision that gives preference to a project that reduces flood damages for which one or both of the following applies:

(1) The project is not receiving state funding for flood control or flood prevention projects pursuant to Section 5096.824 or Section 75034.

(2) The project provides multiple benefits, including, but not limited to, water quality improvements, ecosystem benefits, reduction of instream erosion and sedimentation, and groundwater recharge.

SEC. 3. Section 5096.827.3 is added to the Public Resources Code, to read:

5096.827.3. Consistent with the requirements of Sections 5096.827 and 5096.827.2, the design and construction of projects for combined municipal sewer and stormwater systems are eligible for financing under Section 5096.827.

SEC. 4. Section 75050.2 is added to the Public Resources Code, to read:

75050.2. (a) The state board shall develop project selection and evaluation guidelines for the allocation of funds made available pursuant to subdivision (m) of Section 75050. Upon appropriation, the funds shall be available for matching grants to local public agencies, not to exceed five million dollars ($5,000,000) per project, for projects to achieve any of the following purposes in accordance with the requirements of that subdivision:

(1) Complying with total maximum daily load requirements established pursuant to Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313(d)) and this division where pollutant loads have been allocated to stormwater, including, but not limited to, metals, pathogens, and trash pollutants.

(2) Assistance in implementing low-impact development and other onsite and regional practices, on public and private lands, that seek to maintain predevelopment hydrology for existing and new development and redevelopment projects. Projects funded pursuant to this paragraph

shall be designed to infiltrate, filter, store, evaporate, or retain runoff in close proximity to the source of water.

(3) Implementing treatment and source control practices to meet design and performance standard requirements for new development.

(4) Treating and recycling stormwater discharge.

(5) Implementing improvements to combined municipal sewer and stormwater systems.

(6) Implementing best management practices, and other measures, required by municipal stormwater permits issued by a California regional water quality control board or the state board.

(7) Assessing project effectiveness, including, but not limited to, monitoring receiving water quality, determining pollutant load reductions, and assessing improvements in stormwater discharge water quality.

(b) (1) For the purpose of implementing subdivision (a), the state board shall give preference to a project that does one or more of the following:

(A) Supports sustained, long-term water quality improvements.

(B) Is coordinated or consistent with any applicable integrated regional water management plan.

(2) The allocation of funds pursuant to this section shall be consistent with water quality control plans and Section 75072.

(c) The state board shall require grant recipients for projects described in subdivision (a) to assess and report on project effectiveness, which may include monitoring receiving water quality, determining pollutant load reductions, and assessing improvements in stormwater discharge water quality resulting from project implementation.

SEC. 5. Section 75050.4 is added to the Public Resources Code, to read:

75050.4. The state board and the department shall consult with each other, as necessary, with regard to the development of project selection and evaluation guidelines for the following financial assistance programs that are directed, in whole or in part, for municipal stormwater management, to avoid duplication and maximize water quality benefits:

(a) Section 5096.827.

(b) Subdivision (a) of Section 75026.

(c) Subdivision (m) of Section 75050.

(d) Subdivision (a) of Section 75060.

SEC. 6. Section 13383.7 is added to the Water Code, to read:

13383.7. (a) No later than July 1, 2009, and after holding public workshops and soliciting public comments, the state board shall develop a comprehensive guidance document for evaluating and measuring the effectiveness of municipal stormwater management programs undertaken,

and permits issued, in accordance with Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)) and this division.

(b) For the purpose of implementing subdivision (a), the state board shall promote the use of quantifiable measures for evaluating the effectiveness of municipal stormwater management programs and provide for the evaluation of, at a minimum, all of the following:

(1) Compliance with stormwater permitting requirements, including all of the following:

(A) Inspection programs.

(B) Construction controls.

(C) Elimination of unlawful discharges.

(D) Public education programs.

(E) New development and redevelopment requirements.

(2) Reduction of pollutant loads from pollution sources.

(3) Reduction of pollutants or stream erosion due to stormwater discharge.

(4) Improvements in the quality of receiving water in accordance with water quality standards.

(c) The state board and the regional boards shall refer to the guidance document developed pursuant to subdivision (a) when establishing requirements in municipal stormwater programs and permits.

SEC. 7. Section 13383.8 is added to the Water Code, to read:

13383.8. (a) The state board shall appoint a stormwater management task force comprised of public agencies, representatives of the regulated community, and nonprofit organizations with expertise in water quality and stormwater management. The task force shall provide advice to the state board on its stormwater management program that may include, but is not limited to, program priorities, funding criteria, project selection, and interagency coordination of state programs that address stormwater management.

(b) The state board shall submit a report, including, but not limited to, stormwater and other polluted runoff control information, to the Ocean Protection Council no later than January 1, 2009, on the way in which the state board is implementing the priority goals and objectives of the council's strategic plan.

CHAPTER 611

An act to add Section 14838.1 to the Government Code, relating to state contracts.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

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

SECTION 1. Section 14838.1 is added to the Government Code, to read:

14838.1. (a) In order to encourage the participation of small businesses in the construction, alteration, demolition, repair, or improvement, of the state's infrastructure, as provided in the infrastructure-related bond acts of 2006, each state agency awarding contracts financed with the proceeds of these bonds shall do all of the following:

(1) Establish a 25 percent small business participation goal in all contracts it financed with the proceeds of the infrastructure-related bond acts of 2006.

(2) Advertise all upcoming opportunities to bid on contracts for projects funded by the infrastructure-related bond acts of 2006, described in subdivision (c), in the California State Contracts Register and include in the advertisement an Internet link to information for prospective bidders, including, but not limited to, general bidding procedures and how to properly prepare a bid for those contracts.

(3) Provide information to California small businesses regarding training and technical assistance that is available to assist these small businesses in understanding and bidding on contracts for projects funded by the infrastructure-related bond acts of 2006, described in subdivision (c).

(b) For purposes of this section, "small business" has the same meaning as set forth in subdivision (d) in Section 14837.

(c) For purposes of this section, all of the following measures are deemed to be the infrastructure-related bond acts of 2006:

(1) The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of the Government Code).

(2) The Housing and Emergency Shelter Trust Fund Act of 2006 (Part 12 (commencing with Section 53540) of Division 31 of the Health and Safety Code).

(3) The Kindergarten-University Public Education Facilities Bond Act of 2006 (Part 69 (commencing with Section 101000) of the Education Code).

(4) The Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code).

(5) The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code).

(d) For the purposes of this section, "state agency" includes each agency provided for in Section 12800 and each state entity included in Section 10335.7 of the Public Contract Code in which the head of the agency is appointed by the Governor.

(e) This section does not require the expenditure of the proceeds of the sale of the bonds described in this section, except as permitted by the measure authorizing the issuance of the bond.

(f) On or before August 1, 2009, and annually thereafter, each state agency that has awarded any contract financed with the proceeds of the infrastructure-related bond acts of 2006 in the previous fiscal year shall report to the Director of General Services statistics comparing the small business and microbusiness participation dollars for contracts funded by these bonds to the total contract dollars for contracts funded by these bonds. If an agency did not meet its participation goal, then the agency shall include in its report a plan of action to meet its participation goal during the current fiscal year.

CHAPTER 612

An act to amend Sections 66452.5, 66452.8, 66452.9, 66459, and 66499.37 of, to add Sections 66452.11 and 66452.12 to, and to repeal and add Section 66427.1 of, the Government Code, relating to housing.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 66427.1 of the Government Code is repealed.

SEC. 2. Section 66427.1 is added to the Government Code, to read:

66427.1. (a) The legislative body shall not approve a final map for a subdivision to be created from the conversion of residential real property into a condominium project, a community apartment project, or a stock cooperative project, unless it finds as follows:

(1) Each tenant of the proposed condominium, community apartment project, or stock cooperative project, and each person applying for the rental of a unit in the residential real property, has received or will have received all applicable notices and rights now or hereafter required by this chapter or Chapter 3 (commencing with Section 66451).

(2) Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has received or will receive each of the following notices:

(A) Written notification, pursuant to Section 66452.9, of intention to convert, provided at least 60 days prior to the filing of a tentative map pursuant to Section 66452.

(B) Ten days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, that the period for each tenant's right to purchase begins with the issuance of the final public report, and that the report will be available on request.

(C) Written notification that the subdivider has received the public report from the Department of Real Estate. This notice shall be provided within five days after the date that the subdivider receives the public report from the Department of Real Estate.

(D) Written notification within 10 days after approval of a final map for the proposed conversion.

(E) One hundred eighty days' written notice of intention to convert, provided prior to termination of tenancy due to the conversion or proposed conversion pursuant to Section 66452.11, but not before the local authority has approved a tentative map for the conversion. The notice given pursuant to this paragraph shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

(F) Notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that the unit will be initially offered to the general public or terms more favorable to the tenant. The exclusive right to purchase shall commence on the date the subdivision public report is issued, as provided in Section 11018.2 of the Business and Professions Code, and shall run for a period of not less than 90 days, unless the tenant gives prior written notice of his or her intention not to exercise the right.

(b) The written notices to tenants required by subparagraphs (A) and (B) of paragraph (2) of subdivision (a) shall be deemed satisfied if those notices comply with the legal requirements for service by mail.

(c) This section shall not diminish, limit or expand, other than as provided in this section, the authority of any city, county, or city and county to approve or disapprove condominium projects.

(d) If a rental agreement was negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean, all required written notices regarding the conversion of residential real property into a condominium project, a

community apartment project, or a stock cooperative project shall be issued in that language.

SEC. 3. Section 66452.5 of the Government Code is amended to read:

66452.5. (a) (1) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body.

(2) The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.

(3) Upon the filing of an appeal, the appeal board or legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of a request filed by the subdivider or the appellant. If there is no regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.

(b) (1) The subdivider, any tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal shall be filed in writing with the clerk of the legislative body within 10 days after the action of the appeal board from which the appeal is being taken.

(2) After the filing of an appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of the request filed by the subdivider or the appellant. If there is no regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. Within 10 days following the conclusion of the hearing, the legislative body shall render its decision on the appeal.

(c) (1) If there is an appeal board and it fails to act upon an appeal within the time limit specified in this chapter, the decision from which the appeal was taken shall be deemed affirmed and an appeal therefrom may thereupon be taken to the legislative body as provided in subdivision

(b) of this section. If no further appeal is taken, the tentative map, insofar as it complies with applicable requirements of this division and any local ordinance, shall be deemed approved or conditionally approved as last approved or conditionally approved by the advisory agency, and it shall be the duty of the clerk of the legislative body to certify or state that approval, or if the advisory agency is one which is not authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, the advisory agency shall submit its report to the legislative body as if no appeal had been taken.

(2) If the legislative body fails to act upon an appeal within the time limit specified in this chapter, the tentative map, insofar as it complies with applicable requirements of this division and any local ordinance, shall be deemed to be approved or conditionally approved as last approved or conditionally approved, and it shall be the duty of the clerk of the legislative body to certify or state that approval.

(d) (1) Any interested person adversely affected by a decision of the advisory agency or appeal board may file an appeal with the legislative body concerning any decision of the advisory agency or appeal board. The appeal shall be filed with the clerk of the legislative body within 10 days after the action of the advisory agency or appeal board that is the subject of the appeal. Upon the filing of the appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of a request filed by the subdivider or the appellant. If there is no regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

(2) Upon conclusion of the hearing, the legislative body shall, within 10 days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. The legislative body may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal board and may make any findings that are not inconsistent with the provisions of this chapter or any local ordinance adopted pursuant to this chapter.

(e) Each decision made pursuant to this section shall be supported by findings that are consistent with the provisions of this division and any local ordinance adopted pursuant to this division.

(f) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three

days prior to the hearing. The notice requirement of this subdivision shall be deemed satisfied if the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider or from persons appealing or filing an appeal for expenses incurred under this section.

SEC. 4. Section 66452.8 of the Government Code is amended to read:

66452.8. (a) Commencing at a date not less than 60 days prior to the filing of a tentative map pursuant to Section 66452, the subdivider or his or her agent shall give notice of the filing, in the form outlined in subdivision (b), to each person applying after that date for rental of a unit of the subject property immediately prior to the acceptance of any rent or deposit from the prospective tenant by the subdivider.

(b) The notice shall be as follows:

"To the prospective occupant(s) of

_____:

(address)

The owner(s) of this building, at (address), has filed or plans to file a tentative map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). No units may be sold in this building unless the conversion is approved by the (city, county, or city and county) and until after a public report is issued by the Department of Real Estate. If you become a tenant of this building, you shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

_____

(signature of owner or owner's agent)

_____

(dated)

I have received this notice on _____.

(date)

_____

(prospective tenant's signature)"

(c) Failure by a subdivider or his or her agent to give the notice required in subdivision (a) shall not be grounds to deny the conversion. However, if the subdivider or his or her agent fails to give notice pursuant to this section, he or she shall pay to each prospective tenant who

becomes a tenant and who was entitled to the notice, and who does not purchase his or her unit pursuant to subparagraph (F) of paragraph (2) of subdivision (a) of Section 66427.1, an amount equal to the sum of the following:

(1) Actual moving expenses incurred when moving from the subject property, but not to exceed one thousand one hundred dollars ($1,100).

(2) The first month's rent on the tenant's new rental unit, if any, immediately after moving from the subject property, but not to exceed one thousand one hundred dollars ($1,100).

(d) The requirements of subdivision (c) constitute a minimum state standard. However, nothing in that subdivision shall be construed to prohibit any city, county, or city and county from requiring, by ordinance or charter provision, a subdivider to compensate any tenant, whose tenancy is terminated as the result of a condominium, community apartment project, or stock cooperative conversion, in amounts or by services which exceed those set forth in paragraphs (1) and (2) of that subdivision. If that requirement is imposed by any city, county, or city and county, a subdivider who meets the compensation requirements of the local ordinance or charter provision shall be deemed to satisfy the requirements of subdivision (c).

SEC. 5. Section 66452.9 of the Government Code is amended to read:

66452.9. (a) Pursuant to subparagraph (A) of paragraph (2) of subdivision (a) of Section 66427.1, the subdivider shall give notice 60 days prior to the filing of a tentative map pursuant to Section 66452 in the form outlined in subdivision (b), to each tenant of the subject property.

(b) The notice shall be as follows:

"To the occupant(s) of

_____:

(address)

The owner(s) of this building, at (address), plans to file a tentative map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). You shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

_____

(signature of owner or owner's agent)

_____
(date)"

The written notices to tenants required by this section shall be deemed satisfied if the notices comply with the legal requirements for service by mail.

SEC. 6. Section 66452.11 is added to the Government Code, to read:

66452.11. (a) Pursuant to the provisions of subparagraph (E) of paragraph (2) of subdivision (a) of Section 66427.1, the subdivider shall give written notice of the intent to convert 180 days prior to the termination of tenancy in the form outlined in subdivision (b), to each tenant of the subject property.

(b) The notice shall be as follows:

"To the occupant(s) of

_____:
(address)

The owner(s) of this building, at (address), plans to convert this building to a (condominium, community apartment, or stock cooperative project). This is a notice of the owner's intention to convert the building to a (condominium, community apartment, or stock cooperative project).

A tentative map to convert the building to a (condominium, community apartment, or stock cooperative project) was approved by the City on _____. If the City approves a final map, you may be required to vacate the premises, but that cannot happen for at least 180 days from the date this notice was served upon you.

Any future notice given to you to terminate your tenancy because of the conversion cannot be effective for at least 180 days from the date this notice was served upon you. This present notice is not a notice to terminate your tenancy; it is not a notice that you must now vacate the premises.

_____
(signature of owner or owner's agent)

_____
(date)"

The written notices to tenants required by this section shall be deemed satisfied if such notices comply with the legal requirements for service by mail.

SEC. 7. Section 66452.12 is added to the Government Code, to read:

66452.12. (a) Pursuant to subparagraph (F) of paragraph (2) of subdivision (a) of Section 66427.1, the subdivider shall give written notice within five days after receipt of the subdivision public report to each tenant of his or her exclusive right for at least 90 days after issuance of the subdivision public report to contract for the purchase of his or her respective unit in the form outlined in subdivision (b).

(b) The notice shall be as follows:

"To the occupant(s) of

_____:

(address)

The owner(s) of this building, at (address), have received the final subdivision report on the proposed conversion of this building to a (condominium, community apartment, or stock cooperative project). Commencing on the date of issuance of the subdivision public report, you have the exclusive right for 90 days to contract for the purchase of your rental unit upon the same or more favorable terms and conditions than the unit will initially be offered to the general public.

_____

(signature of owner or owner's agent)

_____

(date)"

The written notices to tenants required by this section shall be deemed satisfied if the notices comply with the legal requirements for service by mail.

SEC. 8. Section 66459 of the Government Code is amended to read:

66459. (a) If a final map has been approved for a condominium project, community apartment project, or stock cooperative project, and the subdivider or subsequent owner of the project, on or after January 1, 1993, rents a dwelling in that project, he or she shall, prior to offering the separate interest for sale to the general public, deliver the following notice, printed in at least 14-point bold print, prior to the execution of the rental agreement:

TO THE PROSPECTIVE TENANTS OF

_____

(address)

THE UNIT YOU MAY RENT HAS BEEN APPROVED FOR SALE TO THE PUBLIC AS A CONDOMINIUM PROJECT, COMMUNITY APARTMENT PROJECT, OR STOCK COOPERATIVE PROJECT (WHICHEVER APPLIES). THE RENTAL UNIT MAY BE SOLD TO THE PUBLIC, AND, IF IT IS OFFERED FOR SALE, YOUR LEASE MAY BE TERMINATED. YOU WILL BE NOTIFIED AT LEAST 90 DAYS PRIOR TO ANY OFFERING TO SELL. IF YOU STILL LAWFULLY RESIDE IN THE UNIT, YOU WILL BE GIVEN A RIGHT OF FIRST REFUSAL TO PURCHASE THE UNIT.

_____

(signature of owner or owner's agent)

_____

(dated)

(b) The condominium project, community apartment project, or stock cooperative project shall not be referred to in a lease or rental agreement as an "apartment" or "apartments" on or after the date of the approval by the local agency of the final map for the condominium project, community apartment project, or stock cooperative project in which the final map was approved on or after January 1, 1993.

(c) Any tenant of a condominium project, community apartment project, or stock cooperative project pursuant to this section shall be given at least 90 days' written notice of the intention to sell the rental unit to the general public. This subdivision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or other obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

(d) Any tenant who lawfully resides in a condominium project, community apartment project, or stock cooperative project pursuant to this section shall be given a right of first refusal by the subdivider or subsequent owner of the project for the purchase of his or her rental unit upon the same terms and conditions that the unit will be initially offered to the general public or terms and conditions more favorable to the tenant. This right to purchase shall run for a period of 90 days from the date of the notice, unless the tenant gives written notice within the 90-day period of his or her intention not to exercise that right.

(e) Failure to comply with this section shall not invalidate the transfer of title to real property.

(f) Failure by a subdivider or his or her agent to give the notice required in subdivision (a) shall not be grounds to deny the conversion. However, if the subdivider or his or her agent fails to give notice pursuant

to this section, he or she shall pay to each prospective tenant who becomes a tenant and who was entitled to that notice, and who does not purchase his or her unit pursuant to subparagraph (F) of paragraph (2) of subdivision (a) of Section 66427.1, an amount equal to the sum of the following:

(1) Actual moving expenses incurred when moving from the subject property, but not to exceed one thousand one hundred dollars ($1,100).

(2) The first month's rent on the tenant's new rental unit, if any, immediately after moving from the subject property, but not to exceed one thousand one hundred dollars ($1,100).

(g) This section shall not apply to any of the following:

(1) An owner of four dwelling units or less.

(2) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, or transfers by a sale under a power of sale after a default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, and any subsequent transfer by a mortgagor or beneficiary of a deed of trust who accepts a deed in lieu of foreclosure or purchases the property at a foreclosure sale.

(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust. For purposes of this paragraph, a "fiduciary" means a state- or federally chartered bank, trust company, savings association, savings bank, credit union, or industrial loan company.

SEC. 9. Section 66499.37 of the Government Code is amended to read:

66499.37. Any action or proceeding to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision, or of any of the proceedings, acts, or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, including, but not limited to, the approval of a tentative map or final map, shall not be maintained by any person unless the action or proceeding is commenced and service of summons effected within 90 days after the date of the decision. Thereafter all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision or of the proceedings, acts, or determinations. The proceeding shall take precedence over all matters of the calendar of the

court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

CHAPTER 613

An act to amend Section 19605.72 of, to amend and repeal Sections 19411, 19590, and 19595 of, and to add Sections 19601.4 and 19604 to, the Business and Professions Code, relating to horse racing, and making an appropriation therefor.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 19411 of the Business and Professions Code, as amended by Section 1 of Chapter 198 of the Statutes of 2001, is amended to read:

19411. "Parimutuel wagering" is a form of wagering in which bettors either purchase tickets of various denominations, or issue wagering instructions leading to the placement of wagers, on the outcome of one or more horse races. The association distributes the total wagers comprising each pool, less the amounts retained for purposes specified in this chapter, to winning bettors based on the official race results.

SEC. 2. Section 19411 of the Business and Professions Code, as added by Section 1.5 of Chapter 198 of the Statutes of 2001, is repealed.

SEC. 3. Section 19590 of the Business and Professions Code, as amended by Section 4 of Chapter 505 of the Statutes of 2005, is amended to read:

19590. The board shall adopt rules governing, permitting, and regulating parimutuel wagering on horse races under the system known as the parimutuel method of wagering. Parimutuel wagering shall be conducted only by a person or persons licensed under this chapter to conduct a horse racing meeting or authorized by the board to conduct advance deposit wagering.

SEC. 4. Section 19590 of the Business and Professions Code, as added by Section 8 of Chapter 198 of the Statutes of 2001, is repealed.

SEC. 5. Section 19595 of the Business and Professions Code, as amended by Section 9 of Chapter 198 of the Statutes of 2001, is amended to read:

19595. Any form of wagering or betting on the result of a horse race other than that permitted by this chapter is illegal.

SEC. 6. Section 19595 of the Business and Professions Code, as added by Section 9.5 of Chapter 198 of the Statutes of 2001, is repealed.

SEC. 7. Section 19601.4 is added to the Business and Professions Code, to read:

19601.4. (a) Notwithstanding any other provision of law, a fair, combination of fairs, or an association conducting racing at a fair, may, after approval from the board, deduct an additional 1 percent from the total amount handled daily in its conventional and exotic pools. The additional 1 percent shall be deposited into the Inclosure Facilities Improvement Fund, which is hereby created as a special fund in the State Treasury, the moneys of which are available upon appropriation by the Legislature in the annual Budget Act. Any moneys deducted from the handle pursuant to this section shall be used solely for the purpose of facilities maintenance and improvements at a fair's racetrack inclosure for those fairs that contribute to, or for those fairs where an association conducting racing at that fair contributes to, the Inclosure Facilities Improvement Fund.

(b) The secretary shall appoint a committee of not more than five and no fewer than three individuals with expertise in financing, constructing, and managing horse racing facilities, to advise in the administration of the funds. The secretary shall have oversight over the committee. The secretary shall adhere to the same oversight responsibilities as outlined in Section 19620 when administering the funds contributed and disbursed pursuant to this section.

(c) The secretary shall include in the annual expenditure plan required pursuant to Section 19621 any allocations made pursuant to this section.

(d) For purposes of this section, "secretary" means the Secretary of Food and Agriculture.

SEC. 8. Section 19604 is added to the Business and Professions Code, to read:

19604. The board may authorize any racing association, racing fair, betting system, or multijurisdictional wagering hub to conduct advance deposit wagering in accordance with this section. Racing associations, racing fairs, and their respective horsemen's organizations may form a partnership, joint venture, or any other affiliation in order to further the purposes of this section.

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

(1) "Advance deposit wagering" means a form of parimutuel wagering in which a person residing within California or outside of this state establishes an account with an ADW provider, and subsequently issues wagering instructions concerning the funds in this account, thereby authorizing the ADW provider holding the account to place wagers on the account owner's behalf.

(2) "ADW provider" means a licensee, betting system, or multijurisdictional wagering hub, located within California or outside this state, that is authorized to conduct advance deposit wagering pursuant to this section.

(3) "Betting system" means a business conducted exclusively in this state that facilitates parimutuel wagering on races it simulcasts and other races it offers in its wagering menu.

(4) "Breed of racing" means as follows:

(A) With respect to associations and fairs licensed by the board to conduct thoroughbred, fair, or mixed breed race meetings, "breed of racing" shall mean thoroughbred.

(B) With respect to associations licensed by the board to conduct quarter horse race meetings, "breed of racing" shall mean quarter horse.

(C) With respect to associations and fairs licensed by the board to conduct standardbred race meetings, "breed of racing" shall mean standardbred.

(5) "Contractual compensation" means the amount paid to an ADW provider from advance deposit wagers originating in this state. Contractual compensation includes, but is not limited to, hub fee payments, and may include host fee payments, if any, for out-of-state and out-of-country races. Contractual compensation is subject to the following requirements:

(A) Excluding contractual compensation for host fee payments, contractual compensation shall not exceed 6.5 percent of the amount wagered.

(B) The host fee payments included within contractual compensation shall not exceed 3.5 percent of the amount wagered. Notwithstanding this provision, the host fee payment with respect to wagers on the Kentucky Derby, Preakness Stakes, Belmont Stakes, and selected Breeders' Cup Championship races may be negotiated by the ADW provider, the racing associations accepting wagers on those races pursuant to Section 19596.2, and the horsemen's organization.

(C) In order to ensure fair and consistent market access fee distributions to associations, fairs, horsemen, and breeders, for each breed of racing, the percentage of wagers paid as contractual compensation to an ADW provider pursuant to the terms of a hub agreement with a racing association or fair when that racing association or fair is conducting live racing shall be the same as the percentage of wagers paid as contractual compensation to that ADW provider when that racing association or fair is not conducting live racing.

(6) "Horsemen's organization" means, with respect to a particular racing meeting, the organization recognized by the board as responsible

for negotiating purse agreements on behalf of horsemen participating in that racing meeting.

(7) "Hub agreement" means a written agreement providing for contractual compensation paid with respect to advance deposit wagers placed by California residents on a particular breed of racing conducted outside of California. In the event a hub agreement exceeds a term of two years, then an ADW provider, one or more racing associations or fairs that together conduct no fewer than five weeks of live racing for the breed covered by the hub agreement, and the horsemen's organization responsible for negotiating purse agreements for the breed covered by the hub agreement shall be signatories to the hub agreement. A hub agreement is required for an ADW provider to receive contractual compensation for races conducted outside of California.

(8) "Hub agreement arbitration" means an arbitration proceeding pursuant to which the disputed provisions of the hub agreement pertaining to the hub or host fees from wagers on races conducted outside of California provided pursuant to paragraph (2) of subdivision (b) are determined in accordance with the provisions of this paragraph. If a hub agreement arbitration is requested, all of the following shall apply:

(A) The ADW provider shall be permitted to accept advance deposit wagers from California residents.

(B) The contractual compensation received by the ADW provider shall be the contractual compensation specified in the hub agreement that is the subject of the hub agreement arbitration.

(C) The difference between the contractual compensation specified in subparagraph (B) and the contractual compensation determined to be payable at the conclusion of the hub agreement arbitration shall be calculated and paid within 15 days following the arbitrator's decision and order. The hub agreement arbitration shall be held as promptly as possible, but in no event more than 60 days following the demand for that arbitration. The arbitrator shall issue a decision no later than 15 days following the conclusion of the arbitration. A single arbitrator jointly selected by the ADW provider and the party requesting a hub agreement arbitration shall conduct the hub agreement arbitration. However, if the parties cannot agree on the arbitrator within seven days of issuance of the written demand for arbitration, then the arbitrator shall be selected pursuant to the Streamlined Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services, or pursuant to the applicable rules of its successor organization. In making the hub agreement arbitration determination, the arbitrator shall be required to choose between the contractual compensation of the hub agreement agreed to by the ADW provider or whatever different terms for the hub agreement were proposed by the party requesting the hub agreement arbitration.

The arbitrator shall not be permitted to impose new, different, or compromised terms to the hub agreement. The arbitrator's decision shall be final and binding on the parties. If an arbitration is requested, either party may bring an action in state court to compel a party to go into arbitration or to enforce the decision of the arbitrator. The cost of the hub agreement arbitration, including the cost of the arbitrator, shall be borne in equal shares by the parties to the hub agreement and the party or parties requesting a hub agreement arbitration. The hub agreement arbitration shall be administered by the Judicial Arbitration and Mediation Services pursuant to its Streamlined Arbitration Rules and Procedures or its successor organization.

(9) "Incentive awards" means those payments provided for in Sections 19617.2, 19617.7, 19617.8, 19617.9, and 19619. The amount determined to be payable for incentive awards under this section shall be payable to the applicable official registering agency and thereafter distributed as provided in this chapter.

(10) "Licensee" means any racing association or fair licensed to conduct a live racing meet in this state, or affiliation thereof, authorized under this section.

(11) "Market access fee" means the amount of advance deposit wagering handle remaining after the payment of winning wagers, and after the payment of contractual compensation, if any, to an ADW provider. Market access fees shall be distributed in accordance with subdivision (f).

(12) "Multijurisdictional wagering hub" means a business conducted in more than one jurisdiction that facilitates parimutuel wagering on races it simulcasts and other races it offers in its wagering menu.

(13) "Racing fair" means a fair authorized by the board to conduct live racing.

(14) "Zone" means the zone of the state, as defined in Section 19530.5, except as modified by the provisions of subdivision (f) of Section 19601. For these purposes, the central and southern zones shall together be considered one zone.

(b) Wagers shall be accepted according to the procedures set forth in this subdivision.

(1) No ADW provider shall accept wagers or wagering instructions on races conducted in California from a resident of California unless all of the following conditions are met:

(A) The ADW provider is licensed by the board.

(B) A written agreement allowing those wagers exists with the racing association or fair conducting the races on which the wagers are made.

(C) The agreement referenced in subparagraph (B) shall have been approved in writing by the horsemen's organization responsible for

negotiating purse agreements for the breed on which the wagers are made in accordance with the Interstate Horseracing Act (15 U.S.C. Sec. 3001, et seq.), regardless of the location of the ADW provider, whether in California or otherwise, including, without limitation, any and all requirements contained therein with respect to written consents and required written agreements of horsemen's groups to the terms and conditions of the acceptance of those wagers and any arrangements as to the exclusivity between the host racing association or fair and the ADW provider. For purposes of this subdivision, the substantive provisions of the Interstate Horseracing Act shall be taken into account without regard to whether, by its own terms, that act is applicable to advance deposit wagering on races conducted in California accepted from residents of California.

(2) No ADW provider shall accept wagers or wagering instructions on races conducted outside of California from a resident of California unless all of the following conditions are met:

(A) The ADW provider is licensed by the board.

(B) There is a hub agreement between the ADW provider and one or both of (i) one or more racing associations or fairs that together conduct no fewer than five weeks of live racing on the breed on which wagering is conducted during the calendar year during which the wager is placed, and (ii) the horsemen's organization responsible for negotiating purse agreements for the breed on which wagering is conducted.

(C) If the parties referenced in clauses (i) and (ii) of subparagraph (B) are both signatories to the hub agreement, then no party shall have the right to request a hub agreement arbitration.

(D) If only the party or parties referenced in clause (i) of subdivision (B) is a signatory to the hub agreement, then the signatories to the hub agreement shall, within five days of execution of the hub agreement, provide a copy of the hub agreement to the horsemen's organization responsible for negotiating purse agreements for the breed on which wagering is conducted for each race conducted outside of California on which California residents may place advance deposit wagers. Prior to receipt of the hub agreement, the horsemen's organization shall sign a nondisclosure agreement with the ADW provider agreeing to hold confidential all terms of the hub agreement. If the horsemen's organization wants to request a hub agreement arbitration, it shall send written notice of its election to the signatories to the hub agreement within 10 days after receipt of the copy of the hub agreement, and shall provide its alternate proposal to the hub and host fees specified in the hub agreement with that written notice. If the horsemen's organization does not provide that written notice within the 10-day period, then no party shall have the right to request a hub agreement arbitration. If the

horsemen's organization does provide that written notice within the 10-day period, then the ADW provider shall have 10 days to elect in writing to do one of the following:

(i) Abandon the hub agreement.

(ii) Accept the alternate proposal submitted by the horsemen's organization.

(iii) Proceed with a hub agreement arbitration.

(E) If only the party referenced in clause (ii) of subdivision (B) is a signatory to the hub agreement, then the signatories to the hub agreement shall, within five days of execution of the hub agreement, provide written notice of the host and hub fees applicable pursuant to the hub agreement for each race conducted outside of California on which California residents may place advance deposit wagers, which notice shall be provided to all racing associations and fairs conducting live racing of the same breed covered by the hub agreement. If any racing association or fair wants to request a hub agreement arbitration, it shall send written notice of its election to the signatories to the hub agreement within 10 days after receipt of the notice of host and hub fees. It shall also provide its alternate proposal to the hub and host fees specified in the hub agreement with the notice of its election. If more than one racing association or fair provides notice of their request for hub agreement arbitration, those racing associations or fairs, or both, shall have a period of five days to jointly agree upon which of their alternate proposals shall be the official proposal for purposes of the hub agreement arbitration. If one or more racing associations or fairs that together conduct no fewer than five weeks of live racing on the breed on which wagering is conducted during the calendar year during which the wager is placed does not provide written notice of their election to arbitrate within the 10-day period, then no party shall have the right to request a hub agreement arbitration. If a valid hub agreement arbitration request is made, then the ADW provider shall have 10 days to elect in writing to do one of the following:

(i) Abandon the hub agreement.

(ii) Accept the alternate proposal submitted by the racing associations or fairs.

(iii) Proceed with a hub agreement arbitration.

The results of any hub agreement arbitration elected pursuant to this subdivision shall be binding on all other associations and fairs conducting live racing on that breed.

(F) The acceptance thereof is in compliance with the provisions of the Interstate Horseracing Act (15 U.S.C. Sec. 3001, et seq.), regardless of the location of the ADW provider, whether in California or otherwise, including, without limitation, any and all requirements contained therein

with respect to written consents and required written agreements of horsemen's groups to the terms and conditions of the acceptance of such wagers and any arrangements as to the exclusivity between the host racing association or fair and the ADW provider.

(c) An advance deposit wager may be made only by the ADW provider holding the account pursuant to wagering instructions issued by the owner of the funds communicated by telephone call or through other electronic media. The ADW provider shall ensure the identification of the account's owner by using methods and technologies approved by the board. Any ADW provider that accepts wagering instructions concerning races conducted in California, or accepts wagering instructions originating in California, shall provide a full accounting and verification of the source of the wagers thereby made, including the postal ZIP Code and breed of the source of the wagers, in the form of a daily download of parimutuel data to a database designated by the board. The daily download shall be delivered in a timely basis using file formats specified by the database designated by the board, and shall include any and all data necessary to calculate and distribute moneys according to the rules and regulations governing California parimutuel wagering. Any and all reasonable costs associated with the creation, provision, and transfer of this data shall be borne by the ADW provider.

(d) (1) (A) The board shall develop and adopt rules to license and regulate all phases of operation of advance deposit wagering for ADW providers operating in California.

(B) The board shall not approve an application for an original or renewal license as an ADW provider unless the entity, if requested in writing by a bona fide labor organization no later than ninety days prior to licensing, has entered into a contractual agreement with that labor organization that provides all of the following:

(i) The labor organization has historically represented employees who accept or process any form of wagering at the nearest horse racing meeting located in California.

(ii) The agreement establishes the method by which the ADW provider will agree to recognize and bargain in good faith with a labor organization which has demonstrated majority status by submitting authorization cards signed by those employees who accept or process any form of wagering for which a California ADW license is required.

(iii) The agreement requires the ADW provider to maintain its neutrality concerning the choice of those employees who accept or process any form of wagering for which a California ADW license is required whether or not to authorize the labor organization to represent them with regard to wages, hours, and other the terms and conditions of employment.

(iv) The agreement applies to those classifications of employees who accept or process wagers for which a California ADW license is required whether the facility is located within or outside of California.

(C) (i) The agreement required by subparagraph (B) shall not be conditioned by either party upon the other party agreeing to matters outside the requirements of subparagraph (B).

(ii) The requirement in subparagraph (B) shall not apply to an ADW provider which has entered into a collective bargaining agreement with a bona fide labor organization that is the exclusive bargaining representative of employees who accept or process parimutuel wagers on races for which an ADW license is required whether the facility is located within or outside California.

(D) Permanent state or county employees and nonprofit organizations that have historically performed certain services at county, state, or district fairs may continue to provide those services.

(E) Parimutuel clerks employed by racing associations or fairs or employees of ADW providers who accept or process any form of wagers who are laid off due to lack of work shall have preferential hiring rights for new positions with their employer in occupations whose duties include accepting or processing any form of wagers, or the operation, repair, service, or maintenance of equipment that accepts or processes any form of wagering at a racetrack, satellite wagering facility, or ADW provider licensed by the board. The preferential hiring rights established by this subdivision shall be conditioned upon the employee meeting the minimum qualification requirements of the new job.

(2) The board shall develop and adopt rules and regulations requiring ADW providers to establish security access policies and safeguards, including, but not limited to, the following:

(A) The ADW provider shall use board-approved methods to perform location and age verification confirmation with respect to persons establishing an advance deposit wagering account.

(B) The ADW provider shall use personal identification numbers (PINs) or other technologies to assure that only the accountholder has access to the advance deposit wagering account.

(C) The ADW provider shall provide for withdrawals from the wagering account only by means of a check made payable to the accountholder and sent to the address of the accountholder or by means of an electronic transfer to an account held by the verified accountholder or the accountholder may withdraw funds from the wagering account at a facility approved by the board by presenting verifiable account identification information.

(D) The ADW provider shall allow the board access to its premises to visit, investigate, audit and place expert accountants and other persons

it deems necessary for the purpose of ensuring that its rules and regulations concerning credit authorization, account access, and other security provisions are strictly complied with. To ensure that the amounts retained from the parimutuel handle are distributed under law, rules, or agreements, any ADW provider that accepts wagering instructions concerning races conducted in California or accepts wagering instructions originating in California shall provide an independent "agreed upon procedures" audit for each California racing meeting, within 60 days of the conclusion of the race meeting. The auditing firm to be used and the content and scope of the audit, including host fee obligations, shall be set forth in the applicable agreement. The ADW provider shall provide the board, horsemen's organizations, and the host racing association with an annual parimutuel audit of the financial transactions of the ADW provider with respect to wagers authorized pursuant to this section, prepared in accordance with generally accepted auditing standards and the requirements of the board. Any and all reasonable costs associated with those audits shall be borne by the ADW provider.

(3) The board shall prohibit advance deposit wagering advertising that it determines to be deceptive to the public. The board shall also require, by regulation, that every form of advertising contain a statement that minors are not allowed to open or have access to advance deposit wagering accounts.

(e) In order for a licensee, betting system, or multijurisdictional wagering hub to be approved by the board as an ADW provider, it shall meet both of the following requirements:

(1) All wagers thereby made shall be included in the appropriate parimutuel pool under a contractual agreement with the applicable host track.

(2) The amounts deducted from advance deposit wagers shall be in accordance with the provisions of this chapter.

(f) After the payment of contractual compensation, the amounts received as market access fees from advance deposit wagers, which shall not be considered for purposes of Section 19616.51, shall be distributed as follows:

(1) An amount equal to 0.0011 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting shall be distributed to the Center for Equine Health to establish the Kenneth L. Maddy Fund for the benefit of the School of Veterinary Medicine at the University of California at Davis.

(2) An amount equal to 0.0003 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting shall be distributed to the Department of Industrial Relations to cover costs associated with audits conducted pursuant to Section 19526 and

for the purposes of reimbursing the State Mediation and Conciliation Service for costs incurred pursuant to this bill. However, if that amount would exceed the costs of the Department of Industrial Relations, the amount distributed to the department shall be reduced, and that reduction shall be forwarded to an organization designated by the racing association or fair described in subdivision (a) for the purpose of augmenting a compulsive gambling prevention program specifically addressing that problem.

(3) An amount equal to 0.00165 multiplied by the amount handled on advance deposit wagers that originate in California for each racing meeting shall be distributed as follows:

(A) One-half of the amount shall be distributed to supplement the trainer-administered pension plans for backstretch personnel established pursuant to Section 19613. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19613 or any other provision of law.

(B) One-half of the amount shall be distributed to the welfare fund established for the benefit of horsemen and backstretch personnel pursuant to subdivision (b) of Section 19641. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

(4) With respect to wagers on each breed of racing that originate in California, an amount equal to two percent of the first two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, an amount equal to 1.5 percent of the next two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, an amount equal to one percent of the next two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, and an amount equal to 0.50 percent of handle from all advance deposit wagers originating from within California in excess of seven hundred fifty million dollars ($750,000,000) annually, shall be distributed as satellite wagering commissions. Satellite facilities that were not operational in 2001, other than one each in the cities of Inglewood and San Mateo, and two additional facilities each operated by the Alameda County Fair and the Los Angeles County Fair and their partners and other than existing facilities which are relocated, are not eligible for satellite wagering commission distributions under this section. The satellite wagering facility commissions calculated in accordance with this subdivision shall be distributed to each satellite wagering facility and racing association or fair in the zone in which the wager originated in the same relative

proportions that the satellite wagering facility or the racing association or fair generated satellite commissions during the previous calendar year. If there is a reduction in the satellite wagering commissions pursuant to this section, the benefits therefrom shall be distributed equitably as purses and commissions to all associations and racing fairs generating advance deposit wagers in proportion to the handle generated by those associations and racing fairs. For purposes of this section, the purse funds distributed pursuant to Section 19605.72 shall be considered to be satellite wagering facility commissions attributable to thoroughbred races at the locations described in that section.

(5) After the distribution of the amounts set forth in paragraphs (1) to (4), inclusive, the remaining market access fees from advance deposit wagers originating in California shall be as follows:

(A) With respect to wagers on each breed of racing, the amount remaining shall be distributed to the racing association or fair that is conducting live racing on that breed during the calendar period in the zone in which the wager originated. That amount shall be allocated to that racing association or fair as commissions, to horsemen participating in that racing meeting in the form of purses, and as incentive awards, in the same relative proportion as they were generated or earned during the prior calendar year at that racing association or fair on races conducted or imported by that racing association or fair after making all deductions required by applicable law. Notwithstanding any other provision of law, the distributions with respect to each breed of racing set forth in this subparagraph may be altered upon the approval of the board, in accordance with an agreement signed by the respective associations, fairs, horsemen's organizations, and breeders organizations receiving those distributions.

(B) If the provisions of Section 19601.2 apply, then the amount distributed to the applicable racing associations or fairs shall first be divided between those racing associations or fairs in direct proportion to the total amount wagered in the applicable zone on the live races conducted by the respective association or fair. Notwithstanding this requirement, when the provisions of subdivision (b) of Section 19607.5 apply to the 2nd District Agricultural Association in Stockton or the California Exposition and State Fair in Sacramento, then the total amount distributed to the applicable racing associations or fairs shall first be divided equally, with 50 percent distributed to applicable fairs and 50 percent distributed to applicable associations.

(C) Notwithstanding any provisions of this section to the contrary, with respect to wagers on out-of-state and out-of-country thoroughbred races conducted after 6 p.m., Pacific time, 50 percent of the amount remaining shall be distributed as commissions to thoroughbred

associations and racing fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subparagraph (A), and the remaining 50 percent, together with the total amount remaining from advance deposit wagering originating from California out-of-state and out-of-country harness and quarter horse races conducted after 6 p.m., Pacific time, shall be distributed as commissions on a pro rata basis to the applicable licensed quarter horse association and the applicable licensed harness association, based upon the amount handled in state, both on- and off-track, on each breed's own live races in the previous year by that association, or its predecessor association. One-half of the amount thereby received by each association shall be retained by that association as a commission, and the other half of the money received shall be distributed as purses to the horsemen participating in its current or next scheduled licensed racing meeting.

(D) Notwithstanding any provisions of this section to the contrary, with respect to wagers on out-of-state and out-of-country nonthoroughbred races conducted before 6 p.m., Pacific time, 50 percent of the amount remaining shall be distributed as commissions as provided in subparagraph (C) for licensed quarter horse and harness associations, and the remaining 50 percent shall be distributed as commissions to the applicable thoroughbred associations or fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subparagraph (A).

(E) Notwithstanding any provision of this section to the contrary, the distribution of market access fees pursuant to this subparagraph may be altered upon the approval of the board, in accordance with an agreement signed by all parties whose distributions would be affected.

(g) A racing association, a fair, or a satellite wagering facility may enter into an agreement with an ADW provider to accept and facilitate the placement of any wager from a patron at its facility that a California resident could make through that ADW provider. Deductions from wagers made pursuant to such an agreement shall be distributed in accordance with the provisions of this chapter governing wagers placed at that facility, except that the board may authorize alternative distributions as agreed to by the ADW provider, the operator of the facility accepting the wager, the association or fair conducting that breed of racing in the zone where the wager is placed, and the respective horsemen's organization.

(h) Any issues concerning the interpretation or application of this section shall be resolved by the board.

(i) Amounts distributed under this section shall be proportionally reduced by an amount equal to 0.00295 multiplied by the amount handled on advanced deposit wagers originating in California for each racing meeting, and shall not exceed two million dollars ($2,000,000). The

method used to calculate the reduction in proportionate share shall be approved by the board. The amount deducted shall be distributed as follows:

(1) Fifty percent of the money to the California Horse Racing Board to establish and to administer jointly with the organization certified as the majority representative of California licensed jockeys pursuant to Section 19612.9, a defined contribution retirement plan for California licensed jockeys who retired from racing on or after January 1, 2009, and who, as of the date of their retirement, had ridden in a minimum of 1,250 parimutuel races conducted in California.

(2) The remaining 50 percent of the money shall be distributed as follows:

(A) Seventy percent shall be distributed to supplement the trainer-administered pension plans for backstretch personnel established pursuant to Section 19613. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19613 or any other provision of law.

(B) Thirty percent shall be distributed to the welfare fund established for the benefit of horsemen and backstretch personnel pursuant to subdivision (b) of Section 19641. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

SEC. 9. Section 19605.72 of the Business and Professions Code is amended to read:

19605.72. (a) In addition to the amounts deducted and distributed pursuant to Section 19605.7, an amount equal to 1.25 percent of the total amount handled on thoroughbred races conducted by, or disseminated by, a thoroughbred racing association or fair at a satellite facility that is located on the premises where, and on days when, harness races are being conducted in the northern zone, shall be paid to the harness racing association and thereafter shall be distributed as purses to the harness horsemen racing at the harness racing meeting.

(b) In addition to the amounts deducted and distributed pursuant to Section 19605.71, an amount equal to 1.25 percent of the total amount handled on thoroughbred races conducted by, or disseminated by, a thoroughbred racing association or fair at a satellite facility that is located on the premises where, and during calendar periods when, quarter horse or harness race meetings are being conducted in Orange County, shall be distributed as purses to the horsemen racing at the quarter horse or harness racing meeting.

CHAPTER 614

An act to amend Sections 116275 and 116480 of, and to add Section 116326 to, the Health and Safety Code, relating to public water systems.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 116275 of the Health and Safety Code is amended to read:

116275. As used in this chapter:

(a) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(b) "Department" means the State Department of Health Services.

(c) "Primary drinking water standards" means:

(1) Maximum levels of contaminants that, in the judgment of the department, may have an adverse effect on the health of persons.

(2) Specific treatment techniques adopted by the department in lieu of maximum contaminant levels pursuant to subdivision (j) of Section 116365.

(3) The monitoring and reporting requirements as specified in regulations adopted by the department that pertain to maximum contaminant levels.

(d) "Secondary drinking water standards" means standards that specify maximum contaminant levels that, in the judgment of the department, are necessary to protect the public welfare. Secondary drinking water standards may apply to any contaminant in drinking water that may adversely affect the odor or appearance of the water and may cause a substantial number of persons served by the public water system to discontinue its use, or that may otherwise adversely affect the public welfare. Regulations establishing secondary drinking water standards may vary according to geographic and other circumstances and may apply to any contaminant in drinking water that adversely affects the taste, odor, or appearance of the water when the standards are necessary to ensure a supply of pure, wholesome, and potable water.

(e) "Human consumption" means the use of water for drinking, bathing or showering, hand washing, or oral hygiene.

(f) "Maximum contaminant level" means the maximum permissible level of a contaminant in water.

(g) "Person" means an individual, corporation, company, association, partnership, limited liability company, municipality, public utility, or other public body or institution.

(h) "Public water system" means a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following:

(1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system which are used primarily in connection with the system.

(2) Any collection or pretreatment storage facilities not under the control of the operator that are used primarily in connection with the system.

(3) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(i) "Community water system" means a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents of the area served by the system.

(j) "Noncommunity water system" means a public water system that is not a community water system.

(k) "Nontransient noncommunity water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

(*l*) "Local health officer" means a local health officer appointed pursuant to Section 101000 or a local comprehensive health agency designated by the board of supervisors pursuant to Section 101275 to carry out the drinking water program.

(m) "Significant rise in the bacterial count of water" means a rise in the bacterial count of water that the department determines, by regulation, represents an immediate danger to the health of water users.

(n) "State small water system" means a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year.

(o) "Transient noncommunity water system" means a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per year.

(p) "User" means any person using water for domestic purposes. User does not include any person processing, selling, or serving water or operating a public water system.

(q) "Waterworks standards" means regulations adopted by the department that take cognizance of the latest available "Standards of Minimum Requirements for Safe Practice in the Production and Delivery of Water for Domestic Use" adopted by the California section of the American Water Works Association.

(r) "Local primacy agency" means any local health officer that has applied for and received primacy delegation from the department pursuant to Section 116330.

(s) "Service connection" means the point of connection between the customer's piping or constructed conveyance, and the water system's meter, service pipe, or constructed conveyance. A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection in determining if the system is a public water system if any of the following apply:

(1) The water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, and cooking or other similar uses.

(2) The department determines that alternative water to achieve the equivalent level of public health protection provided by the applicable primary drinking water regulation is provided for residential or similar uses for drinking and cooking.

(3) The department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a passthrough entity, or the user to achieve the equivalent level of protection provided by the applicable primary drinking water regulations.

(t) "Resident" means a person who physically occupies, whether by ownership, rental, lease or other means, the same dwelling for at least 60 days of the year.

(u) "Water treatment operator" means a person who has met the requirements for a specific water treatment operator grade pursuant to Section 106875.

(v) "Water treatment operator-in-training" means a person who has applied for and passed the written examination given by the department but does not yet meet the experience requirements for a specific water treatment operator grade pursuant to Section 106875.

(w) "Water distribution operator" means a person who has met the requirements for a specific water distribution operator grade pursuant to Section 106875.

(x) "Water treatment plant" means a group or assemblage of structures, equipment, and processes that treats, blends, or conditions the water

supply of a public water system for the purpose of meeting primary drinking water standards.

(y) "Water distribution system" means any combination of pipes, tanks, pumps, and other physical features that deliver water from the source or water treatment plant to the consumer.

(z) "Public health goal" means a goal established by the Office of Environmental Health Hazard Assessment pursuant to subdivision (c) of Section 116365.

(aa) "Small community water system" means a community water system that serves no more than 3,300 service connections or a yearlong population of no more than 10,000 persons.

(ab) "Disadvantaged community" means the entire service of area of a community water system, or a community therein, in which the median household income is less than 80 percent of the statewide average.

SEC. 2. Section 116326 is added to the Health and Safety Code, to read:

116326. In administering programs to fund improvements and expansions of small community water systems, the department shall do all of the following:

(a) Give priority to funding projects in disadvantaged communities.

(b) Encourage the consolidation of small community water systems that serve disadvantaged communities in instances where consolidation will help the affected agencies and the state to meet all of the following goals:

(1) Improvement in the quality of water delivered.

(2) Improvement in the reliability of water delivery.

(3) Reduction in the cost of drinking water for ratepayers.

(c) Pursuant to subdivision (b), allow funding for feasibility studies performed prior to a construction project to include studies of the feasibility of consolidating two or more community water systems, at least one of which is a small community water system that serves a disadvantaged community.

(d) In instances where it is shown that small community water system consolidation will further the goals of subdivision (b), give priority to funding construction projects that involve the physical restructuring of two or more community water systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system.

SEC. 3. Section 116480 of the Health and Safety Code is amended to read:

116480. (a) The department shall expend moneys available in the Emergency Clean Water Grant Fund only for the purpose of taking corrective action necessary to remedy or prevent an emergency or

imminent threat to public health due to the contamination or potential contamination of the public water supply.

(b) Notwithstanding any other provision of law, the department may enter into written contracts for remedial action taken or to be taken pursuant to subdivision (a), and may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when, in the judgment of the department, immediate remedial action is necessary to remedy or prevent an emergency specified in subdivision (a). The contracts, written or oral, may include provisions for the rental or purchase of tools and equipment, either with or without operators, for the furnishing of labor and materials and for engineering consulting necessary to accomplish the work.

CHAPTER 615

An act to add Section 11760.1 to the Insurance Code, relating to workers' compensation audits.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 11760.1 is added to the Insurance Code, to read:

11760.1. (a) If an employer fails to provide for access by the insurer or its authorized representative to its records, to enable the insurer to perform an audit to determine the remuneration earned by the employer's employees and by any of its uninsured subcontractors and the employees of any of its uninsured subcontractors during the policy period, the employer shall be liable to pay to the insurer a total premium for the policy equal to three times the insurer's then-current estimate of the annual premium on the expiration date of the policy. The employer shall also be liable, in addition to the premium, for costs incurred by the insurer in its attempts to perform an audit, after the insured has failed upon the insurer's third request during at least a 90-day period to provide access, and the insured has provided no compelling business reason for the failure. This section shall only apply if the insurer elects to comply with the conditions set forth in subdivision (d).

(b) "Access" shall mean access at any time during regular business hours during the policy period and within three years after the policy

period ends. "Access" may also include any other time mutually agreed upon by the employer and insurer.

(c) The insurer shall have and follow regular and reasonable rules and procedures to notify employers of their duty to provide for access to records, and to contact employers to make appointments during regular business hours for that purpose.

(d) Upon the employer's failure to provide access after the insurer's third request during at least a 90-day period, the insurer may notify the employer through its mailing of a certified, return-receipt, document of the increased premium and the total amount of the costs incurred by the insurer for its attempts to perform an audit as described under subdivision (a). Upon the expiration of 30 days after the delivery of the notice, collection by the insurer of the amount of premium and costs described under subdivision (a), less all premiums previously paid by the employer for the policy, shall be fully enforceable and executable.

(e) If the employer provides for access to its records after having received the notice described in subdivision (d), and if the insurer then succeeds in performing the audit to its satisfaction, the insurer shall revise the total premium and costs payable for the policy by the employer to reflect the results of its audit.

CHAPTER 616

An act to add Article 4 (commencing with Section 25546) to Chapter 6.95 of Division 20 of the Health and Safety Code, relating to toxic chemicals.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Article 4 (commencing with Section 25546) is added to Chapter 6.95 of Division 20 of the Health and Safety Code, to read:

Article 4. California Toxic Release Inventory Program Act of 2007

25546. The Legislature finds and declares all of the following:

(a) The people of California have the right to know the hazards posed by toxic releases near their homes, schools, and workplaces. They have the right to know how much pollution is being released into the water, air, and soil.

(b) Since its inception in 1986, as part of the federal Emergency Planning and Community Right-to-Know Act of 1986, (EPCRA; Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code), the Toxics Release Inventory (TRI) has supplied this essential information on toxic chemical releases to the public. The goal of the TRI is to empower citizens, through information, to hold companies and local governments accountable for how toxic chemicals are managed.

(c) It is the intent of the Legislature that California citizens do not lose access to the information necessary to understand the potential threats to public health and safety and the environment that is available through the Toxics Release Inventory as it existed on January 1, 2006, including the ease of accessibility.

25546.1. This article shall be known, and may be cited, as the "California Toxic Release Inventory Program Act of 2007."

25546.2. For purposes of this article, the following definitions shall apply:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Facility" means a facility subject to the federal act, as provided by Section 11002 of Title 42 of the United States Code, as that section read on January 1, 2006, and that is subject to the existing federal regulations.

(c) "Existing federal regulations" mean the regulations found in Part 372 (commencing with Section 372.1) of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 2006, except as provided in subdivision (b) of Section 25546.3.

(d) "Federal act" means the federal Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA; Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code).

(e) "Federal regulations" mean the regulations found in Part 372 (commencing with Section 372.1) of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations may be revised or amended on or after January 1, 2006.

(f) "Program" means the California Toxic Release Inventory Program established pursuant to this article.

(g) "Toxic chemical" means a substance listed pursuant to Subpart D (commencing with Section 372.65) of Part 372 of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 2006, and not as those regulations may be subsequently amended, revised, or repealed after that date, except as provided in subdivision (b) of Section 25546.3.

(h) "Toxic chemical release form" means the form required to be completed by the owner or operator of a facility pursuant to Section

11023 of Title 42 of the United States Code, as that section read on January 1, 2006.

(i) "Threshold quantity" means the amount of a toxic chemical specified in Sections 372.25, 372.27, and 372.28 of Title 40 of the Code of Federal Regulations as those regulations read on January 1, 2006, and not as those regulations may be subsequently amended, revised, or repealed after that date, except as provided in subdivision (b) of Section 25546.3.

25546.3. (a) On or before January 1, 2009, the department shall develop and implement the California Toxic Release Inventory Program pursuant to this article.

(b) Notwithstanding any other provision of this article, the department shall, when implementing the program, comply with the requirements of the federal act with regard to ensuring that any requirement imposed pursuant to this article is no less stringent than, or is not otherwise preempted by, any requirement imposed pursuant to the federal act, including any changes to the existing federal regulations that decrease the threshold quantity or include additional toxic chemicals subject to the federal act.

(c) If there is a legal challenge to changes made to Section 312 of the federal act (42 U.S.C. Sec. 11022) or the federal regulations adopted pursuant to that section, that result in the changes being stayed or enjoined by a federal court, the department shall not require a facility to submit a toxic chemical release form pursuant to Section 25546.4 until the department determines that the court action has been settled or adjudicated.

25546.4. (a) The program established pursuant to this article shall require a facility to submit a toxic chemical release form to the department, in accordance with the existing federal regulations, if the facility is not required by the federal regulations to submit a toxic chemical release form containing that same information.

(b) The program adopted pursuant to subdivision (a) shall require that the information be reported retroactively to the effective date of the change in the federal act or the existing federal regulations as to ensure no gap in data collection.

(c) The department shall evaluate California-specific reporting requirements and determine if this information can substitute, in whole or in part, for the information that would be required under the program. This review shall include, but not be limited to, reporting required pursuant to the Air Toxic "Hot Spot" Information and Assessment Act (Part 6 (commencing with Section 44300) of Division 26), the Hazardous Waste Source Reduction and Management Review Act of 1989 (Article 11.9 (commencing with Section 25244.12) of Chapter 6.5), and reporting

required by the regional water quality control boards pursuant to the National Pollution Discharge Elimination System permits and waste discharge requirements.

(d) The department shall require the facility to utilize the same reporting forms in use, pursuant to the existing federal regulations, unless the department determines that an alternative form is necessary to substitute chemical release data reported under existing California-specific programs, to ensure that the information is consolidated. The department shall also prescribe the manner in which the information in the forms shall be transmitted.

(e) The department shall post a copy of each form received from each facility that is subject to the program on the department's publicly available Internet Web site.

25546.5. (a) The department may adopt regulations to implement the program as emergency regulations. The emergency regulations adopted pursuant to this section shall be adopted by the department in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is hereby deemed 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.

(b) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

CHAPTER 617

An act to amend Sections 3751 and 3752.5 of the Family Code, to amend Section 1373 of the Health and Safety Code, and to amend Sections 10277 and 10278 of the Insurance Code, relating to disabled persons.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 3751 of the Family Code is amended to read:

3751. (a) (1) Support orders issued or modified pursuant to this chapter shall include a provision requiring the child support obligor to keep the agency designated under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.) informed of whether the obligor has health insurance coverage at a reasonable cost and, if so, the health insurance policy information.

(2) In any case in which an amount is set for current support, the court shall require that health insurance coverage for a supported child shall be maintained by either or both parents if that insurance is available at no cost or at a reasonable cost to the parent. Health insurance coverage shall be rebuttably presumed to be reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. The actual cost of the health insurance to the obligor shall be considered in determining whether the cost of insurance is reasonable. If the court determines that the cost of health insurance coverage is not reasonable, the court shall state its reasons on the record.

(b) If the court determines that health insurance coverage is not available at no cost or at a reasonable cost, the court's order for support shall contain a provision that specifies that health insurance coverage shall be obtained if it becomes available at no cost or at a reasonable cost. Upon health insurance coverage at no cost or at a reasonable cost becoming available to a parent, the parent shall apply for that coverage.

(c) The court's order for support shall require the parent who, at the time of the order or subsequently, provides health insurance coverage for a supported child to seek continuation of coverage for the child upon attainment of the limiting age for a dependent child under the health insurance coverage if the child meets the criteria specified under Section 1373 of the Health and Safety Code or Section 10277 or 10278 of the Insurance Code and that health insurance coverage is available at no cost or at a reasonable cost to the parent or parents, as applicable.

SEC. 2. Section 3752.5 of the Family Code is amended to read:

3752.5. (a) A child support order issued or modified pursuant to this division shall include a provision requiring the child support obligor to keep the obligee informed of whether the obligor has health insurance made available through the obligor's employer or has other group health insurance and, if so, the health insurance policy information. The support obligee under a child support order shall inform the support obligor of whether the obligee has health insurance made available through the

employer or other group health insurance and, if so, the health insurance policy information.

(b) A child support order issued or modified pursuant to this division shall include a provision requiring the child support obligor and obligee to provide the information described in subdivision (a) for a child or an adult who meets the criteria for continuation of health insurance coverage upon attaining the limiting age pursuant to Section 1373 of the Health and Safety Code or Section 10277 or 10278 of the Insurance Code.

(c) The Judicial Council shall modify the form of the order for health insurance coverage (family law) to notify child support obligors of the requirements of this section and of Section 3752. Notwithstanding any other provision of law, the Judicial Council shall not be required to modify the form of the order for health insurance coverage (family law) to include the provisions described in subdivision (b) until January 1, 2010.

SEC. 3. Section 1373 of the Health and Safety Code is amended to read:

1373. (a) A plan contract may not provide an exception for other coverage if the other coverage is entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or Medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

Each plan contract shall be interpreted not to provide an exception for the Medi-Cal or Medicaid benefits.

A plan contract shall not provide an exemption for enrollment because of an applicant's entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or Medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

A plan contract may not provide that the benefits payable thereunder are subject to reduction if the individual insured has entitlement to the Medi-Cal or Medicaid benefits.

(b) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual's reason for sterilization.

As used in this section, "sterilization operations or procedures" shall have the same meaning as that specified in Section 10120 of the Insurance Code.

(c) Every plan contract that provides coverage to the spouse or dependents of the subscriber or spouse shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any subscriber or spouse covered and to each minor child placed for adoption from and after the date on which the adoptive child's birth parent or other appropriate legal authority signs a written document, including, but not limited to, a health facility minor release report, a medical authorization form, or a relinquishment form, granting the subscriber or spouse the right to control health care for the adoptive child or, absent this written document, on the date there exists evidence of the subscriber's or spouse's right to control the health care of the child placed for adoption. No plan may be entered into or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn infants of, or children placed for adoption with, a subscriber or spouse covered as required by this subdivision.

(d) (1) Every plan contract that provides that coverage of a dependent child of a subscriber shall terminate upon attainment of the limiting age for dependent children specified in the plan, shall also provide that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to meet both of the following criteria:

(A) Incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition.

(B) Chiefly dependent upon the subscriber for support and maintenance.

(2) The plan shall notify the subscriber that the dependent child's coverage will terminate upon attainment of the limiting age unless the subscriber submits proof of the criteria described in subparagraphs (A) and (B) of paragraph (1) to the plan within 60 days of the date of receipt of the notification. The plan shall send this notification to the subscriber at least 90 days prior to the date the child attains the limiting age. Upon receipt of a request by the subscriber for continued coverage of the child and proof of the criteria described in subparagraphs (A) and (B) of paragraph (1), the plan shall determine whether the child meets that criteria before the child attains the limiting age. If the plan fails to make the determination by that date, it shall continue coverage of the child pending its determination.

(3) The plan may subsequently request information about a dependent child whose coverage is continued beyond the limiting age under this subdivision but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(4) If the subscriber changes carriers to another plan or to a health insurer, the new plan or insurer shall continue to provide coverage for the dependent child. The new plan or insurer may request information about the dependent child initially and not more frequently than annually thereafter to determine if the child continues to satisfy the criteria in subparagraphs (A) and (B) of paragraph (1). The subscriber shall submit the information requested by the new plan or insurer within 60 days of receiving the request.

(e) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment of premiums, if any, as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the director.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated or an individual subscriber leaves the group, or the enrollees' eligibility status changes.

(h) (1) A health care service plan or specialized health care service plan may provide for coverage of, or for payment for, professional mental health services, or vision care services, or for the exclusion of these services. If the terms and conditions include coverage for services provided in a general acute care hospital or an acute psychiatric hospital as defined in Section 1250 and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility as defined in Section 1250.2 operating pursuant to licensure by the State Department of Mental Health. A health care service plan that offers outpatient mental health services but does not cover these services in all of its group contracts shall communicate to prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any psychologist who is licensed pursuant to the Psychology Licensing Law (Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and

Professions Code), any optometrist who is the holder of a certificate issued pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code or, upon referral by a physician and surgeon licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code), (i) any marriage and family therapist who is the holder of a license under Section 4980.50 of the Business and Professions Code, (ii) any licensed clinical social worker who is the holder of a license under Section 4996 of the Business and Professions Code, (iii) any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing, or (iv) any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, and the certificate holder is expressly authorized by law to perform these services.

(3) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience.

(4) For the purposes of this section, "marriage and family therapist" means a licensed marriage and family therapist who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions that is equivalent to the instruction required for licensure on January 1, 1981.

(5) Nothing in this section shall be construed to allow a member to select and obtain mental health or psychological or vision care services from a certificate or licenseholder who is not directly affiliated with or under contract to the health care service plan or specialized health care service plan to which the member belongs. All health care service plans and individual practice associations that offer mental health benefits shall make reasonable efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, "individual practice association" means an entity as defined in subsection (5) of Section 1307 of the federal Public Health Service Act (42 U.S.C. Sec. 300e-1 (5)).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services that are alternatives to inpatient care and that are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract that provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of confinement or the number of consecutive hours of confinement that are requisite to the commencement of benefits.

SEC. 4. Section 10277 of the Insurance Code is amended to read:

10277. (a) A group health insurance policy that provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy, shall also provide that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to meet both of the following criteria:

(1) Incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition.

(2) Chiefly dependent upon the employee or member for support and maintenance.

(b) The insurer shall notify the employee or member that the dependent child's coverage will terminate upon attainment of the limiting age unless the employee or member submits proof of the criteria described in paragraphs (1) and (2) of subdivision (a) to the insurer within 60 days of the date of receipt of the notification. The insurer shall send this notification to the employee or member at least 90 days prior to the date the child attains the limiting age. Upon receipt of a request by the employee or member for continued coverage of the child and proof of the criteria described in paragraphs (1) and (2) of subdivision (a), the insurer shall determine whether the dependent child meets that criteria before the child attains the limiting age. If the insurer fails to make the determination by that date, it shall continue coverage of the child pending its determination.

(c) The insurer may subsequently request information about a dependent child whose coverage is continued beyond the limiting age under subdivision (a), but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(d) If the employee or member changes carriers to another insurer or to a health care service plan, the new insurer or plan shall continue to provide coverage for the dependent child. The new plan or insurer may

request information about the dependent child initially and not more frequently than annually thereafter to determine if the child continues to satisfy the criteria in paragraphs (1) and (2) of subdivision (a). The employee or member shall submit the information requested by the new plan or insurer within 60 days of receiving the request.

SEC. 5. Section 10278 of the Insurance Code is amended to read:

10278. (a) An individual health insurance policy that provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy, shall also provide that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to meet both of the following criteria:

(1) Incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition.

(2) Chiefly dependent upon the policyholder or subscriber for support and maintenance.

(b) The insurer shall notify the policyholder or subscriber that the dependent child's coverage will terminate upon attainment of the limiting age unless the policyholder or subscriber submits proof of the criteria described in paragraphs (1) and (2) of subdivision (a) to the insurer within 60 days of the date of receipt of the notification. The insurer shall send this notification to the policyholder or subscriber at least 90 days prior to the date the child attains the limiting age. Upon receipt of a request by the policyholder or subscriber for continued coverage of the child and proof of the criteria described in paragraphs (1) and (2) of subdivision (a), the insurer shall determine whether the dependent child meets that criteria before the child attains the limiting age. If the insurer fails to make the determination by that date, it shall continue coverage of the child pending its determination.

(c) The insurer may subsequently request information about a dependent child whose coverage is continued beyond the limiting age under subdivision (a), but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(d) If the subscriber or policyholder changes carriers to another insurer or to a health care service plan, the new insurer or plan shall continue to provide coverage for the dependent child. The new plan or insurer may request information about the dependent child initially and not more frequently than annually thereafter to determine if the child continues to satisfy the criteria in paragraphs (1) and (2) of subdivision (a). The subscriber or policyholder shall submit the information requested by the new plan or insurer within 60 days of receiving the request.

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 618

An act to amend Section 50675.1 of the Health and Safety Code, relating to housing.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 50675.1 of the Health and Safety Code is amended to read:

50675.1. (a) This chapter shall be known and may be cited as the Multifamily Housing Program.

(b) Assistance provided to a project pursuant to this chapter shall be provided in the form of a deferred payment loan to pay for the eligible costs of development as hereafter described.

(c) Except as provided in paragraph (3), on and after January 1, 2008, of the total assistance provided under this chapter, the percentage that is awarded for units restricted to senior citizens, as defined in paragraph (1) of subdivision (b) of Section 51.3 of the Civil Code, shall be proportional to the percentage of lower income renter households in the state that are lower income elderly renter households, as reported by the federal Department of Housing and Urban Development on the basis of the most recent decennial census conducted by the United States Census Bureau.

(1) The department shall be deemed to have met its obligation under this subdivision if the assistance awarded is not less than 1 percent below the proportional share.

(2) This subdivision does not require the department to provide loans to projects that fail to meet minimum threshold requirements under subdivision (b) of Section 50675.7.

(3) Assistance for projects meeting the definitions in paragraphs (2) and (3) of subdivision (e) of Section 11139.3 of the Government Code

and subdivisions (c) and (d) of Section 53260 shall be excluded from the total assistance calculation under this subdivision.

(4) The department shall determine the time period over which it will measure compliance with this section, but that period shall not be less than one year or two funding cycles, whichever period is longer.

(5) If, at the end of the time period determined by the department, the total amount of funding for which sponsors have submitted qualified applications is lower than the proportional share, the department may award the remaining funds to units that are not restricted to senior citizens.

(6) The department's annual report to the Legislature submitted under Section 50408 shall include a breakdown of funding awards between units restricted to senior citizens and units that are not age-restricted.

(d) This chapter shall be administered by the department and the department shall establish the terms upon which loans may be made consistent with the provisions of this chapter.

CHAPTER 619

An act to amend Sections 34 and 155 of the Sacramento Area Flood Control Agency Act (Chapter 510 of the Statutes of 1990), relating to flood management.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) The top priority of the Sacramento Area Flood Control Agency should be to undertake and complete the capital improvement projects that serve as the backbone of the Sacramento area flood control network.

(b) When used in conjunction with these capital improvement projects, easements and other nonstructural flood control projects provide important and cost-effective tools for the Sacramento Area Flood Control Agency to use to augment the Sacramento region's system of flood protection.

SEC. 2. Section 34 of the Sacramento Area Flood Control Agency Act (Chapter 510 of the Statutes of 1990) is amended to read:

Sec. 34. (a) "Project" means the acquisition, construction, maintenance, or operation of any flood control facility authorized under the agreement and not inconsistent with this act, including, but not limited

to, acquisition of rights-of-way and easements and payment of incidental expenses.

(b) Nothing in this section, or any other provision of this act, authorizes the agency to exercise the power of eminent domain outside its boundaries.

(c) Participation in a project includes making payments or other contributions pursuant to any contract entered into with another governmental agency that requires the other governmental agency to perform work on a project.

(d) The acquisition of rights-of-way and easements outside of the agency's boundaries shall be consistent with applicable county plans, including county general plans, and the State Plan of Flood Control.

(e) This section does not alter the existing powers granted to members of the agreement.

(f) This section does not preclude the acquisition of time-limited easements.

SEC. 3. Section 155 of the Sacramento Area Flood Control Agency Act (Chapter 510 of the Statutes of 1990) is amended to read:

Sec. 155. Revenues derived from fees prescribed pursuant to this chapter for any area may be used only for the acquisition, engineering, design, construction, reconstruction, maintenance, or operation of flood control projects that protect that area, or used to pay the debt service on, or reduce the principal of, any bonded indebtedness of that area.

CHAPTER 620

An act to amend Sections 1729, 1730, and 1736.1 of, and to add Section 1728.8 to, the Health and Safety Code, relating to home health agencies.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 1728.8 is added to the Health and Safety Code, to read:

1728.8. (a) It is the intent of the Legislature to ensure that the department licenses and certifies home health agencies in a reasonable and timely manner to ensure Californians have access to critical home- and community-based services. Home health agencies have significant startup costs and regulatory requirements, which make home health

agencies vulnerable to delays in licensing and certification surveys. Home health agencies help the state protect against the unnecessary institutionalization of individuals and are integral in ensuring the state's compliance with the United States Supreme Court decision in Olmstead v. L.C. (527 U.S. 581 (1999)), which requires public agencies to provide services in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(b) No later than 90 calendar days after the department receives an initial and complete parent, branch, or change of ownership home health agency application, the department shall make every effort to complete the application paperwork and conduct a licensure survey, if necessary, to inspect the agency and evaluate the agency's compliance with state requirements. The department shall forward its recommendation, if necessary, and all other information, to the federal Centers for Medicare and Medicaid Services within the same 90 calendar days.

(c) (1) For those applicants seeking to receive reimbursement under the Medicare or Medi-Cal programs, the department shall make every effort to complete the initial application paperwork and conduct an unannounced certification survey, if necessary, no later than 90 calendar days after the department conducts the licensure survey required by subdivision (a), or no later than 90 days after the department's receipt of a letter from the home health agency notifying the department of its readiness for the certification survey from a parent or branch agency.

(2) No later than 30 calendar days after the certification survey, the department shall forward the results of its licensure and certification surveys and all other information necessary for certification to the federal Centers for Medicare and Medicaid Services.

(d) This section shall apply to all licensing and certification entities, including any county that contracts with the state to provide licensing and certification services on behalf of the state.

(e) If the department is unable to meet the 90-day timelines for licensing or certification required pursuant to this section, the department shall notify the applicant in writing of the delay and the anticipated date of the survey.

(f) This section shall become operative on July 1, 2008.

SEC. 2. Section 1729 of the Health and Safety Code is amended to read:

1729. Each application for a license under this chapter, except applications by the State of California or any state department, authority, bureau, commission, or officer, shall be accompanied by a Licensing and Certification Program fee for the headquarters or main office of the agency and for each additional branch office maintained and operated by the agency in the amount set in accordance with Section 1266. The

department shall work with the home health agency industry association and providers to restructure home health agency licensing and certification program fees in a budget neutral capacity for the 2008–09 fiscal year.

SEC. 3. Section 1730 of the Health and Safety Code is amended to read:

1730. (a) Each license issued under this chapter shall expire 12 months from the date of its issuance. Application for renewal of license accompanied by the necessary fee shall be filed with the state department annually, not less than 30 days prior to expiration date. Failure to make a timely renewal shall result in expiration of the license.

(b) (1) At least 45 days prior to the expiration of a license issued pursuant to this chapter, the department shall mail an application for renewal to the licensee.

(2) Any application for a license renewal shall be submitted with the necessary fee in accordance with subdivision (a). A license shall be deemed renewed upon payment of the necessary fee, commencing from the license's expiration date. If the requirements of this section are met, the department shall issue a license to the agency and its branches by the expiration date of the license to ensure the provider remains in good standing. The agency's license shall be mailed within 30 calendar days after the date the department receives the renewal fee.

SEC. 4. Section 1736.1 of the Health and Safety Code is amended to read:

1736.1. (a) An applicant for certification as a certified home health aide shall comply with each of the following requirements:

(1) Have successfully completed a training program with a minimum of 75 hours or an equivalent competency evaluation program approved by the department pursuant to applicable federal and state regulations.

(2) Obtain a criminal record clearance pursuant to Section 1736.6.

(b) Any person who violates this article is guilty of a misdemeanor and, upon a conviction thereof, shall be punished by imprisonment in the county jail for not more than 180 days, or by a fine of not less than twenty dollars ($20) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment.

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 621

An act to amend Section 4604.5 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 4604.5 of the Labor Code is amended to read:

4604.5. (a) Upon adoption by the administrative director of a medical treatment utilization schedule pursuant to Section 5307.27, the recommended guidelines set forth in the schedule shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her injury. The presumption created is one affecting the burden of proof.

(b) The recommended guidelines set forth in the schedule adopted pursuant to subdivision (a) shall reflect practices that are evidence and scientifically based, nationally recognized, and peer reviewed. The guidelines shall be designed to assist providers by offering an analytical framework for the evaluation and treatment of injured workers, and shall constitute care in accordance with Section 4600 for all injured workers diagnosed with industrial conditions.

(c) Three months after the publication date of the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, and continuing until the effective date of a medical treatment utilization schedule, pursuant to Section 5307.27, the recommended guidelines set forth in the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines shall be presumptively correct on the issue of extent and scope of medical treatment, regardless of date of injury. The presumption is rebuttable and may be controverted by a preponderance of the evidence establishing that a variance from the guidelines is reasonably required to cure and relieve the employee from the effects

of his or her injury, in accordance with Section 4600. The presumption created is one affecting the burden of proof.

(d) (1) Notwithstanding the medical treatment utilization schedule or the guidelines set forth in the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury.

(2) Paragraph (1) shall not apply when an employer authorizes, in writing, additional visits to a health care practitioner for physical medicine services.

(3) Paragraph (1) shall not apply to visits for postsurgical physical medicine and postsurgical rehabilitation services provided in compliance with a postsurgical treatment utilization schedule established by the administrative director pursuant to Section 5307.27.

(e) For all injuries not covered by the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines or official utilization schedule after adoption pursuant to Section 5307.27, authorized treatment shall be in accordance with other evidence based medical treatment guidelines generally recognized by the national medical community and that are scientifically based.

CHAPTER 622

An act to amend Sections 11155.2, 11155.4, 11155.6, 11322.6, and 15204.6 of, and to add Section 11322.5 to, the Welfare and Institutions Code, relating to CalWORKs.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 11155.2 of the Welfare and Institutions Code is amended to read:

11155.2. (a) In addition to the personal property permitted by this part, recipients of aid under CalWORKs shall be permitted to retain savings and interest thereon for specified purposes. Interest earned from these savings and deposited into a restricted account shall be considered exempt as income for purposes of determining eligibility for aid and grant amounts if the interest is retained in the account. If the interest is not deposited by the financial institution into the account, the interest

shall be treated as a nonqualifying withdrawal of funds from the account as specified in subdivision (b). This section shall not apply to applicants. Funds may be used by the family for education or job training expenses for the accountholder or his or her dependents, for starting a business, or for the purchase of a home. Recipients who wish to retain savings for these purposes shall enter into a written agreement with the county to establish a separate account with a financial institution, with the account to be used solely for the purpose of accumulating funds for later withdrawal for a qualifying expenditure. A qualifying expenditure shall be defined by department regulations and shall be verified by the recipient. The recipient shall agree to provide periodic verification of account activity, as required by department regulations. The agreement shall notify the recipient of the penalty for nonqualifying withdrawal of funds.

(b) Any nonqualifying withdrawal of funds from the account shall result in a calculation of a period of ineligibility for all persons in the assistance unit, to be determined by dividing the balance in the account immediately prior to the withdrawal by the minimum basic standard of adequate care for the members of the assistance unit, as set forth in Section 11452. The resulting whole number shall be the number of months of ineligibility. The period of ineligibility may be reduced when the minimum basic standard of adequate care of the assistance unit, including special needs, increases.

(c) If the California Savings and Asset Project is established pursuant to Chapter 17 (commencing with Section 50897) of Part 2 of Division 31 of the Health and Safety Code, then to the extent permitted by federal law, a recipient shall be eligible to receive matching funds derived from federal contributions for the purpose of establishing an individual account in an amount not to exceed three thousand dollars ($3,000) in addition to the amounts specified in subdivision (a) and a fiduciary organization may provide amounts in excess of the first three thousand dollars ($3,000) limitation if contributed solely through private sources.

SEC. 2. Section 11155.4 of the Welfare and Institutions Code is amended to read:

11155.4. The principal and interest in an individual development account established in accordance with the federal requirements of Section 604(h) of Title 42 of the United States Code or established by a statewide individual development account program shall be exempt from consideration when determining or redetermining eligibility and the amount of CalWORKs assistance.

SEC. 3. Section 11155.6 of the Welfare and Institutions Code is amended to read:

11155.6. (a) (1) The principal and interest in a 401(k) plan, 403(b) plan, or 457 plan shall be excluded from consideration as property when determining eligibility and the amount of assistance with respect to an applicant for benefits who is not a recipient of CalWORKs benefits.

(2) The principal and interest in a 401(k) plan, 403(b) plan, IRA, 457 plan, 529 college savings plan, or Coverdell ESA, shall be excluded from consideration as property when redetermining eligibility and the amount of assistance for recipients of CalWORKs benefits.

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

(1) "401(k) plan" means a deferred compensation plan that satisfies the requirements of Section 401(k) of the Internal Revenue Code.

(2) "403(b) plan" means a qualified annuity plan that satisfies the requirements of Section 403(b) of the Internal Revenue Code.

(3) "IRA" means an individual retirement account that satisfies the requirements of Section 408 of the Internal Revenue Code.

(4) "457 plan" means a deferred compensation plan that satisfies the requirements of Section 457 of the Internal Revenue Code.

(5) "529 college savings plan" means a qualified tuition program that satisfies the requirements of Section 529 of the Internal Revenue Code.

(6) "Coverdell ESA" means an education savings account that satisfies the requirements of Section 530 of the Internal Revenue Code.

SEC. 4. Section 11322.5 is added to the Welfare and Institutions Code, to read:

11322.5. (a) It is the intent of the Legislature to do each of the following:

(1) Maximize the ability of CalWORKs recipients to benefit from the federal Earned Income Tax Credit (EITC), including retroactive EITC credits and the Advance EITC, take advantage of the earned-income disregard to increase their federal Food Stamp Program benefits, and accumulate credit toward future social security income.

(2) Educate and empower all CalWORKs participants who receive the federal EITC to save or invest part or all of their credits in instruments such as individual development accounts, 401(k) plans, 403(b) plans, IRAs, 457 plans, Coverdell ESA plans, restricted accounts pursuant to subdivision (a) of Section 11155.2, or 529 plans, and to take advantage of the federal Assets for Independence Program and any other matching funds, tools, and training available from public or private sources, in order to build their assets.

(b) It is the intent of the Legislature that counties encourage CalWORKs recipients to participate in activities that will maximize their receipt of the EITC. To this end, counties may do all of the following:

(1) Structure welfare-to-work activities pursuant to subdivisions (a) to (j), inclusive, of Section 11322.6 to give recipients the option of maximizing the portion of their CalWORKs benefits that meets the definition of "earned income" in Section 32(c)(2) of the Internal Revenue Code.

(2) Inform CALWORKS recipients of each of the following:

(A) That earned income, either previous or future, may make them eligible for the federal EITC, including retroactive EITC credits and the Advance EITC, increase their federal Food Stamp Program benefits, and accumulate credit toward future social security income.

(B) That recipients, as part of their welfare-to-work plans, have the option of engaging in subsidized employment and grant-based on-the-job training, as specified in Section 11322.6, and that participating in these activities will increase their earned income to the extent that they meet the requirements of federal law.

(C) That receipt of the federal EITC does not affect their CalWORKs grant and is additional tax-free income for them.

(D) That a CalWORKs recipient who receives the federal EITC may invest these funds in an individual development account, 401(k) plan, 403(b) plan, IRA, 457 plan, 529 college savings plan, Coverdell ESA, or restricted account, and that investments in these accounts will not make the recipient ineligible for CalWORKs benefits or reduce the recipient's CalWORKs benefits.

(3) At each regular eligibility redetermination, the county shall ask each recipient whether the recipient is eligible for and takes advantage of the EITC. If the recipient may be eligible and does not participate, the county shall give the recipient the federal EITC form and encourage and assist the recipient to take advantage of it.

(c) (1) No later than December 1, 2008, the State Department of Social Services shall develop guidelines that counties may adopt to carry out the intent of this section and shall present options to the Governor and Legislature for any legislation necessary to further carry out the intent of this section.

(2) In developing the guidelines and legislative options, the department shall consult and convene at least one meeting of subject-matter experts, including representatives from the Assembly and Senate Human Services Committees, Assets for All Alliance, Asset Policy Initiative of California, California Budget Project, California Catholic Conference, California Council of Churches, California Family Resource Association, California State Association of Counties, CFED, County Welfare Directors Association of California, Federal Reserve Bank of San Francisco, Legislative Analyst's Office, Lifetime, National Council of Churches, National Economic Development and Law Center, New America

Foundation, Public Policy Institute of California, University of California at Los Angeles Law School, United States Internal Revenue Service, and Western Center on Law and Poverty. Nothing in this section requires the department to compensate or pay expenses for any person it consults or invites to the meeting or meetings.

SEC. 5. Section 11322.6 of the Welfare and Institutions Code is amended to read:

11322.6. The welfare-to-work plan developed by the county welfare department and the participant pursuant to this article shall provide for welfare-to-work activities. Welfare-to-work activities may include, but are not limited to, any of the following:

(a) Unsubsidized employment.

(b) Subsidized private sector employment.

(c) Subsidized public sector employment.

(d) Work experience, which means public or private sector work that shall help provide basic job skills, enhance existing job skills in a position related to the participant's experience, or provide a needed community service that will lead to employment. Unpaid work experience shall be limited to 12 months, unless the county welfare department and the recipient agree to extend this period by an amendment to the welfare-to-work plan. The county welfare department shall review the work experience assignment as appropriate and make revisions as necessary to ensure that it continues to be consistent with the participant's plan and effective in preparing the participant to attain employment.

(e) On-the-job training.

(f) (1) Grant-based on-the-job training, which means public or private sector employment or on-the-job training in which the recipient's cash grant, or a portion thereof, or the aid grant savings resulting from employment, or both, is diverted to the employer as a wage subsidy to partially or wholly offset the payment of wages to the participant, so long as the total amount diverted does not exceed the family's maximum aid payment.

(2) A county shall not assign a participant to grant-based on-the-job training unless and until the participant has voluntarily agreed to participate in grant-based on-the-job training by executing a voluntary agreement form, which shall be developed by the department. The agreement shall include, but not be limited to, information on the following:

(A) How job termination or another event will not result in loss of the recipient's grant funds, pursuant to department regulations.

(B) (i) How to obtain the federal Earned Income Tax Credit (EITC), including the Advance EITC, and increased Food Stamp Program benefits, which may become available due to increased earned income.

(ii) This subparagraph shall only become operative when and to the extent that the department determines that it reflects current federal law and Internal Revenue Service regulations.

(C) How these financial supports should increase the participant's current income and how increasing earned income should increase the recipient's future social security income.

(3) Grant-based on-the-job training shall include community service positions pursuant to Section 11322.9.

(4) Any portion of a wage from employment that is funded by the diversion of a recipient's cash grant, or the grant savings from employment pursuant to this subdivision, or both, shall not be exempt under Section 11451.5 from the calculation of the income of the family for purposes of subdivision (a) of Section 11450.

(g) Supported work or transitional employment, which means forms of grant-based on-the-job training in which the recipient's cash grant, or a portion thereof, or the aid grant savings from employment, is diverted to an intermediary service provider, to partially or wholly offset the payment of wages to the participant.

(h) Workstudy.

(i) Self-employment.

(j) Community service.

(k) Adult basic education, which shall include reading, writing, arithmetic, high school proficiency, or general educational development certificate of instruction, and English-as-a-second-language. Participants under this subdivision shall be referred to appropriate service providers that include, but are not limited to, educational programs operated by school districts or county offices of education that have contracted with the Superintendent of Public Instruction to provide services to participants pursuant to Section 33117.5 of the Education Code.

(*l*) Job skills training directly related to employment.

(m) Vocational education and training, including, but not limited to, college and community college education, adult education, regional occupational centers, and regional occupational programs.

(n) Job search and job readiness assistance, which means providing the recipient with training to learn job seeking and interviewing skills, to understand employer expectations, and learn skills designed to enhance an individual's capacity to move toward self-sufficiency, including financial management education.

(o) Education directly related to employment.

(p) Satisfactory progress in secondary school or in a course of study leading to a certificate of general educational development, in the case of a recipient who has not completed secondary school or received such a certificate.

(q) Mental health, substance abuse, and domestic violence services, described in Sections 11325.7 and 11325.8, and Article 7.5 (commencing with Section 11495), that are necessary to obtain and retain employment.

(r) Other activities necessary to assist an individual in obtaining unsubsidized employment.

Assignment to an educational activity identified in subdivisions (k), (m), (o), and (p) is limited to those situations in which the education is needed to become employed.

SEC. 6. Section 15204.6 of the Welfare and Institutions Code is amended to read:

15204.6. (a) Contingent upon a Budget Act appropriation, a Pay for Performance Program shall provide additional funding for counties that meet the standards developed according to subdivision (c) in their welfare-to-work programs under Article 3.2 (commencing with Section 11320) of Chapter 2. The state shall have no obligation to pay incentives earned that exceed the funds appropriated for the year in which the incentives were earned.

(b) To the extent that funds are appropriated, the maximum total funds available to each county each year under the Pay for Performance Program shall be 5 percent of the funds the county receives that year, less the amount for child care, from the single allocation under Section 15204.2. If funds appropriated for this section are less than the incentives earned under this subdivision, each county's allocation under this section shall be prorated based on the amount of funds appropriated for that year.

(c) The funds available to each county under the Pay for Performance Program shall be divided each year into as many equal parts as there are measures established for the year under this subdivision. A county shall earn payment of one equal part for each improvement standard that it achieves for the year or by ranking in the top 20 percent of all counties in a measure identified in paragraphs (1), (2), (3), (4), and (5), except as provided in subparagraph (B) of paragraph (4). Counties may receive a pro rata share of incentive funds for each improvement standard. The department shall consult with the County Welfare Directors Association, legislative staff, and other stakeholders, when developing improvement standards and the methodology for earning and distributing incentives for each of the following measures:

(1) The employment rate of county CalWORKs cases.

(2) The federal participation rates of county CalWORKs cases, calculated in accordance with Section 607 of Title 42 of the United States Code, but excluding individuals who are exempt in accordance with Section 11320.3 and including sanctioned cases and cases participating in activities described in subdivision (q) of Section 11322.6. If valid data

does not exist to measure this outcome, the funds for this measure shall be made available for the Pay for Performance Program in the following fiscal year.

(3) The percentage of county CalWORKs cases that have earned income three months after ceasing to receive assistance under Section 11450.

(4) (A) The percentage of county CalWORKs cases, including cases that have ceased receiving assistance in the previous two quarters, with earned income that equals or exceeds the income level for the maximum EITC amount available to a household, as determined under Section 22 of the Internal Revenue Code.

(B) This paragraph shall only become operative if the department, in consultation with the County Welfare Directors Association, legislative staff, and other stakeholders, determines that implementing its provisions will not create a substantial risk of California failing to meet federal welfare-to-work participation goals, and shall remain operative for so long as the department does not reverse that determination.

(5) Any additional measures that the department may establish in consultation with the County Welfare Directors Association, legislative staff, and other stakeholders.

(d) Performance measures, standards, outcomes, and payments to counties under subdivisions (a), (b), and (c) shall be based on the following schedule:

(1) For the performance measure described in paragraph (2) of subdivision (c), payments in fiscal year 2007–08 shall be based on outcomes for the period of July 1, 2006, through December 31, 2006, compared to outcomes for the period of January 1, 2007, through June 30, 2007, and payments in each subsequent fiscal year shall be based on outcomes for the fiscal year prior to payment, compared to outcomes for the fiscal year two years prior to payment.

(2) For all other performance measures, payments shall be based on outcomes for the fiscal year prior to payment, compared to outcomes for the fiscal year two years prior to payment.

(e) The department may make further adjustments to any of the performance measures listed under subdivision (c), in consultation with the County Welfare Directors Association, legislative staff, and other stakeholders. The act that both amends subdivision (c) and enacts this sentence in the 2007–08 Regular Session of the Legislature shall not limit the department's authority under this subdivision.

(f) The funds paid in accordance with this section may only be used in accordance with subdivisions (f) and (g) of Section 10544.1 and only for the purpose of enhancing family self-sufficiency. Funds earned by a county in accordance with this section shall be available for expenditure

in the fiscal year that they are received and the following two fiscal years. Following the period of availability, and notwithstanding any provisions of subdivision (f) of Section 10544.1 to the contrary, any unspent balance shall revert to the Temporary Assistance for Needy Families (TANF) block grant.

(g) Any funds appropriated by the Legislature for the Pay for Performance Program, but not earned by a county, shall revert to the TANF block grant at the end of the fiscal year for which the funds were appropriated.

(h) The department shall periodically publish the outcomes measured by the Pay for Performance Program, identified by county.

(i) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section through all-county letters throughout the duration of the Pay for Performance Program.

SEC. 7. No appropriation pursuant to Section 15200 of the Welfare and Institutions Code shall be made for the purposes of this act.

SEC. 8. 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.

CHAPTER 623

An act to amend Sections 25514.5 and 25540 of, and to add Section 25540.1 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 25514.5 of the Health and Safety Code is amended to read:

25514.5. (a) Notwithstanding Section 25514, any business that violates this article is liable to an administering agency for an administrative penalty not greater than two thousand dollars ($2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire or health or medical problem requiring toxicological, health, or medical consultation,

the business shall also be assessed the full cost of the county, city, fire district, local EMS agency designated pursuant to Section 1797.200, or poison control center as defined by Section 1797.97, emergency response, as well as the cost of cleaning up and disposing of the hazardous materials, or acutely hazardous materials.

(b) Notwithstanding Section 25514, any business that knowingly violates this article after reasonable notice of the violation is liable for an administrative penalty, not greater than five thousand dollars ($5,000) for each day in which the violation occurs.

(c) When an administering agency issues an enforcement order or assesses an administrative penalty, or both, for a violation of this article, the administering agency shall utilize the administrative enforcement procedures, including the hearing procedures, specified in Sections 25404.1.1 and 25404.1.2.

SEC. 2. Section 25540 of the Health and Safety Code is amended to read:

25540. (a) Any person or stationary source that violates this article shall be civilly liable to the administering agency in an amount of not more than two thousand dollars ($2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Any person or stationary source that knowingly violates this article after reasonable notice of the violation shall be civilly liable to the administering agency in a amount not to exceed twenty-five thousand dollars ($25,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of any hazardous materials.

(c) When an administering agency issues an enforcement order or assesses an administrative penalty, or both, for a violation of this article, the administering agency shall utilize the administrative enforcement procedures, including the hearing procedures, specified in Sections 25404.1.1 and 25404.1.2.

SEC. 3. Section 25540.1 is added to the Health and Safety Code, to read:

25540.1. A person or stationary source that knowingly violates this article after reasonable notice of the violation is guilty of a misdemeanor and may, upon conviction, be punished by imprisonment in a county jail not to exceed one year. If the violation results in, or significantly

contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of any hazardous materials.

CHAPTER 624

An act to amend Sections 14030.1, 14034, and 14075 of the Corporations Code, relating to small businesses, and making an appropriation therefor.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 14030.1 of the Corporations Code is amended to read:

14030.1. (a) There is hereby created in the State Treasury the Small Business Disaster Recovery Loan Loss Reserve Account, as part of the expansion fund. This account shall be used to pay for unrecovered losses resulting from loan guarantees issued pursuant to subdivision (a) of Section 14075 and subdivision (b) of this section and disaster loan guarantees issued prior to the effective date of this section that are in default. Any lending institution that issues a low-interest loan that is guaranteed by resources in this account shall be fully reimbursed for the guaranteed portion of principal and interest that result from a loan or loans that are in default. If there are insufficient funds in this account to fully satisfy all claimants, the full faith of the resources in the General Fund are pledged to satisfy the obligations of this account. This account may only guarantee as much loan dollar value as is specifically authorized by the Director of Finance with the concurrence of the Governor. This account shall receive all moneys transferred pursuant to Section 14037.5, and any unencumbered balances transferred to the California Small Business Expansion Fund pursuant to Chapters 11 and 12 of the Statutes of 1989, First Extraordinary Session, and Chapter 1525 of the Statutes of 1990, as of July 1, 1992.

(b) The Governor should utilize this authority to prevent business insolvencies and loss of employment in an area affected by a state of emergency within the state and declared a disaster by the President of the United States, or by the Administrator of the United States Small

Business Administration, or by the United States Secretary of Agriculture or declared to be in a state of emergency by the Governor of California.

SEC. 2. Section 14034 of the Corporations Code is amended to read:

14034. (a) The director at his or her discretion, with the approval of the Director of Finance, may request the trustee to invest those funds in the trust fund in any of the securities described in Section 16430 of the Government Code. Returns from these investments shall be deposited in the expansion fund and shall be used to support the programs of this part.

(b) Any investments made in securities described in Section 16430 of the Government Code shall be governed by the statement of investment policy prepared by the Treasurer pursuant to subdivision (a) of Section 16481.2 of the Government Code.

SEC. 3. Section 14075 of the Corporations Code is amended to read:

14075. (a) A corporation may, in an area affected by a state of emergency within the state and declared a disaster by the President of the United States, or by the Administrator of the United States Small Business Administration, or by the United States Secretary of Agriculture or declared to be in a state of emergency by the Governor of California, provide loan guarantees from funds allocated in Section 14037.5 to small businesses, small farms, nurseries, and agriculture-related enterprises that have suffered actual physical damage or significant economic injury as a result of the disaster.

(b) The agency may adopt regulations to implement the loan guarantee program authorized by this section. The agency may adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 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 the Government Code, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) Allocations pursuant to subdivision (a) shall be deemed to be for extraordinary emergency or disaster response operations costs incurred by the agency.

CHAPTER 625

An act relating to state property.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

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

SECTION 1. (a) Notwithstanding any other provision of law, the Director of General Services, with the approval of the Adjutant General, may lease to the City of Healdsburg at fair market value and for a period of up to 30 years state-owned property comprising approximately two acres and improvements located at 900 Powell Avenue, Healdsburg, Sonoma County, known as the Healdsburg Armory.

(b) Notwithstanding subdivision (g) of Section 11011, the proceeds of the lease shall be deposited into the Armory Fund pursuant to subdivision (b) of Section 435 of the Military and Veterans Code.

(c) The City of Healdsburg shall reimburse the Department of General Services for its actual costs in drafting, negotiating, and executing the lease documents pursuant to this section.

(d) The lease described in this section shall be executed by all parties no later than January 1, 2009.

CHAPTER 626

An act to amend Sections 25270.2, 25270.3, 25270.6, 25270.8, 25270.12, 25270.13, 25404, 25404.1.1, 25404.5, and 25503.4 of, to add Section 25270.4.5 to, to repeal Sections 25270.1, 25270.7, and 25270.10 of, to repeal and add Sections 25270, 25270.4, 25270.5, and 25270.9 of, and to repeal, add, and repeal Section 25270.11 of, the Health and Safety Code, relating to aboveground storage tanks.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

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

SECTION 1. Section 25270 of the Health and Safety Code is repealed.

SEC. 2. Section 25270 is added to the Health and Safety Code, to read:

25270. This chapter shall be known and may be cited as the Aboveground Petroleum Storage Act.

SEC. 3. Section 25270.1 of the Health and Safety Code is repealed.

SEC. 4. Section 25270.2 of the Health and Safety Code is amended to read:

25270.2. For purposes of this chapter, the following definitions apply:

(a) "Aboveground storage tank" or "storage tank" means a tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground. "Aboveground storage tank" does not include any of the following:

(1) A pressure vessel or boiler that is subject to Part 6 (commencing with Section 7620) of Division 5 of the Labor Code.

(2) A tank containing hazardous waste, as defined in subdivision (g) of Section 25316, if the Department of Toxic Substances Control has issued the person owning or operating the tank a hazardous waste facilities permit for the storage tank.

(3) An aboveground oil production tank that is subject to Section 3106 of the Public Resources Code.

(4) Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers, or capacitors, if the oil-filled electrical equipment meets either of the following conditions:

(A) The equipment contains less than 10,000 gallons of dielectric fluid.

(B) The equipment contains 10,000 gallons or more of dielectric fluid with PCB levels less than 50 parts per million, appropriate containment or diversionary structures or equipment are employed to prevent discharged oil from reaching a navigable water course, and the electrical equipment is visually inspected in accordance with the usual routine maintenance procedures of the owner or operator.

(5) A tank regulated as an underground storage tank under Chapter 6.7 (commencing with Section 25280) and Chapter 16 (commencing with Section 2610) of Division 3 of Title 23 of the California Code of Regulations.

(6) Any transportation-related tank facility, subject to the authority and control of the United States Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the United States Environmental Protection Agency, dated November 24, 1971, set forth in Appendix A to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

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

(c) (1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the Secretary for Environmental Protection to

implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating Agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) (A) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent that each PA has been designated by the CUPA, pursuant to a written agreement, to implement and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404. The UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce the requirements of this chapter.

(B) After a CUPA has been certified by the secretary, the unified program agency shall be the only agency authorized to enforce the requirements of this chapter..

(C) This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter.

(d) "Operator" means the person responsible for the overall operation of a tank facility.

(e) "Owner" means the person who owns the tank facility or part of the tank facility.

(f) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the University of California, the California State University, the state, any department or agency thereof, and the United States, to the extent authorized by federal law.

(g) "Petroleum" means crude oil, or any fraction thereof, which is liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per square inch absolute pressure.

(h) "Regional board" means a California regional water quality control board.

(i) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, or disposing into the environment.

(j) "Secretary" means the Secretary for Environmental Protection.

(k) "Storage" or "store" means the containment, handling, or treatment of petroleum, for any period of time, including on a temporary basis.

(*l*) "Storage capacity" means the aggregate capacity of all aboveground tanks at a tank facility.

(m) "Tank facility" means any one, or combination of, aboveground storage tanks, including any piping that is integral to the tank, that contains petroleum and that is used by a single business entity at a single location or site. For purposes of this chapter, a pipe is integrally related to an aboveground storage tank if the pipe is connected to the tank and meets any of the following:

(1) The pipe is within the dike or containment area.

(2) The pipe is between the containment area and the first flange or valve outside the containment area.

(3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.

SEC. 5. Section 25270.3 of the Health and Safety Code is amended to read:

25270.3. A tank facility is subject to this chapter if the tank facility is subject to the oil pollution prevention regulations specified in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations or the tank facility has a storage capacity of 1,320 gallons or more of petroleum.

SEC. 6. Section 25270.4 of the Health and Safety Code is repealed.

SEC. 7. Section 25270.4 is added to the Health and Safety Code, to read:

25270.4. This chapter shall be implemented by the Unified Program Agency. If there is no UPA, the agency authorized pursuant to subdivision (f) of Section 25404.3 shall be deemed to be the UPA for purposes of this chapter and shall implement this chapter.

SEC. 8. Section 25270.4.5 is added to the Health and Safety Code, to read:

25270.4.5. (a) Except as provided in subdivision (b), each owner or operator of a storage tank at a tank facility subject to this chapter shall prepare a spill prevention control and countermeasure plan prepared in accordance with Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. Each owner or operator specified in this subdivision shall conduct periodic inspections of the storage tank to assure compliance with Section 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. In implementing the spill prevention control and countermeasure plan, each owner or operator specified in this subdivision shall fully comply with the latest version of the regulations contained in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) A tank facility located on a farm, nursery, logging site, or construction site is not subject to subdivision (a) if no storage tank at

the location exceeds 20,000 gallons and the cumulative storage capacity of the tank facility does not exceed 100,000 gallons. The owner or operator of a tank facility exempt pursuant to this subdivision shall take the following actions:

(1) Conduct a daily visual inspection of any storage tank storing petroleum.

(2) Allow the UPA to conduct a periodic inspection of the tank facility.

(3) If the UPA determines installation of secondary containment is necessary for the protection of the waters of the state, install a secondary means of containment for each tank or group of tanks where the secondary containment will, at a minimum, contain the entire contents of the largest tank protected by the secondary containment plus precipitation.

SEC. 9. Section 25270.5 of the Health and Safety Code is repealed.

SEC. 10. Section 25270.5 is added to the Health and Safety Code, to read:

25270.5. (a) Except as provided in subdivision (b), at least once every three years, the UPA shall inspect each storage tank or a representative sampling of the storage tanks at each tank facility that has a storage capacity of 10,000 gallons or more of petroleum. The purpose of the inspection shall be to determine whether the owner or operator is in compliance with the spill prevention control and countermeasure plan requirements of this chapter.

(b) The UPA may develop an alternative inspection and compliance plan, subject to approval by the secretary.

(c) An inspection conducted pursuant to this section does not require the oversight of a professional engineer. The person conducting the inspection shall meet both of the following requirements:

(1) Complete an aboveground storage tank training program, which shall be established by the secretary.

(2) Satisfactorily pass an examination developed by the secretary on the spill prevention control and countermeasure plan provisions and safety requirements for aboveground storage tank inspections.

SEC. 11. Section 25270.6 of the Health and Safety Code is amended to read:

25270.6. (a) (1) On or before January 1, 2009, and on or before January 1 annually thereafter, each owner or operator of a tank facility subject to this chapter shall file with the UPA a tank facility statement that shall identify the name and address of the tank facility, a contact person for the tank facility, the total storage capacity of the tank facility, and the location, size, age, and contents of each storage tank that exceeds 10,000 gallons in capacity and that holds a substance containing at least 5 percent of petroleum. A copy of a statement submitted previously

pursuant to this section may be submitted in lieu of a new tank facility statement if no new or used storage tanks have been added to the facility or if no significant modifications have been made. For purposes of this section, a significant modification includes, but is not limited to, altering existing storage tanks or changing spill prevention or containment methods.

(2) Notwithstanding paragraph (1), an owner or operator of a tank facility that submits a business plan, as defined in subdivision (e) of Section 25501, to the UPA, and that complies with Sections 25503.5, 25505, and 25510, satisfies the requirement in paragraph (1) to file a tank facility statement.

(b) Each year, commencing in calendar year 2010, each owner or operator of a tank facility who is subject to the requirements of subdivision (a) shall pay a fee to the UPA, on or before a date specified by the UPA. The governing body of the UPA shall establish a fee, as part of the single fee system implemented pursuant to Section 25404.5, at a level sufficient to pay the necessary and reasonable costs incurred by the UPA in administering this chapter, including, but not limited to, inspections, enforcement, and administrative costs. The UPA shall also implement the fee accountability program established pursuant to subdivision (c) of Section 25404.5 and the regulations adopted to implement that program. The UPA may provide for a waiver of these fees when a state or local government agency submits a tank facility statement.

SEC. 12. Section 25270.7 of the Health and Safety Code is repealed.

SEC. 13. Section 25270.8 of the Health and Safety Code is amended to read:

25270.8. Each owner or operator of a tank facility shall immediately, upon discovery, notify the Office of Emergency Services and the UPA using the appropriate 24-hour emergency number or the 911 number, as established by the UPA, or by the governing body of the UPA, of the occurrence of a spill or other release of one barrel (42 gallons) or more of petroleum that is required to be reported pursuant to subdivision (a) of Section 13272 of the Water Code.

SEC. 14. Section 25270.9 of the Health and Safety Code is repealed.

SEC. 15. Section 25270.9 is added to the Health and Safety Code, to read:

25270.9. (a) The board and the regional board may oversee cleanup or abatement efforts, or cause cleanup or abatement efforts, of a release from a storage tank at a tank facility.

(b) The reasonable expenses of the board and the regional board incurred in overseeing, or contracting for, cleanup or abatement efforts that result from a release at a tank facility is a charge against the owner

or operator of the tank facility. Expenses reimbursable to a public agency under this section are a debt of the tank facility owner or operator, and shall be collected in the same manner as in the case of an obligation under a contract, express or implied.

(c) Expenses recovered by the board or a regional board pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the board, upon appropriation by the Legislature, to assist regional boards and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

SEC. 16. Section 25270.10 of the Health and Safety Code is repealed.

SEC. 17. Section 25270.11 of the Health and Safety Code is repealed.

SEC. 18. Section 25270.11 is added to the Health and Safety Code, to read:

25270.11. (a) All moneys in the Environmental Protection Trust Fund may be expended, upon appropriation by the Legislature, in the following manner:

(1) A portion of the funds, in an amount determined by the secretary in consultation with the UPAs, to a training account established and maintained by the secretary, to be used for purposes of training UPA personnel in the requirements of this chapter.

(2) All remaining funds in the Environmental Protection Trust Fund, shall be allocated to the UPAs, in accordance with a formula and process determined by the secretary in consultation with the UPAs. The UPAs shall expend those funds for the purpose of implementing this chapter. Eighty percent or less of each UPA's allocation may be distributed to the UPA in advance of actual expenditure by the UPA.

(b) All moneys remaining in the training account established pursuant to paragraph (1) of subdivision (a), as of June 1, 2011, may be expended pursuant to paragraph (2) of subdivision (a), upon appropriation by the Legislature.

(c) All moneys remaining in the Environmental Protection Trust Fund that have not been expended, as of June 1, 2011, shall be expended pursuant to paragraph (2) of subdivision (a), upon appropriation by the Legislature.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 19. Section 25270.12 of the Health and Safety Code is amended to read:

25270.12. (a) Any owner or operator of a tank facility who fails to prepare a spill prevention control and countermeasure plan in compliance with subdivision (a) of Section 25270.4.5, to file a tank facility statement pursuant to subdivision (a) of Section 25270.6, to submit the fee required by subdivision (b) of Section 25270.6, to report spills as required by Section 25270.8, or otherwise to comply with the requirements of this chapter, is subject to a civil penalty of not more than five thousand dollars ($5,000) for each day on which the violation continues. If the owner or operator commits a second or subsequent violation, a civil penalty of not more than ten thousand dollars ($10,000) for each day on which the violation continues may be imposed.

(b) (1) The civil penalties provided by this section may be assessed and recovered in a civil action brought by the city attorney or district attorney on behalf of the UPA.

(2) Fifty percent of all penalties assessed and recovered in a civil action brought on behalf of a UPA pursuant to this subdivision shall be deposited into a unified program account established by the UPA for the purpose of carrying out the functions of the unified program and 50 percent shall be paid to the office of the city attorney or district attorney, whoever brought that action.

(c) (1) The civil penalties provided in this section may be assessed and recovered in a civil action brought by the Attorney General on behalf of the board or a regional board, or on behalf of the people of the State of California.

(2) All penalties assessed and recovered in a civil action brought pursuant to this subdivision shall be deposited in the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the board, upon appropriation by the Legislature, to assist regional boards and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

(d) The city attorney, district attorney, or the Attorney General may seek to enjoin, in any court of competent jurisdiction, any person believed to be in violation of this chapter.

(e) The penalties specified in this section are in addition to any other penalties provided by law.

SEC. 20. Section 25270.13 of the Health and Safety Code is amended to read:

25270.13. (a) This chapter does not preempt local storage tank ordinances, in effect as of August 16, 1989, that meet or exceed the standards prescribed by this chapter.

(b) This chapter does not preempt the authority granted to the board and the regional boards under the Porter Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

SEC. 21. Section 25404 of the Health and Safety Code 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, are 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 requirements of Chapter 6.67 (commencing with Section 25270) concerning aboveground storage tanks.

(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.

SEC. 21.5. Section 25404 of the Health and Safety Code 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, are 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 requirements of Chapter 6.67 (commencing with Section 25270) concerning aboveground storage tanks.

(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) (A) 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 to the maximum extent feasible within the constraints of federal and state statutes, and consistent with Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(B) For the hazardous materials inventory information required to be submitted pursuant to Section 25509, any claims by a business that the information is a trade secret as that term is defined in Section 6254.7 of the Government Code and Section 1060 of the Evidence Code shall be handled in accordance with the provisions of Section 25511.

(3) (A) To the extent funding is available by January 1, 2010, 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 and Section 25509 for all hazardous materials.

(5) Using information required to be submitted pursuant to Section 25509 that is part of the statewide database, within six months of the establishment of the statewide database pursuant to subparagraph (A) of paragraph (3), the department shall develop and post on its Internet Web site baseline hazardous materials use information, and shall update that information at least annually. The department shall develop its hazardous materials use baseline information in consultation with the Office of Environmental Health Hazard Assessment consistent with the environmental protection indicators developed pursuant to Chapter 4 (commencing with Section 71080) of Part 2 of Division 34 of the Public Resources Code.

SEC. 22. Section 25404.1.1 of the Health and Safety Code is amended to read:

25404.1.1. (a) If the unified program agency determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty, in accordance with the following:

(1) Except as provided in paragraph (5), if the order is for a violation of Chapter 6.5 (commencing with Section 25100), the violator shall be subject to the applicable administrative penalties provided by that chapter.

(2) If the order is for a violation of Chapter 6.7 (commencing with Section 25280), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), (c), and (e) of Section 25299.

(3) If the order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25514.5.

(4) If the order is for a violation of Article 2 (commencing with Section 25531) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25540 or 25540.5.

(5) If the order is for a violation of Section 25270.4.5, the violator shall be liable for a penalty of not more than five thousand dollars ($5,000) for each day on which the violation continues. If the violator commits a second or subsequent violation, a penalty of not more than ten thousand dollars ($10,000) for each day on which the violation continues may be imposed.

(b) In establishing a penalty amount and ordering that the violation be corrected pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If the UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation with the UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by the UPA under this section may select the hearing officer specified in either paragraph (1) or (2) in the notice of defense filed with the UPA pursuant to subdivision (d). If a notice of defense is filed but no hearing officer is selected, the UPA may select the hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the hearing shall be scheduled using one of the following:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions.

(2) (A) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a UPA hearing officer pursuant to this paragraph, the UPA shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by a UPA shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(B) A UPA, or a person requesting a hearing on an order issued by a UPA may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the UPA has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(f) The hearing decision issued pursuant to paragraph (2) of subdivision (e) shall be effective and final upon issuance by the UPA. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

(g) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA if the UPA finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the UPA determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(h) A decision issued pursuant to paragraph (2) of subdivision (e) may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall

not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(i) All administrative penalties collected from actions brought by a UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

(j) The UPA shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the UPA to issue orders.

(k) (1) A unified program agency may suspend or revoke any unified program facility permit, or an element of a unified program facility permit, for not paying the permit fee or a fine or penalty associated with the permit in accordance with the procedures specified in this subdivision.

(2) If a permittee does not comply with a written notice from the unified program agency to the permittee to make the payments specified in paragraph (1) by the required date provided in the notice, the unified program agency may suspend or revoke the permit or permit element. If the permit or permit element is suspended or revoked, the permittee shall immediately discontinue operating that facility or function of the facility to which the permit element applies until the permit is reinstated or reissued.

(3) A permittee may request a hearing to appeal the suspension or revocation of a permit or element of a permit pursuant to this subdivision by requesting a hearing using the procedures provided in subdivision (d).

(*l*) This section does not do any of the following:

(1) Otherwise affect the authority of a UPA to take any other action authorized by any other provision of law, except the UPA shall not require a person to pay a penalty pursuant to this section and pursuant to a local ordinance for the same violation.

(2) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(3) Prevent the UPA from cooperating with, or participating in, a proceeding specified in paragraph (2).

SEC. 23. Section 25404.5 of the Health and Safety Code is amended to read:

25404.5. (a) (1) Each certified unified program agency shall institute a single fee system, which shall replace the fees levied pursuant to Sections 25201.14 and 25205.14, except for transportable treatment units

permitted under Section 25200.2, and which shall also replace any fees levied by a local agency pursuant to Sections 25143.10, 25287, 25513, and 25535.5, or any other fee levied by a local agency specifically to fund the implementation of the provisions specified in subdivision (c) of Section 25404. The single fee system shall additionally include the fee established pursuant to Section 25270.6. Notwithstanding Sections 25143.10, 25201.14, 25287, 25513, and 25535.5, a person who complies with the certified unified program agency's "single fee system" fee shall not be required to pay any fee levied pursuant to those sections, except for transportable treatment units permitted under Section 25200.2.

(2) (A) The governing body of the local certified unified program agency shall establish the amount to be paid by each person regulated by the unified program under the single fee system at a level sufficient to pay the necessary and reasonable costs incurred by the certified unified program agency and by any participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3.

(B) The secretary shall establish the amount to be paid when the unified program agency is a state agency.

(3) The fee system may also be designed to recover the necessary and reasonable costs incurred by the certified unified program agency, or a participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3, in administering provisions other than those specified in subdivision (c) of Section 25404, if the implementation and enforcement of those provisions has been incorporated as part of the unified program by the certified unified program agency pursuant to subdivision (b) of Section 25404.2, and if the single fee system replaces any fees levied as of January 1, 1994, to fund the implementation of those additional provisions.

(4) The amount to be paid by a person regulated by the unified program may be adjusted to account for the differing costs of administering the unified program with respect to that person's regulated activities.

(b) (1) Except as provided in subdivision (d), the single fee system instituted by each certified unified program agency shall include an assessment on each person regulated by the unified program of a surcharge, the amount of which shall be determined by the secretary annually, to cover the necessary and reasonable costs of the state agencies in carrying out their responsibilities under this chapter. The secretary may adjust the amount of the surcharge to be collected by different certified unified program agencies to reflect the different costs incurred by the state agencies in supervising the implementation of the unified program in different jurisdictions, and in supervising the implementation

of the unified program in those jurisdictions for which the secretary has waived the assessment of the surcharge pursuant to subdivision (d). The certified unified program agency may itemize the amount of the surcharge on any bill, invoice, or return that the agency sends to a person regulated by the unified program. Each certified unified program agency shall transmit all surcharge revenues collected to the secretary on a quarterly basis. The surcharge shall be deposited in the Unified Program Account, which is hereby created in the General Fund and which may be expended, upon appropriation by the Legislature, by state agencies for the purposes of implementing this chapter.

(2) On or before January 10, 2001, the secretary shall report to the Legislature on whether the number of persons subject to regulation by the unified program in any county is insufficient to support the reasonable and necessary cost of operating the unified program using only the revenues from the fee. The secretary's report shall consider whether the surcharge required by subdivision (a) should include an assessment to be used to supplement the funding of unified program agencies that have a limited number of entities regulated under the unified program.

(c) Each certified unified program agency and the secretary shall, before the institution of the single fee system and the assessment of the surcharge, implement a fee accountability program designed to encourage more efficient and cost-effective operation of the program for which the single fee and surcharge are assessed. The fee accountability programs shall include those elements of the requirements of the plan adopted pursuant to former Section 25206, as it read on January 1, 1995, that the secretary determines are appropriate.

(d) The secretary may waive the requirement for a county to assess a surcharge pursuant to subdivision (b), if both of the following conditions apply:

(1) The county meets all of the following conditions:

(A) The county submits an application to the secretary for certification on or before January 1, 1996, that incorporates all of the requirements of this chapter, and includes the county's request for a waiver of the surcharge, and contains documentation that demonstrates, to the satisfaction of the secretary, both of the following:

(i) That the assessment of the surcharge will impose a significant economic burden on most businesses within the county.

(ii) That the combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(B) The application for certification, including the information required by subparagraph (A), is determined by the secretary to be

complete, on or before April 30, 1996. The secretary, for good cause, may grant an extension of that deadline of up to 90 days.

(C) The county is certified by the secretary on or before December 31, 1996.

(D) On or before January 1, 1994, the county completed the consolidation of the administration of the hazardous waste generator program, the hazardous materials release response plans and inventories program, and the underground storage tank program, referenced in paragraphs (1), (3), and (4) of subdivision (c) of Section 25404, into a single program within the county's jurisdiction.

(E) The county demonstrates that it will consolidate the administration of all programs specified in subdivision (c) of Section 25404, and that it will also consolidate the administration of at least one additional program that regulates hazardous waste, hazardous substances, or hazardous materials, as specified in subdivision (d) of Section 25404.2, other than the programs specified in subdivision (c) of Section 25404, into a single program to be administered by a single agency in the county's jurisdiction at the time that the county's certification by the secretary becomes effective.

(2) The secretary makes all of the following findings:

(A) The county meets all of the criteria specified in paragraph (1).

(B) The assessment of the surcharge would impose a significant economic burden on most businesses within the county.

(C) The combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) would exceed the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(D) The waiver of the surcharge for those counties applying for and qualifying for a waiver, and the resulting increase in the surcharge for other counties, would not, when considered cumulatively, impose a significant economic burden on businesses in any other county that does not apply for, or does not meet the criteria for, a waiver of the surcharge.

(e) The secretary shall review all of the requests for a waiver of the surcharge made pursuant to subdivision (d) simultaneously, so as to adequately assess the cumulative impact of granting the requested waivers on businesses in those counties that have not applied, or do not qualify, for a waiver, and shall grant or deny all requests for a waiver of the surcharge within 30 days from the date that the secretary certifies all counties applying, and qualifying, for a waiver. If the secretary finds that the grant of a waiver of the surcharge for all counties applying and qualifying for the waiver will impose a significant economic burden on businesses in one or more other counties, the secretary shall take either of the following actions:

(1) Deny all of the applications for a waiver of the surcharge.

(2) Approve only a portion of the waiver requests for counties meeting the criteria set forth in subdivision (d), to the extent that the approved waivers, when taken as a whole, meet the condition specified in subparagraph (D) of paragraph (2) of subdivision (d). In determining which of the counties' waiver requests to grant, the secretary shall consider all of the following factors:

(A) The relative degree to which the assessment of the surcharge will impose a significant economic burden on most businesses within each county applying and qualifying for a waiver.

(B) The relative degree to which the combined dollar amount of the surcharge and the single fee system to be assessed, pursuant to subdivision (a), by each county applying and qualifying for a waiver exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(C) The relative extent to which each county applying and qualifying for a waiver has incorporated, or will incorporate, upon certification, additional programs pursuant to subdivision (d) of Section 25404.2, into the unified program within the county's jurisdiction.

(f) The secretary may, at any time, terminate a county's waiver of the surcharge granted pursuant to subdivisions (d) and (e) if the secretary determines that the criteria specified in subdivision (d) for the grant of a waiver are no longer met.

SEC. 24. Section 25503.4 of the Health and Safety Code is amended to read:

25503.4. (a) The office shall adopt a format that allows persons subject to two or more of the following requirements to meet those requirements in one document:

(1) The business plan required by this chapter.

(2) The risk management plan required by Section 25534.

(3) The contingency plan required by Division 4.5 (commencing with Section 66001) of Title 22 of the California Code of Regulations and by Part 262 (commencing with Section 262.10), Part 264 (commencing with Section 264.1), or Part 265 (commencing with Section 265.1) of Title 40 of the Code of Federal Regulations.

(4) The spill prevention control and countermeasure plan required by Section 25270.4.5 and by Part 112 (commencing with Section 112.1) or by Part 300 (commencing with Section 300.1) of Title 40 of the Code of Federal Regulations.

(5) Any accident or spill prevention plan or response plan required by Chapter 6.7 (commencing with Section 25280) or by regulations adopted pursuant to that chapter or required by an underground storage tank ordinance adopted by a city or county.

(6) The interim marine facility oil spill contingency plan required by Section 8670.29 of the Government Code and the marine facility oil spill contingency plan required by Section 8670.31 of the Government Code.

(b) The format required by subdivision (a) shall be organized as follows:

(1) A central element that will enable persons using the format to report information and data common to all of the requirements described in subdivision (a).

(2) Appendices that will contain the additional information unique to each individual requirement described in subdivision (a).

(c) The office shall adopt the format required by subdivision (a) in consultation with administering agencies and the Information Management Subcommittee of the Chemical Emergency Planning and Response Commission and in cooperation with the State Water Resources Control Board, the Department of Fish and Game, and the department. The adoption of the format is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be completed by January 1, 1995. To the extent feasible, and within the limits of budgetary constraints, the office, the State Water Resources Control Board, the Department of Fish and Game, and the department shall convene workshops and other public meetings to obtain public assistance on the development of the format.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 26. Section 21.5 of this bill incorporates amendments to Section 25404 of the Health and Safety Code proposed by both this bill and AB 558. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 25404 of the Health and Safety Code, and (3) this bill is enacted after AB 558, in which case Section 21 of this bill shall not become operative.

CHAPTER 627

An act to add Sections 1798.88 and 1798.89 to the Civil Code, to add Section 9526.5 to the Commercial Code, to add Section 66018.55 to the Education Code, and to amend Section 27361 of, to add Sections 6254.27, 6254.28, 6254.29, and 15705 to, and to add Article 3.5 (commencing

with Section 27300) to Chapter 6 of Part 3 of Division 2 of Title 3 of, the Government Code, relating to social security numbers.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 1798.89 is added to the Civil Code, to read:

1798.89. Unless otherwise required to do so by state or federal law, no person, entity, or government agency shall present for recording or filing with a county recorder a document that is required by any provision of law to be open to the public if that record displays more than the last four digits of a social security number.

SEC. 2. Section 9526.5 is added to the Commercial Code, to read:

9526.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Official filing" means the permanent archival filing of all instruments, papers, records, and attachments as accepted for filing by a filing office.

(2) "Public filing" means a filing that is an exact copy of an official filing except that any social security number contained in the copied filing is truncated. The public filing shall have the same legal force and effect as the official filing.

(3) "Truncate" means to redact at least the first five digits of a social security number.

(4) "Truncated social security number" means a social security number that displays no more than the last four digits of the number.

(b) For every filing containing an untruncated social security number filed before August 1, 2007, a filing office shall create a public filing.

(c) A filing office shall post a notice on its Web site informing filers not to include social security numbers in any portion of their filings. A filing office's online filing system shall not contain a field requesting a social security number.

(d) Beginning August 1, 2007, for every filing containing an untruncated social security number filed by means other than the filing office's Web site, a filing office shall create a public filing.

(e) When a public filing version of an official filing exists, both of the following shall apply:

(1) Upon a request for inspection, copying, or any other public disclosure of an official filing that is not exempt from disclosure, a filing office shall make available only the public filing version of that filing.

(2) A filing office shall publicly disclose an official filing only in response to a subpoena or order of a court of competent jurisdiction.

(3) Nothing in this article shall be construed to restrict, delay, or modify access to any official filing, or modify any existing agreements regarding access to any official filing, prior to the creation and availability of a public filing version of that official filing.

(f) A filing office shall be deemed to be in compliance with the requirements of this section and shall not be liable for failure to truncate a social security number if he or she uses due diligence to locate social security numbers in official records and truncate the social security numbers in the public filing version of those official filings. The use of an automated program with a high rate of accuracy shall be deemed to be due diligence.

(g) In the event that a filing office fails to truncate a social security number contained in a record pursuant to subdivision (b) or (d), any person may request that the filing office truncate the social security number contained in that record. Notwithstanding that a filing office may be deemed to be in compliance with this section pursuant to subdivision (f), a filing office that receives a request that identifies the exact location of an untruncated social security number that is required to be truncated pursuant to subdivision (b) or (d) within a specifically identified record, shall truncate that number within 10 business days of receiving the request. The public filing with the truncated social security number shall replace the record with the untruncated number.

(h) The Secretary of State shall not produce or make available financing statements in the form and format described in Section 9521 that provide a space identified for the disclosure of the social security number of an individual.

(i) The Secretary of State shall produce and make available financing statements in the form and format described in Section 9521, except that the financing statements shall not provide a space identified for the disclosure of the social security number of an individual.

(j) The provisions of this section shall not apply to a county recorder.

SEC. 3. Section 66018.55 is added to the Education Code, to read:

66018.55. (a) As used in this section "college and university" shall include all institutions of public higher education and all independent institutions of higher education.

(b) The Office of Privacy Protection in the Department of Consumer Affairs shall establish a task force to conduct a review of the use by all colleges and universities of social security numbers in order to recommend practices to minimize the collection, use, storage, and retention of social security numbers in relation to academic and operational needs and applicable legal requirements.

(c) The task force shall be known as the "College and University Social Security Number Task Force." The Office of Privacy Protection shall determine the composition of the task force, which shall include, but not be limited to, all of the following:

(1) Two representatives from each of the three institutions of public higher education.

(2) Two representatives of the California Association of Independent Colleges and Universities.

(3) Two representatives each from two organizations devoted to the protection of personal privacy.

(4) One representative from a national organization devoted to the management of informational technology in higher education.

(5) One representative from the business community with expertise in technological solutions to privacy concerns.

(6) One representative each from the Assembly Committee on Judiciary and the Senate Committee on Judiciary.

(d) The task force shall seek input, as deemed necessary and appropriate, from all of the following:

(1) Representatives of organizations with expertise in technical policy and practices of Internet disclosure, private policy relevant to Internet disclosure, and fostering public integrity and accountability.

(2) The constituencies of the college and university communities, including students, staff, and faculty.

(e) The task force shall review and make recommendations to minimize the collection, use, storage, and retention of social security numbers by California colleges and universities and shall include, but not be limited to, all of the following:

(1) A survey of best practices at colleges and universities and the costs of implementing those best practices.

(2) The necessary use and protection of social security numbers for all of the following:

(A) Research purposes.

(B) Academic purposes, including, but not limited to, academic research, admission, financial aid, and other related operational uses.

(C) Operational uses by academic medical centers, including, but not limited to, patient identification, tracking, and care.

(D) Business purposes, including, but not limited to, the provision of employee benefits, tax purposes, loan programs, and other requirements imposed by current state and federal statutes and regulations.

(E) Any other operational need of the college or university.

(3) Current personal privacy protections provided to students, applicants, staff, and faculty of colleges and universities.

(4) Existing state and federal legal requirements, including regulatory requirements, mandating the use of social security numbers at colleges and universities.

(5) The possible use of personal identifiers or other substitutes for social security numbers that protect personal information and meet the operational needs of colleges and universities.

(6) The cost of funding any recommendations presented by the task force, including those that are of minimal cost and can be implemented immediately and those that require additional funding or time to implement.

(f) The task force shall commence meetings no later than May 1, 2008.

(g) (1) On or before July 1, 2010, the task force shall submit a final report of its findings and recommendations to the Office of Privacy Protection, and to the Assembly Committee on Judiciary and the Senate Committee on Judiciary.

(2) The final report shall also include a list of the existing uses of social security numbers common among colleges and universities for routine operations and compliance with state and federal laws.

(3) The findings and recommendations of the task force shall be informational only and shall not be binding on any college or university.

SEC. 4. Section 6254.27 is added to the Government Code, to read:

6254.27. Nothing in this chapter shall be construed to require the disclosure by a county recorder of any "official record" if a "public record" version of that record is available pursuant to Article 3.5 (commencing with Section 27300) of Chapter 6 of Part 3 of Division 2 of Title 3.

SEC. 5. Section 6254.28 is added to the Government Code, to read:

6254.28. Nothing in this chapter shall be construed to require the disclosure by a filing office of any "official record" if a "public record" version of that record is available pursuant to Section 9526.5 of the Commercial Code.

SEC. 6. Section 6254.29 is added to the Government Code, to read:

6254.29. (a) It is the intent of the Legislature that, in order to protect against the risk of identity theft, local agencies shall redact social security numbers from records before disclosing them to the public pursuant to this chapter.

(b) Nothing in this chapter shall be construed to require a local agency to disclose a social security number.

(c) This section shall not apply to records maintained by a county recorder.

SEC. 7. Section 15705 is added to the Government Code, to read:

15705. Notwithstanding any other provision of law, unless prohibited by federal law, the Franchise Tax Board shall truncate social security numbers on lien abstracts and any other records created by the board that are disclosable under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 before disclosing the record to the public. For purposes of this section, "truncate" means to redact the first five digits of a social security number.

SEC. 8. Article 3.5 (commencing with Section 27300) is added to Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code, to read:

Article 3.5. Social Security Number Truncation Program

27300. As used in this article, the following terms have the following meanings:

(a) "Official record" means the permanent archival record of all instruments, papers, and notices as accepted for recording by a county recorder.

(b) "Public record" means a record that is in an electronic format and is an exact copy of an official record except that any social security number contained in the copied record is truncated. The public record shall have the same legal force and effect as the official record.

(c) "Truncate" means to redact the first five digits of a social security number.

(d) "Truncated social security number" means a social security number that displays only the last four digits of the number.

27301. The county recorder of each county shall establish a social security number truncation program in order to create a public record version of each official record. The program shall include both of the following components, which the recorder shall implement concurrently:

(a) For each official record recorded between January 1, 1980, and December 31, 2008, the recorder shall create in an electronic format an exact copy of the record except that any social security number contained in the copied record shall be truncated. In order to create a public record copy, the recorder shall first truncate the social security numbers in all records that already exist in an electronic format and then create an electronic version of all other records and truncate social security numbers contained in those records. Each group of records shall be handled in descending chronological order.

(b) For each official record recorded on or after January 1, 2009, the recorder shall create a copy of that record in an electronic format and truncate any social security number contained in that record.

(c) Nothing in this article shall be construed to restrict, delay, or modify access to any official record, or modify any existing agreements regarding access to any official record, prior to the creation and availability of a public record version of that official record. A county recorder shall not charge any new fee or increase any existing fees in order to fund the social security number truncation program pursuant to this article, except as provided in subdivision (d) of Section 27361.

(d) Notwithstanding subdivisions (a) and (b), a county recorder shall not be required to create a public record version of an official record if the fee authorized in Section 27304 is determined by the recorder to be insufficient to meet the cost of creating the public record version. In that case, the county recorder shall determine whether the fee is sufficient to meet the cost of creating a public record version of only a fraction of the official records described in subdivisions (a) and (b). If the fee is sufficient to meet the cost of creating a public record version of a fraction of the official records, the recorder shall be required to create a public record version of that fraction only.

27302. (a) A county recorder shall be deemed to be in compliance with the requirements of Section 27301 and shall not be liable for failure to truncate a social security number if he or she uses due diligence to locate social security numbers in official records and truncate social security numbers in the public record version of those official records. The use of an automated program with a high rate of accuracy shall be deemed to be due diligence.

(b) In the event that a county recorder fails to truncate a social security number contained in a public record, any person may request that the county recorder truncate the social security number contained in that record. Notwithstanding that a county recorder may be deemed to be in compliance with Section 27301 pursuant to subdivision (a), a county recorder that receives a request that identifies the exact location of an untruncated social security number within a specifically identified public record, shall truncate that number within 10 business days of receiving the request. The public record with the truncated social security number shall replace the record with the untruncated number.

27303. When a public record version of an official record exists, both of the following shall apply:

(a) Upon a request for inspection, copying, or any other public disclosure of an official record that is not exempt from disclosure, a county recorder shall make available only the public record version of that record.

(b) A county recorder shall publicly disclose an official record only in response to a subpoena or order of a court of competent jurisdiction.

27304. (a) Each county may use funds generated by fees authorized by subdivision (d) of Section 27361 to implement a social security number truncation program required by this article.

(b) No later than June 1, 2008, the county recorder of each county shall petition the board of supervisors in that county for the authority to levy the fee authorized by subdivision (d) of Section 27361.

(c) It is the intent of the Legislature that in the interest of enabling county recorders to act expeditiously to protect the privacy of Californians, counties be permitted to seek revenue anticipation loans or other outside funding sources for the implementation of a social security number truncation program to be secured by the anticipated revenue from the fee authorized by subdivision (d) of Section 27361.

27305. (a) To assist the Legislature in monitoring the progress of each county recorder's social security number truncation program, the County Recorders Association of California, no later than January 1, 2009, and annually thereafter, shall submit to the chairpersons of the Assembly Committee on Judiciary and of the Senate Committee on Judiciary, and to the Office of Privacy Protection, or any successor agency, a report on the progress each county recorder has made in complying with this article.

(b) Upon the Office of Privacy Protection making a determination that all counties have completed the component of the program described in subdivision (a) of Section 27301, the report described in subdivision (a) of this section shall no longer be required.

27307. A county recorder is authorized to take all actions required by this article notwithstanding subdivision (d) of Section 27203 or any other provision of law.

SEC. 9. Section 27361 of the Government Code is amended to read:

27361. (a) The fee for recording and indexing every instrument, paper, or notice required or permitted by law to be recorded is four dollars ($4) for recording the first page and three dollars ($3) for each additional page, except the recorder may charge additional fees as follows:

(1) If the printing on printed forms is spaced more than nine lines per vertical inch or more than 22 characters and spaces per inch measured horizontally for not less than three inches in one sentence, the recorder shall charge one dollar ($1) extra for each page or sheet on which printing appears excepting, however, the extra charge shall not apply to printed words which are directive or explanatory in nature for completion of the form or on vital statistics forms. Fees collected under this paragraph are not subject to subdivision (b) or (c).

(2) If a page or sheet does not conform with the dimensions described in subdivision (a) of Section 27361.5, the recorder shall charge three dollars ($3) extra per page or sheet of the document. The extra charge

authorized under this paragraph shall be available solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents. Fees collected under this paragraph are not subject to subdivision (b) or (c).

(b) One dollar ($1) of each three dollar ($3) fee for each additional page shall be deposited in the county general fund.

(c) Notwithstanding Section 68085, one dollar ($1) for recording the first page and one dollar ($1) for each additional page shall be available solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents.

(d) (1) In addition to all other fees authorized by this section, a county recorder may charge a fee of one dollar ($1) for recording the first page of every instrument, paper, or notice required or permitted by law to be recorded, as authorized by each county's board of supervisors. The funds generated by this fee shall be used only by the county recorder collecting the fee for the purpose of implementing a social security number truncation program pursuant to Article 3.5 (commencing with Section 27300).

(2) A county recorder shall not charge the fee described in paragraph (1) after December 31, 2017, unless the county recorder has received reauthorization by the county's board of supervisors. A county recorder shall not seek reauthorization of the fee by the board before June 1, 2017, or after December 31, 2017. In determining the additional period of authorization, the board shall consider the review described in paragraph (4) of this subdivision.

(3) Notwithstanding paragraph (2), a county recorder who, pursuant to subdivision (c) of Section 27304, secures a revenue anticipation loan, or other outside source of funding, for the implementation of a social security truncation program, may be authorized to charge the fee described in paragraph (1) for a period not to exceed the term of repayment of the loan or other outside source of funding.

(4) A county board of supervisors that authorizes the fee described in this subdivision shall require the county auditor to conduct two reviews to verify that the funds generated by this fee are used only for the purpose of the program, as described in Article 3.5 (commencing with Section 27300) and for conducting these reviews. The reviews shall state the progress of the county recorder in truncating recorded documents pursuant to subdivision (a) of Section 27301, and shall estimate any ongoing costs to the county recorder of complying with subdivisions (a) and (b) of Section 27301. The board shall require that the first review be completed not before June 1, 2012, or after December 31, 2013, and

that the second review be completed not before June 1, 2017, or after December 31, 2017. The reviews shall adhere to generally accepted accounting standards, and the review results shall be made available to the public.

SEC. 10. The Legislature finds and declares that Sections 2, 4, 5, and 8 of this act impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect against the risk of identity theft when government documents maintained by county recorders contain social security numbers, it is necessary to enact legislation that ensures the confidentiality of social security numbers.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

However, 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.

CHAPTER 628

An act to amend Sections 10631.5 and 10644 of, and to add Section 10631.7 to, the Water Code, relating to water.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) Increased urban water conservation has the potential to result in significant annual water savings statewide, and therefore can play a fundamental role in promoting sustainable and reliable water supplies statewide.

(b) The California Water Plan as updated in 2005 supports water use efficiency as a foundational action to ensure sustainable water uses.

SEC. 2. Section 10631.5 of the Water Code is amended to read:

10631.5. (a) (1) Beginning January 1, 2009, the terms of, and eligibility for, a water management grant or loan made to an urban water supplier and awarded or administered by the department, state board, or California Bay-Delta Authority or its successor agency shall be conditioned on the implementation of the water demand management measures described in Section 10631, as determined by the department pursuant to subdivision (b).

(2) For the purposes of this section, water management grants and loans include funding for programs and projects for surface water or groundwater storage, recycling, desalination, water conservation, water supply reliability, and water supply augmentation. This funding includes, but is not limited to, funds made available pursuant to Section 75026 of the Public Resources Code.

(3) Notwithstanding paragraph (1), the department shall determine that an urban water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the water demand management measures described in Section 10631, if the urban water supplier has submitted to the department for approval a schedule, financing plan, and budget, to be included in the grant or loan agreement, for implementation of the water demand management measures. The supplier may request grant or loan funds to implement the water demand management measures to the extent the request is consistent with the eligibility requirements applicable to the water management funds.

(4) (A) Notwithstanding paragraph (1), the department shall determine that an urban water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the water demand management measures described in Section 10631, if an urban water supplier submits to the department for approval documentation demonstrating that a water demand management measure is not locally cost effective. If the department determines that the documentation submitted by the urban water supplier fails to demonstrate that a water demand management measure is not locally cost effective, the department shall notify the urban water supplier and the agency administering the grant or loan program within 120 days that the documentation does not satisfy the requirements for an exemption, and include in that notification a detailed statement to support the determination.

(B) For purposes of this paragraph, "not locally cost effective" means that the present value of the local benefits of implementing a water demand management measure is less than the present value of the local costs of implementing that measure.

(b) (1) The department, in consultation with the state board and the California Bay-Delta Authority or its successor agency, and after soliciting public comment regarding eligibility requirements, shall develop eligibility requirements to implement the requirement of paragraph (1) of subdivision (a). In establishing these eligibility requirements, the department shall do both of the following:

(A) Consider the conservation measures described in the Memorandum of Understanding Regarding Urban Water Conservation in California, and alternative conservation approaches that provide equal or greater water savings.

(B) Recognize the different legal, technical, fiscal, and practical roles and responsibilities of wholesale water suppliers and retail water suppliers.

(2) (A) For the purposes of this section, the department shall determine whether an urban water supplier is implementing all of the water demand management measures described in Section 10631 based on either, or a combination, of the following:

(i) Compliance on an individual basis.

(ii) Compliance on a regional basis. Regional compliance shall require participation in a regional conservation program consisting of two or more urban water suppliers that achieves the level of conservation or water efficiency savings equivalent to the amount of conservation or savings achieved if each of the participating urban water suppliers implemented the water demand management measures. The urban water supplier administering the regional program shall provide participating urban water suppliers and the department with data to demonstrate that the regional program is consistent with this clause. The department shall review the data to determine whether the urban water suppliers in the regional program are meeting the eligibility requirements.

(B) The department may require additional information for any determination pursuant to this section.

(3) The department shall not deny eligibility to an urban water supplier in compliance with the requirements of this section that is participating in a multiagency water project, or an integrated regional water management plan, developed pursuant to Section 75026 of the Public Resources Code, solely on the basis that one or more of the agencies participating in the project or plan is not implementing all of the water demand management measures described in Section 10631.

(c) In establishing guidelines pursuant to the specific funding authorization for any water management grant or loan program subject to this section, the agency administering the grant or loan program shall include in the guidelines the eligibility requirements developed by the department pursuant to subdivision (b).

(d) Upon receipt of a water management grant or loan application by an agency administering a grant and loan program subject to this section, the agency shall request an eligibility determination from the department with respect to the requirements of this section. The department shall respond to the request within 60 days of the request.

(e) The urban water supplier may submit to the department copies of its annual reports and other relevant documents to assist the department in determining whether the urban water supplier is implementing or scheduling the implementation of water demand management activities. In addition, for urban water suppliers that are signatories to the Memorandum of Understanding Regarding Urban Water Conservation in California and submit biennial reports to the California Urban Water Conservation Council in accordance with the memorandum, the department may use these reports to assist in tracking the implementation of water demand management measures.

SEC. 3. Section 10631.7 is added to the Water Code, to read:

10631.7. The department, in consultation with the California Urban Water Conservation Council, shall convene an independent technical panel to provide information and recommendations to the department and the Legislature on new demand management measures, technologies, and approaches. The panel shall consist of no more than seven members, who shall be selected by the department to reflect a balanced representation of experts. The panel shall have at least one, but no more than two, representatives from each of the following: retail water suppliers, environmental organizations, the business community, wholesale water suppliers, and academia. The panel shall be convened by January 1, 2009, and shall report to the Legislature no later than January 1, 2010, and every five years thereafter. The department shall review the panel report and include in the final report to the Legislature the department's recommendations and comments regarding the panel process and the panel's recommendations.

SEC. 4. Section 10644 of the Water Code is amended to read:

10644. (a) An urban water supplier shall submit to the department, the California State Library, and any city or county within which the supplier provides water supplies a copy of its plan no later than 30 days after adoption. Copies of amendments or changes to the plans shall be submitted to the department, the California State Library, and any city or county within which the supplier provides water supplies within 30 days after adoption.

(b) The department shall prepare and submit to the Legislature, on or before December 31, in the years ending in six and one, a report summarizing the status of the plans adopted pursuant to this part. The report prepared by the department shall identify the exemplary elements

of the individual plans. The department shall provide a copy of the report to each urban water supplier that has submitted its plan to the department. The department shall also prepare reports and provide data for any legislative hearings designed to consider the effectiveness of plans submitted pursuant to this part.

(c) (1) For the purpose of identifying the exemplary elements of the individual plans, the department shall identify in the report those water demand management measures adopted and implemented by specific urban water suppliers, and identified pursuant to Section 10631, that achieve water savings significantly above the levels established by the department to meet the requirements of Section 10631.5.

(2) The department shall distribute to the panel convened pursuant to Section 10631.7 the results achieved by the implementation of those water demand management measures described in paragraph (1).

(3) The department shall make available to the public the standard the department will use to identify exemplary water demand management measures.

SEC. 5. Section 10644 of the Water Code is amended to read:

10644. (a) An urban water supplier shall submit to the entities listed in subdivision (b) a copy of its plan no later than 30 days after adoption. Copies of amendments or changes to the plans shall be submitted to the entities listed in subdivision (b) within 30 days after adoption.

(b) An urban water supplier shall file a copy of its plan and amendments or changes with each of the following entities:

(1) The department.

(2) Any city or county within which the urban water supplier provides water supplies.

(3) Any groundwater management entity within which the urban water supplier extracts or provides water supplies.

(4) Any agricultural water supplier within which district the urban water supplier provides water supplies.

(5) Any city or county library within which district the urban water supplier provides water supplies.

(6) The California State Library.

(7) Any local agency formation commission within which county the urban water supplier provides water supplies.

(c) The department shall prepare and submit to the Legislature, on or before December 31, in the years ending in six or one, a report summarizing the status of the plans adopted pursuant to this part. The report prepared by the department shall identify the exemplary elements of the individual plans. The department shall provide a copy of the report to each urban water supplier that has submitted its plan to the department. The department shall also prepare reports and provide data for any

legislative hearings designed to consider the effectiveness of plans submitted pursuant to this part.

(d) (1) For the purpose of identifying the exemplary elements of the individual plans, the department shall identify in the report those water demand management measures adopted and implemented by specific urban water suppliers, and identified pursuant to Section 10631, that achieve water savings significantly above the levels established by the department to meet the requirements of Section 10631.5.

(2) The department shall distribute to the panel convened pursuant to Section 10631.7 the results achieved by the implementation of those water demand management measures described in paragraph (1).

(3) The department shall make available to the public the standard the department will use to identify exemplary water demand management measures.

SEC. 6. Section 5 of this bill incorporates amendments to Section 10644 of the Water Code proposed by both this bill and SB 862. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 10644 of the Water Code, and (3) this bill is enacted after SB 862, in which case Section 4 of this bill shall not become operative.

CHAPTER 629

An act to repeal and add Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code, and to amend Sections 12811 and 13005 of the Vehicle Code, relating to anatomical gifts.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code is repealed.

SEC. 2. Chapter 3.5 (commencing with Section 7150) is added to Part 1 of Division 7 of the Health and Safety Code, to read:

CHAPTER 3.5. UNIFORM ANATOMICAL GIFT ACT

7150. This chapter shall be known, and may be cited, as the Uniform Anatomical Gift Act.

7150.10. (a) As used in this chapter, the following terms have the following meanings:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Agent" means an individual who meets either of the following criteria:

(A) He or she is authorized to make health care decisions on the principal's behalf by a power of attorney for health care.

(B) He or she is expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.

(5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 7150.50.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement recorded on the Donate Life California Organ and Tissue Donor Registry or other donor registry.

(6.5) "Domestic partner" means a person who is registered under Section 297 of the Family Code, or otherwise recognized under the law of any state as a domestic partner.

(7) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts, including, but not limited to, the Donate Life California Organ and Tissue Donor Registry.

(9) "Driver's license" means a license or permit issued by the Department of Motor Vehicles to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the Department of Motor Vehicles.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is under 18 years of age.

(16) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) "Reasonably available" means able to be contacted by a procurement organization, without undue effort, and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) "Recipient" means an individual into whose body a decedent's part has been, or is intended to be, transplanted.

(25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Refusal" means a record created under Section 7150.30 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(27) "Sign" means, to do either of the following with the present intent to authenticate or adopt a record:

(A) Execute or adopt a tangible symbol.

(B) Attach to or logically associate with the record an electronic symbol, sound, or process.

(28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood, unless a blood sample is needed for the purpose of research or education.

(31) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(b) This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

7150.15. Subject to Section 7150.35, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 7150.20 by any of the following individuals:

(a) The donor, if the donor is an adult or if the donor is a minor and is either of the following:

(1) An emancipated minor.

(2) Between 15 and 18 years of age, only upon the written consent of a parent or guardian.

(b) An agent of the donor, provided that the power of attorney for health care or other record expressly permits the agent to make an anatomical gift.

7150.20. (a) A donor may make an anatomical gift through any of the following:

(1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card and included on a donor database registry.

(2) Directly through the Donate Life California Organ and Tissue Donor Registry Internet Web site.

(3) In a will.

(4) During a terminal illness or injury of the donor, by any form of communication that clearly expresses the donor's wish, addressed to at least two adults, at least one of whom is a disinterested witness. The witnesses shall memorialize this communication in a writing and sign and date the writing.

(5) As provided in subdivision (b).

(b) A donor or other person authorized to make an anatomical gift under Section 7150.15 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol, indicating that the donor has made an anatomical gift, be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall comply with all of the following:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person.

(2) State that it has been signed and witnessed as provided in paragraph (1).

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

(e) Notwithstanding subdivision (i) of Section 7150.65, a document of gift may designate a particular physician to carry out the recovery procedures. In the absence of this designation, or if the designee is not reasonably available or is deemed by the organ procurement organization not to be qualified to perform the required procedure, the organ procurement organization may authorize another physician or technician to carry out the recovery.

7150.25. (a) Subject to Section 7150.35, a donor or other person authorized to make an anatomical gift under Section 7150.15 may amend or revoke an anatomical gift by either of the following:

(1) A record signed by any of the following and recorded in a donor registry database:

(A) The donor.

(B) The other person.

(C) Subject to subdivision (b), another individual acting at the direction of the donor or of the other person, if the donor or other person is physically unable to sign.

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subparagraph (C) of paragraph (1) of subdivision (a) shall comply with all of the following:

(1) It shall be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person.

(2) It shall state that it has been signed and witnessed as provided in paragraph (1).

(c) Subject to Section 7150.35, a donor or other person authorized to make an anatomical gift under Section 7150.15 may revoke an anatomical gift by the destruction of the document of gift or cancellation of the document of gift on a donor database registry, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness. The witnesses shall memorialize this communication in a writing and sign and date the writing.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subdivision (a).

7150.30. (a) An individual may refuse to make an anatomical gift of the individual's body or part by any of the following:

(1) A record signed by either of the following:

(A) The individual.

(B) Subject to subdivision (b), another individual acting at the direction of the individual if the individual is physically unable to sign.

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death.

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness. The witnesses shall memorialize this communication in a writing and sign and date the writing.

(b) A record signed pursuant to subparagraph (B) of paragraph (1) of subdivision (a) shall comply with both of the following:

(1) It shall be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual.

(2) It shall state that it has been signed and witnessed as provided in paragraph (1).

(c) An individual who has made a refusal may amend or revoke the refusal by any of the following:

(1) In the manner provided in subdivision (a) for making a refusal.

(2) By subsequently making an anatomical gift pursuant to Section 7150.20 that is inconsistent with the refusal.

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in subdivision (h) of Section 7150.35, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

(e) Notwithstanding any provision to the contrary, including, but not limited to, Section 7150.40, only an individual shall make an anatomical gift of all or part of that individual's body or pacemaker, if it is made known that the individual, at the time of death, was a member of a religion, church, sect, or denomination that relies solely upon prayer for healing of disease or that has religious tenets that would be violated by the disposition of the human body or parts or pacemakers for the purposes of transplantation, therapy, research, or education.

7150.35. (a) Except as otherwise provided in subdivision (g) and subject to subdivision (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 7150.20 or an amendment to an anatomical gift of the donor's body or part under Section 7150.25.

(b) A donor's revocation of an anatomical gift of the donor's body or part under Section 7150.25 is not a refusal and does not bar another person specified in Section 7150.15 or 7150.40 from making an anatomical gift of the donor's body or part under Section 7150.20 or 7150.45.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 7150.20 or an amendment to an anatomical gift of the donor's body or part under Section 7150.25, another person may not make, amend, or revoke the gift of the donor's body or part under Section 7150.45.

(d) A revocation of an anatomical gift of a donor's body or part under Section 7150.25 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 7150.20 or 7150.45.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 7150.15, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 7150.15, an anatomical gift of a part for one or more of the purposes set forth in Section 7150.15 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 7150.20 or 7150.45.

(g) Notwithstanding subdivision (a), an individual who is between 15 and 18 years of age may make an anatomical gift for any purpose authorized in this chapter, may limit an anatomical gift to one or more of those purposes, may refuse to make an anatomical gift, or may amend or revoke an anatomical gift, only upon the written consent of the parent or guardian. If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

7150.40. (a) Subject to subdivisions (b) and (c), and unless barred by Section 7150.30 or 7150.35, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the following order of priority:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under subdivision (b) of Section 7150.15 immediately before the decedent's death.

(2) The spouse or domestic partner of the decedent.

(3) Adult children of the decedent.

(4) Parents of the decedent.

(5) Adult siblings of the decedent.

(6) Adult grandchildren of the decedent.

(7) Grandparents of the decedent.

(8) An adult who exhibited special care and concern for the decedent during the decedent's lifetime.

(9) The persons who were acting as the guardians or conservators of the person of the decedent at the time of death.

(10) (A) Any other person having the authority to dispose of the decedent's body, including, but not limited to, a coroner, medical examiner, or hospital administrator, provided that reasonable effort has been made to locate and inform persons listed in paragraphs (1) to (9), inclusive, of their option to make, or object to making, an anatomical gift.

(B) Except in the case where the useful life of the part does not permit, a reasonable effort shall be deemed to have been made when a search for the persons has been underway for at least 12 hours. The search shall include a check of local police missing persons records, examination of personal effects, and the questioning of any persons visiting the decedent before his or her death or in the hospital, accompanying the decedent's body, or reporting the death, in order to obtain information that might lead to the location of any persons listed.

(b) If there is more than one member of a class listed in paragraph (1), (3), (4), (5), (6), (7), or (9) of subdivision (a) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 7150.50 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person shall not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subdivision (a) is reasonably available to make, or to object to the making of, an anatomical gift.

7150.45. (a) A person authorized to make an anatomical gift under Section 7150.40 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subdivision (c), an anatomical gift by a person authorized under Section 7150.40 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under Section 7150.40 may be amended or revoked as follows:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift.

(2) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subdivision (b) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

7150.50. (a) An anatomical gift may be made to any of the following persons named in the document of gift:

(1) A hospital, accredited medical school, dental school, college, university, or organ procurement organization, for research or education.

(2) Subject to subdivision (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part.

(3) An eye bank, or tissue bank.

(b) If an anatomical gift to an individual under paragraph (2) of subdivision (a) cannot be transplanted into the individual, the part passes in accordance with subdivision (g) in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts, or of all parts, is made in a document of gift that does not name a person described in subdivision (a) but identifies the purpose for which an anatomical gift may be used, all of the following rules shall apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subdivision (c), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subdivision (a) and does not identify the purpose of the gift, the gift shall be used only for transplantation or therapy, and the gift passes in accordance with subdivision (g).

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor,” “organ donor,” or “body donor,” or by a symbol or statement of similar import, the gift may be used for transplantation, therapy, research, or education, and the gift passes in accordance with subdivision (g).

(g) For purposes of subdivisions (b), (e), and (f) all of the following rules shall apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under paragraph (2) of subdivision (a), passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subdivisions (a) to (h), inclusive, or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person shall not accept an anatomical gift if the person knows that the gift was not effectively made under Section 7150.20 or 7150.45 or if the person knows that the decedent made a refusal under Section 7150.30 that was not revoked. For purposes of this subdivision, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in paragraph (2) of subdivision (a), nothing in this chapter affects the allocation of organs for transplantation or therapy.

7150.55. (a) All of the following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual.

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by paragraph (1) of subdivision (a) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section, but may be subject to administrative sanctions.

7150.60. (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making

of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 7150.50.

7150.65. (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Donate Life California Organ and Tissue Donor Registry and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization shall be allowed reasonable access to information in the records of the Donate Life California Organ and Tissue Donor Registry to ascertain whether an individual who is at or near death is a donor. Personally identifiable information on a donor registry about a donor shall not be used or disclosed without the express consent of the donor or the person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift. A procurement organization shall not sell the information obtained from the donor registry. A procurement organization shall also comply with all state and federal laws with respect to the protection of a donor's or prospective donor's personally identifiable information.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under Section 7150.50 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this chapter, an examination under subdivision (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subdivision (a), a procurement organization shall make a reasonable search for any person listed in

Section 7150.40 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to subdivision (i) of Section 7150.50, and Section 7151.20, the rights of the person to which a part passes under Section 7150.50 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 7150.50, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Except as provided in subdivision (e) of Section 7150.20, neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

7150.70. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

7150.75. (a) Except as otherwise provided in subdivision (b), a person that, for valuable consideration, knowingly purchases or sells a part for transplantation or therapy, if removal of a part from an individual is intended to occur after the individual's death, is guilty of a felony and is subject to a fine not exceeding fifty thousand dollars ($50,000), or imprisonment not exceeding five years, or both the fine and imprisonment.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

7150.80. (a) A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action or criminal prosecution.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon

representations of an individual listed in paragraphs (2) to (8), inclusive, of subdivision (a) of Section 7150.40 relating to the individual's relationship to the donor or prospective donor, unless the person knows that the representation is untrue.

7150.85. (a) A document of gift is valid if executed in accordance with any of the following:

(1) This chapter.

(2) The laws of the state or country where it was executed.

(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed, or that it was revoked.

7150.90. (a) The California organ procurement organizations designated pursuant to Section 273 and following Title 42 of the United States Code, are hereby authorized to establish a not-for-profit entity that shall be designated the California Organ and Tissue Donor Registrar, which shall establish and maintain the California Organ and Tissue Donor Registry, to be known as the Donate Life California Organ and Tissue Donor Registry. The registry shall contain information regarding persons who have identified themselves as organ and tissue donors upon their death. The registrar shall be responsible for developing methods to increase the number of donors who enroll in the registry.

(b) The registrar shall make available to the federally designated organ procurement organizations (OPOs) in California and the state licensed tissue and eye banks information contained in the registry regarding potential donors on a 24-hour-a-day, seven-day-a-week basis. This information shall be used to expedite a match between identified organ and tissue donors and potential recipients.

(c) The registrar may receive voluntary contributions to support the registry and its activities.

(d) The registrar shall submit an annual written report to the State Public Health Officer and the Legislature that includes all of the following:

(1) The number of donors on the registry.

(2) The changes in the number of donors on the registry.

(3) The general characteristics of donors as may be determined by information provided on the donor registry forms pursuant to Sections 12811 and 13005 of the Vehicle Code.

7151.10. (a) As used in this section the following terms have the following meanings:

(1) "Advance health care directive" means a power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life-support system may be withheld or withdrawn from the prospective donor.

(3) "Health care decision" means any decision made regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none, or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 7150.40. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part shall not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

7151.15. (a) A county coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(b) If a county coroner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner and a post mortem examination is going to be performed, unless the coroner denies recovery in accordance with Section 7151.20, the coroner or designee shall conduct a post mortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.

(c) A part shall not be removed from the body of a decedent under the jurisdiction of a coroner for transplantation, therapy, research, or

education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner shall not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subdivision does not preclude a coroner from performing the medico legal investigation upon the body or parts of a decedent under the jurisdiction of the coroner.

7151.20. (a) On request from a qualified procurement organization, the county coroner may permit the removal of organs that constitute an anatomical gift from a decedent who died under circumstances requiring an inquest by the coroner.

(b) If no autopsy is required, the organs to be removed may be released to the qualified procurement organization.

(c) If an autopsy is required and the county coroner determines that the removal of the organs will not interfere with the subsequent course of an investigation or autopsy, the organs may be released for removal. The autopsy shall be performed following the removal of the organs.

(d) If a county coroner is considering withholding one or more organs of a potential donor for any reason, the county coroner, or his or her designee, upon request from a qualified organ procurement organization, shall be present during the procedure to remove the organs. The county coroner, or his or her designee, may request a biopsy of those organs or deny removal of the organs if necessary. If the county coroner, or his or her designee, denies removal of the organs, the county coroner may do any of the following:

(1) In the investigative report, explain in writing the reasons for the denial.

(2) Provide the explanation to the qualified organ procurement organization.

(e) If the county coroner, or his or her designee, is present during the removal of the organs, the qualified procurement organization requesting the removal of the organ shall reimburse the county of the coroner, or his or her designee, for the actual costs incurred in performing the duty specified in subdivision (d), if reimbursement is requested by the county coroner. The payment shall be applied to the additional costs incurred by the county coroner's office in performing the duty specified in subdivision (d).

(f) The health care professional removing organs from a decedent who died under circumstances requiring an inquest shall file with the county coroner a report detailing the condition of the organs removed and their relationship, if any, to the cause of death.

7151.25. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

7151.30. This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001 et seq.), but does not modify, limit or supersede Section 101(a) of that act (15 U.S.C. Sec. 7001), or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

7151.35. (a) No hospital, physician and surgeon, procurement organization, or other person shall determine the ultimate recipient of an anatomical gift based upon a potential recipient's physical or mental disability, except to the extent that the physical or mental disability has been found by a physician and surgeon, following a case-by-case evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift.

(b) Subdivision (a) shall apply to each part of the organ transplant process. The organ transplant process includes, but is not limited to, all of the following:

(1) The referral from a primary care provider to a specialist.

(2) The referral from a specialist to a transplant center.

(3) The evaluation of the patient for the transplant by the transplant center.

(4) The consideration of the patient for placement on the official waiting list.

(c) A person with a physical or mental disability shall not be required to demonstrate postoperative independent living abilities in order to have access to a transplant if there is evidence that the person will have sufficient, compensatory support and assistance.

(d) The court shall accord priority on its calendar and handle expeditiously any action brought to seek any remedy authorized by law for purposes of enforcing compliance with this section.

(e) This section shall not be deemed to require referrals or recommendations for, or the performance of, medically inappropriate organ transplants.

(f) As used in this section "disabilities" has the same meaning as used in the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq., P.L. 101-336).

7151.40. (a) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician and surgeon.

(b) Following the final disposition of the remains of the donor, upon request of a person specified in Section 7100, the donee shall return the cremated remains of the donor at no cost to the person specified in Section 7100, unless the donor has previously designated otherwise in the document of gift. A person who knowingly returns the cremated

remains of a person other than the donor to a person specified in Section 7100 shall be punished by imprisonment in the county jail for not more than one year.

(c) Residual anatomical materials and human remains donated to hospitals, organ procurement organizations, accredited medical schools, dental schools, colleges, or universities for educational, research, transplantation, or therapeutic use that are no longer useful or needed for those purposes, may be disposed of by those entities through cremation, in the same manner as medical waste, and without additional burial permit requirements if the donor has specifically waived subdivision (b) of Section 7151.40.

SEC. 3. Section 12811 of the Vehicle Code is amended to read:

12811. (a) (1) (A) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

(B) Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

(C) The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words "provisional until age 18."

(b) (1) The front of an application for an original or renewal of a driver's license or identification card shall contain a space for an applicant to give his or her consent to be an organ and tissue donor upon death. An applicant who gives consent shall be directed to read a statement on the back of the application that shall contain the following statement:

"If you marked on the front of the application that you want to be an organ and tissue donor upon death, your consent shall serve as a legally binding document as outlined under the California Uniform Anatomical Gift Act. Except in the case where the donor is under the age of 18, the donation does not require the consent of any other person. For donors under the age of 18, the legal guardian of the donor shall make the final decision regarding the donation. If you want to change your decision to

consent in the future, or if you want to limit the donation to specific organs, tissues, or research, you must contact Donate Life California by mail at 1760 Creekside Oaks Drive, #220, Sacramento, CA 95833, or online at www.donateLIFEcalifornia.org, or www.doneVIDAcalifornia.org."

(2) Notwithstanding any other provision of law, a person under age 18 may register as a donor. However, the legal guardian of that person shall make the final decision regarding the donation.

(3) The department shall collect donor designation information on all applications for an original or renewal driver's license or identification card.

(4) The department shall print the word "DONOR" or another appropriate designation on the face of a driver's license or identification card to a person who registered as a donor on a form issued pursuant to this section.

(5) On a weekly basis, the department shall electronically transmit to Donate Life California, a nonprofit organization established and designated as the California Organ and Tissue Donor Registrar pursuant to Section 7150.90 of the Health and Safety Code, all of the following information on every applicant that has indicated his or her willingness to participate in the organ donation program:

(A) His or her true full name.

(B) His or her residence or mailing address.

(C) His or her date of birth.

(D) His or her California driver's license number or identification card number.

(6) (A) A person who applies for an original or renewal driver's license or identification card may designate a voluntary contribution of two dollars ($2) for the purpose of promoting and supporting organ and tissue donation. This contribution shall be collected by the department, and treated as a voluntary contribution to Donate Life California and not as a fee for the issuance of a driver's license or identification card.

(B) The department may use the donations collected pursuant to this paragraph to cover its actual administrative costs incurred pursuant to paragraphs (3) to (5), inclusive. The department shall deposit all revenue derived pursuant to this paragraph and remaining after the department's deduction for administrative costs in the Donate Life California Trust Subaccount, that is hereby created in the Motor Vehicle Account in the State Transportation Fund. Notwithstanding Section 13340 of the Government Code, all revenue in this subaccount is continuously appropriated, without regard to fiscal years, to the Controller for allocation to Donate Life California and shall be expended for the purpose of increasing participation in organ donation programs.

(7) The enrollment form shall be posted on the Internet Web sites for the department and the California Health and Human Services Agency.

(8) The enrollment shall constitute a legal document pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and shall remain binding after the donor's death despite any express desires of next of kin opposed to the donation. Except as provided in paragraph (2) of subdivision (b), the donation does not require the consent of any other person.

(9) Donate Life California shall ensure that all additions and deletions to the California Organ and Tissue Donor Registry, established pursuant to Section 7150.90 of the Health and Safety Code, shall occur within 30 days of receipt.

(10) Information obtained by Donate Life California for the purposes of this subdivision shall be used for these purposes only and shall not be disseminated further by Donate Life California.

(c) A public entity or employee shall not be liable for loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(d) A contract shall not be awarded to a nongovernmental entity for the processing of driver's licenses, unless the contract conforms to all applicable state contracting laws and all applicable procedures set forth in the State Contracting Manual.

(e) This section shall become operative on July 1, 2006.

SEC. 4. Section 13005 of the Vehicle Code is amended to read:

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit, as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) (1) Upon issuance of a new identification card, or renewal of an identification card, the department shall provide information on organ and tissue donation, including a standardized form to be filled out by an individual who desires to enroll in the California Organ and Tissue Donor Registry with instructions for mailing the completed form to the California Organ and Tissue Donor Registrar established pursuant to subdivision (a) of Section 7150.90 of the Health and Safety Code.

(2) The enrollment form shall be simple in design and shall be produced by the department, in cooperation with the California Organ and Tissue Donor Registrar, and shall require all of the following information to be supplied by the enrollee:

(A) Date of birth, sex, full name, address, and home telephone number.

(B) Consent for organs or tissues to be donated for transplant after death.

(C) Any limitation of the donation to specific organs or tissues.

(3) The form shall also include a description of the process for having a name removed from the registry, and the process for donating money for the benefit of the registry.

(4) The registry enrollment form shall be posted on the Web sites for the department and the California Health and Human Services Agency.

(5) The form shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(6) The registrar shall ensure that all additions and deletions to the registry shall occur within 30 days of receipt.

(7) Information obtained by the registrar for the purposes of this subdivision shall be used for these purposes only and shall not further be disseminated by the registrar.

(c) No contract may be let to any nongovernmental entity for the processing of identification cards unless the department receives two or more qualified bids from independent, responsible bidders.

SEC. 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, 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.

CHAPTER 630

An act to amend Sections 1804, 5002.7, 12500, 12810.5, 12811, 13005, 15210, 22450, and 22452 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 1804 of the Vehicle Code is amended to read:

1804. (a) The abstract shall be made upon a form furnished or approved by the department and shall contain all necessary information to identify the defendant, including, but not limited to, the person's driver's license number, name, and date of birth, the date and nature of the offense, the vessel number, if any, of the vessel involved in the offense, the license plate number of the vehicle involved in the offense, the date of hearing, and the judgment, except that in the case of infractions where the court has not directed the department to suspend or restrict the defendant's driver's license, only the conviction and not the judgment need be set forth in the abstract. The abstract shall also indicate whether the vehicle involved in the offense is a commercial motor vehicle, as defined in subdivision (b) of Section 15210, whether the vehicle was of a type requiring the driver to have a certificate issued pursuant to Section 2512, 12517, 12519, 12523, or 12523.5 or any endorsement issued pursuant to paragraph (2) or (5) of subdivision (a) of Section 15278, and whether the vehicle was transporting hazardous material at the time of the offense, or whether the vessel involved in the offense was a recreational vessel, as defined in subdivision (bb) of Section 651 of the Harbors and Navigation Code.

(b) As to any abstract for which the original arrest and final conviction was for a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code or Section 23152 or 23153 of this code, the abstract shall contain a statement indicating the percentage of alcohol, by weight, in the person's blood whenever that percentage was determined by a chemical test. The information regarding the chemical test shall be compiled if it is available to the clerk of the court. All information required to be compiled pursuant to this subdivision shall be kept confidential in the records of the department pursuant to Section 1808.5. The department may use the information for research and statistical purposes and for determining the eligibility of any person to operate a motor vehicle on the highways of this state. The information shall not be released to any other public or private agency, except for research and statistical summary purposes and, for those purposes, the name and address of the person and any other identifying information shall not be disclosed.

(c) The Legislature finds and declares that blood-alcohol percentages have valuable research potential in providing statistical summary information on impaired drivers but that a specific blood-alcohol percentage is only an item of evidence for purposes of criminal and licensing sanctions imposed by law. The Legislature recognizes that the

accuracy of the determination of a specific blood-alcohol percentage is not the critical determination in a conviction for driving under the influence of an alcoholic beverage if the blood-alcohol percentage exceeds the statutory amount.

SEC. 2. Section 5002.7 of the Vehicle Code is amended to read:

5002.7. (a) For a county of over 20,000 square miles in area, a member of the county board of supervisors, or a county assessor, auditor, controller, treasurer, or tax collector, who is regularly issued a county-owned vehicle may apply to the department for regular series license plates for that vehicle, if a request for that issuance is also made by the county board of supervisors. The application and the request shall be in the manner specified by the department.

(b) Regular series license plates issued pursuant to subdivision (a) shall be surrendered to the department by the board member or administrative officer, as applicable, upon the reassignment of a vehicle, for which those plates have been issued, to a person other than the person who requested those plates.

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 (h) 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 12810.5 of the Vehicle Code is amended to read:

12810.5. (a) Except as otherwise provided in subdivision (b), a person whose driving record shows a violation point count of four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months shall be prima facie presumed to be a negligent operator of a motor vehicle. In applying this subdivision to a driver, if the person requests and appears at a hearing conducted by the department, the department shall give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

(b) (1) A class A or class B licensed driver, except persons holding certificates pursuant to Section 12517, 12519, 12523, 12523.5, or 12527, or an endorsement issued pursuant to paragraph (2) or (5) of subdivision (a) of Section 15278, who is presumed to be a negligent operator pursuant to subdivision (a), and who requests and appears at a hearing and is found to have a driving record violation point count of six or more points in 12 months, eight or more points in 24 months, or 10 or more points in 36 months is presumed to be a prima facie negligent operator. However, the higher point count does not apply if the department reasonably determines that four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months are attributable to the driver's operation of a vehicle requiring only a class C license, and not requiring a certificate or endorsement, or a class M license.

(2) For purposes of this subdivision, each point assigned pursuant to Section 12810 shall be valued at one and one-half times the value otherwise required by that section for each violation reasonably determined by the department to be attributable to the driver's operation of a vehicle requiring a class A or class B license, or requiring a certificate or endorsement described in this section.

(c) The department may require a negligent operator whose driving privilege is suspended or revoked pursuant to this section to submit proof of financial responsibility, as defined in Section 16430, on or before the date of reinstatement following the suspension or revocation. The proof of financial responsibility shall be maintained with the department for three years following that date of reinstatement.

SEC. 5. Section 12811 of the Vehicle Code is amended to read:

12811. (a) (1) (A) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

(B) Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

(C) The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words "provisional until age 18."

(b) (1) The front of an application for an original or renewal of a driver's license or identification card shall contain a space for an applicant to give his or her consent to be an organ and tissue donor upon death. An applicant who gives consent shall be directed to read a statement on the back of the application that shall contain the following statement:

"If you marked on the front of the application that you want to be an organ and tissue donor upon death, your consent shall serve as a legally binding document as outlined under the California Uniform Anatomical Gift Act. Except in the case where the donor is under the age of 18, the donation does not require the consent of any other person. For donors under the age of 18, the legal guardian of the donor shall make the final decision regarding the donation. If you want to change your decision to consent in the future, or if you want to limit the donation to specific organs, tissues, or research, you must contact Donate Life California by mail at 1760 Creekside Oaks Drive, #220, Sacramento, CA 95833, or online at www.donateLIFEcalifornia.org, or www.doneVIDAcalifornia.org."

(2) Notwithstanding any other provision of law, a person under age 18 may register as a donor. However, the legal guardian of that person shall make the final decision regarding the donation.

(3) The department shall collect donor designation information on all applications for an original or renewal driver's license or identification card.

(4) The department shall print the word "DONOR" or another appropriate designation on the face of a driver's license or identification card to a person who registered as a donor on a form issued pursuant to this section.

(5) On a weekly basis, the department shall electronically transmit to Donate Life California, a nonprofit organization established and designated as the California Organ and Tissue Donor Registrar pursuant to Section 7152.7 of the Health and Safety Code, all of the following

information on every applicant that has indicated his or her willingness to participate in the organ donation program:

(A) His or her true full name.

(B) His or her residence or mailing address.

(C) His or her date of birth.

(D) His or her California driver's license number or identification card number.

(6) (A) A person who applies for an original or renewal driver's license or identification card may designate a voluntary contribution of two dollars ($2) for the purpose of promoting and supporting organ and tissue donation. This contribution shall be collected by the department, and treated as a voluntary contribution to Donate Life California and not as a fee for the issuance of a driver's license or identification card.

(B) The department may use the donations collected pursuant to this paragraph to cover its actual administrative costs incurred pursuant to paragraphs (3) to (5), inclusive. The department shall deposit all revenue derived pursuant to this paragraph and remaining after the department's deduction for administrative costs in the Donate Life California Trust Subaccount, that is hereby created in the Motor Vehicle Account in the State Transportation Fund. Notwithstanding Section 13340 of the Government Code, all revenue in this subaccount is continuously appropriated, without regard to fiscal years, to the Controller for allocation to Donate Life California and shall be expended for the purpose of increasing participation in organ donation programs.

(7) The enrollment form shall be posted on the Internet Web sites for the department and the California Health and Human Services Agency.

(8) The enrollment shall constitute a legal document pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and shall remain binding after the donor's death despite any express desires of next of kin opposed to the donation. Except as provided in paragraph (2) of subdivision (b), the donation does not require the consent of any other person.

(9) Donate Life California shall ensure that all additions and deletions to the California Organ and Tissue Donor Registry, established pursuant to Section 7152.7 of the Health and Safety Code, shall occur within 30 days of receipt.

(10) Information obtained by Donate Life California for the purposes of this subdivision shall be used for these purposes only and shall not be disseminated further by Donate Life California.

(c) A public entity or employee shall not be liable for loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(d) A contract shall not be awarded to a nongovernmental entity for the processing of driver's licenses, unless the contract conforms to all applicable state contracting laws and all applicable procedures set forth in the State Contracting Manual.

(e) This section shall become operative on July 1, 2006.

SEC. 5.5. Section 12811 of the Vehicle Code is amended to read:

12811. (a) (1) (A) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

(B) Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

(C) The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words "provisional until age 18."

(b) (1) The front of an application for an original or renewal of a driver's license or identification card shall contain a space for an applicant to give his or her consent to be an organ and tissue donor upon death. An applicant who gives consent shall be directed to read a statement on the back of the application that shall contain the following statement:

"If you marked on the front of the application that you want to be an organ and tissue donor upon death, your consent shall serve as a legally binding document as outlined under the California Uniform Anatomical Gift Act. Except in the case where the donor is under the age of 18, the donation does not require the consent of any other person. For donors under the age of 18, the legal guardian of the donor shall make the final decision regarding the donation. If you want to change your decision to consent in the future, or if you want to limit the donation to specific organs, tissues, or research, you must contact Donate Life California by mail at 1760 Creekside Oaks Drive, #220, Sacramento, CA 95833, or online at www.donateLIFEcalifornia.org, or www.doneVIDAcalifornia.org."

(2) Notwithstanding any other provision of law, a person under age 18 may register as a donor. However, the legal guardian of that person shall make the final decision regarding the donation.

(3) The department shall collect donor designation information on all applications for an original or renewal driver's license or identification card.

(4) The department shall print the word "DONOR" or another appropriate designation on the face of a driver's license or identification card to a person who registered as a donor on a form issued pursuant to this section.

(5) On a weekly basis, the department shall electronically transmit to Donate Life California, a nonprofit organization established and designated as the California Organ and Tissue Donor Registrar pursuant to Section 7150.90 of the Health and Safety Code, all of the following information on every applicant that has indicated his or her willingness to participate in the organ donation program:

(A) His or her true full name.

(B) His or her residence or mailing address.

(C) His or her date of birth.

(D) His or her California driver's license number or identification card number.

(6) (A) A person who applies for an original or renewal driver's license or identification card may designate a voluntary contribution of two dollars ($2) for the purpose of promoting and supporting organ and tissue donation. This contribution shall be collected by the department, and treated as a voluntary contribution to Donate Life California and not as a fee for the issuance of a driver's license or identification card.

(B) The department may use the donations collected pursuant to this paragraph to cover its actual administrative costs incurred pursuant to paragraphs (3) to (5), inclusive. The department shall deposit all revenue derived pursuant to this paragraph and remaining after the department's deduction for administrative costs in the Donate Life California Trust Subaccount, that is hereby created in the Motor Vehicle Account in the State Transportation Fund. Notwithstanding Section 13340 of the Government Code, all revenue in this subaccount is continuously appropriated, without regard to fiscal years, to the Controller for allocation to Donate Life California and shall be expended for the purpose of increasing participation in organ donation programs.

(7) The enrollment form shall be posted on the Internet Web sites for the department and the California Health and Human Services Agency.

(8) The enrollment shall constitute a legal document pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and shall

remain binding after the donor's death despite any express desires of next of kin opposed to the donation. Except as provided in paragraph (2) of subdivision (b), the donation does not require the consent of any other person.

(9) Donate Life California shall ensure that all additions and deletions to the California Organ and Tissue Donor Registry, established pursuant to Section 7150.90 of the Health and Safety Code, shall occur within 30 days of receipt.

(10) Information obtained by Donate Life California for the purposes of this subdivision shall be used for these purposes only and shall not be disseminated further by Donate Life California.

(c) A public entity or employee shall not be liable for loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(d) A contract shall not be awarded to a nongovernmental entity for the processing of driver's licenses, unless the contract conforms to all applicable state contracting laws and all applicable procedures set forth in the State Contracting Manual.

(e) This section shall become operative on July 1, 2006.

SEC. 6. Section 13005 of the Vehicle Code is amended to read:

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit, as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) (1) Upon issuance of a new identification card, or renewal of an identification card, the department shall provide information on organ and tissue donation, including a standardized form to be filled out by an individual who desires to enroll in the California Organ and Tissue Donor Registry with instructions for mailing the completed form to the California Organ and Tissue Donor Registrar established pursuant to subdivision (a) of Section 7152.7 of the Health and Safety Code.

(2) The enrollment form shall be simple in design and shall be produced by the department, in cooperation with the California Organ and Tissue Donor Registrar, and shall require all of the following information to be supplied by the enrollee:

(A) Date of birth, sex, full name, address, and home telephone number.

(B) Consent for organs or tissues to be donated for transplant after death.

(C) Any limitation of the donation to specific organs or tissues.

(3) The form shall also include a description of the process for having a name removed from the registry, and the process for donating money for the benefit of the registry.

(4) The registry enrollment form shall be posted on the Web sites for the department and the California Health and Human Services Agency.

(5) The form shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(6) The registrar shall ensure that all additions and deletions to the registry shall occur within 30 days of receipt.

(7) Information obtained by the registrar for the purposes of this subdivision shall be used for these purposes only and shall not further be disseminated by the registrar.

(c) A contract shall not be awarded to a nongovernmental entity for the processing of identification cards unless the contract conforms to all applicable state contracting laws and all applicable procedures set forth in the State Contracting Manual.

SEC. 6.5. Section 13005 of the Vehicle Code is amended to read:

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit, as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) (1) Upon issuance of a new identification card, or renewal of an identification card, the department shall provide information on organ and tissue donation, including a standardized form to be filled out by an individual who desires to enroll in the California Organ and Tissue Donor Registry with instructions for mailing the completed form to the California Organ and Tissue Donor Registrar established pursuant to subdivision (a) of Section 7150.90 of the Health and Safety Code.

(2) The enrollment form shall be simple in design and shall be produced by the department, in cooperation with the California Organ and Tissue Donor Registrar, and shall require all of the following information to be supplied by the enrollee:

(A) Date of birth, sex, full name, address, and home telephone number.

(B) Consent for organs or tissues to be donated for transplant after death.

(C) Any limitation of the donation to specific organs or tissues.

(3) The form shall also include a description of the process for having a name removed from the registry, and the process for donating money for the benefit of the registry.

(4) The registry enrollment form shall be posted on the Web sites for the department and the California Health and Human Services Agency.

(5) The form shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(6) The registrar shall ensure that all additions and deletions to the registry shall occur within 30 days of receipt.

(7) Information obtained by the registrar for the purposes of this subdivision shall be used for these purposes only and shall not further be disseminated by the registrar.

(c) A contract shall not be awarded to a nongovernmental entity for the processing of identification cards unless the contract conforms to all applicable state contracting laws and all applicable procedures set forth in the State Contracting Manual.

SEC. 7. 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 (5) 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 for military purposes by civilian and noncivilian personnel, that is owned or operated by the United States Department of Defense or United States Department of Homeland Security, 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 a state or local law involving the safe operation of a motor vehicle, arising in connection with a fatal traffic accident.

(4) A 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 a commercial motor vehicle that is designed to transport any liquid or gaseous material within a tank that is permanently or temporarily attached to the vehicle or the chassis, including, but not limited to, cargo tanks and portable tanks, as defined in Part 171 of Title 49 of the Code of Federal Regulations. This definition

does not include portable tanks having a rated capacity under 1,000 gallons.

SEC. 8. Section 22450 of the Vehicle Code is amended to read:

22450. (a) The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection.

If there is no limit line or crosswalk, the driver shall stop at the entrance to the intersecting roadway.

(b) The driver of a vehicle approaching a stop sign at a railroad grade crossing shall stop at a limit line, if marked, otherwise before crossing the first track or entrance to the railroad grade crossing.

(c) Notwithstanding any other provision of law, a local authority may adopt rules and regulations by ordinance or resolution providing for the placement of a stop sign at any location on a highway under its jurisdiction where the stop sign would enhance traffic safety.

SEC. 9. Section 22452 of the Vehicle Code is amended to read:

22452. (a) Subdivisions (b) and (d) apply to the operation of the following vehicles:

(1) A bus or farm labor vehicle carrying passengers.

(2) A motortruck transporting employees in addition to those riding in the cab.

(3) A schoolbus and a school pupil activity bus transporting school pupils, except as otherwise provided in paragraph (4) of subdivision (c).

(4) A commercial motor vehicle transporting any quantity of a Division 2.3 chlorine, as classified by Title 49 of the Code of Federal Regulations.

(5) A commercial motor vehicle that is required to be marked or placarded in accordance with the regulations of Title 49 of the Code of Federal Regulations with one of the following federal classifications:

(A) Division 1.1.

(B) Division 1.2, or Division 1.3.

(C) Division 2.3 Poison gas.

(D) Division 4.3.

(E) Class 7.

(F) Class 3 Flammable.

(G) Division 5.1.

(H) Division 2.2.

(I) Division 2.3 Chlorine.

(J) Division 6.1 Poison.

(K) Division 2.2 Oxygen.

(L) Division 2.1.

(M) Class 3 Combustible liquid.

(N) Division 4.1.
(O) Division 5.1.
(P) Division 5.2.
(Q) Class 8.
(R) Class Division 1.4.
(S) A cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material, as defined in Parts 107 to 180, inclusive, of Title 49 of the Code of Federal Regulations.

(6) A cargo tank motor vehicle transporting a commodity that at the time of loading has a temperature above its flashpoint, as determined under Section 173.120 of Title 49 of the Code of Federal Regulations.

(7) A cargo tank motor vehicle, whether loaded or empty, transporting any commodity under exemption in accordance with Subpart B of Part 107 of Title 49 of the Code of Federal Regulations.

(b) Before traversing a railroad grade crossing, the driver of a vehicle described in subdivision (a) shall stop that vehicle not less than 15 nor more than 50 feet from the nearest rail of the track and while so stopped shall listen, and look in both directions along the track, for an approaching train and for signals indicating the approach of a train, and shall not proceed until he or she can do so safely. Upon proceeding, the gears shall not be shifted manually while crossing the tracks.

(c) The driver of a commercial motor vehicle, other than those listed in subdivision (a), upon approaching a railroad grade crossing, shall be driven at a rate of speed that allows the commercial vehicle to stop before reaching the nearest rail of that crossing, and shall not be driven upon, or over, the crossing until due caution is taken to ascertain that the course is clear.

(d) A stop need not be made at a crossing in the following circumstances:

(1) Of railroad tracks running along and upon the roadway within a business or residence district.

(2) Where a traffic officer or an official traffic control signal directs traffic to proceed.

(3) Where an exempt sign was authorized by the Public Utilities Commission prior to January 1, 1978.

(4) Where an official railroad crossing stop exempt sign in compliance with Section 21400 has been placed by the Department of Transportation or a local authority pursuant to Section 22452.5. This paragraph does not apply with respect to any schoolbus or to any school pupil activity bus.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 12811 of the Vehicle Code proposed by both this bill and AB 1689. It shall only become operative if (1) both bills are enacted and become

effective on or before January 1, 2008, (2) each bill amends Section 12811 of the Vehicle Code, and (3) this bill is enacted after AB 1689, in which case Section 5 of this bill shall not become operative.

SEC. 11. Section 6.5 of this bill incorporates amendments to Section 13005 of the Vehicle Code proposed by both this bill and AB 1689. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 13005 of the Vehicle Code, and (3) this bill is enacted after AB 1689, in which case Section 6 of this bill shall not become operative.

CHAPTER 631

An act to add Sections 13997.2, 13997.4, and 13997.6 to, and to repeal Section 8450.5 of, the Government Code, relating to economic development.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 8450.5 of the Government Code is repealed.

SEC. 2. Section 13997.2 is added to the Government Code, to read:

13997.2. (a) The Legislature finds and declares all of the following:

(1) California's economic development organizations and corporations are an integral component of the state job creation effort because they are a critical link between state economic development activities and the statewide business community, providing an excellent opportunity to leverage state resources.

(2) Economic development corporations and organizations provide broad public benefit to the residents of this state by alleviating unemployment, encouraging private investment, and diversifying local economies.

(3) Economic development corporations engage in a wide range of programs and strategies to attract, retain, and expand businesses, including marketing the community, small business lending, and other financial services, a wide range of technical assistance to small business, preparation of economic data, and business advocacy.

(4) By using public sector resources and powers to reduce the risks and costs that could prohibit investment, the public sector often sets the stage for employment-generating investment by the private sector.

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

(1) "Local economic development organization" means a public or public-private job creation activity recognized by cities and counties as the lead agency within that city or county for planning and implementation of job creation involving business expansion, business retention, and new business development.

(2) "Regional economic development organization" means an organization comprised of any of the following:

(A) A single county.

(B) More than one county.

(C) A subregion within a county established by the cities and county within that subregion.

(D) An economic development corporation.

(3) "Economic development corporation" means a local or regional nonprofit public-private economic development organization recognized in a defined region by the public and private sector as the lead agency for the planning and implementation of job creation involving business retention and new business development.

(4) "Regional economic development corporation" means a corporation comprised of any of the following:

(A) A single county.

(B) More than one county.

(C) A subregion within a single county established by a group of cities and counties.

(5) "Economic development" means any activity that enhances the factors of productive capacity, such as land, labor, capital, and technology, of a national, state, or local economy. "Economic development" includes policies and programs expressly directed at improving the business climate in business finance, marketing, neighborhood development, small business development, business retention and expansion, technology transfer, and real estate redevelopment. "Economic development" is an investment program designed to leverage private sector capital in such a way as to induce actions that have a positive effect on the level of business activity, employment, income distribution, and fiscal solvency of the community.

(6) "Local economic development" is a process of deliberate intervention in the normal economic process of a particular locality to stimulate economic growth of the locality by making it more attractive, resulting in more jobs, wealth, better quality of life, and fiscal solvency. Prime examples of economic development include business attraction, business expansion and retention, and business creation.

SEC. 3. Section 13997.4 is added to the Government Code, to read:

13997.4. The Business, Transportation and Housing Agency shall be the primary state agency responsible for facilitating economic

development in the state. The agency shall work with other federal, state, regional, local, and international public and private entities in meeting this responsibility.

SEC. 4. Section 13997.6 is added to the Government Code, to read:

13997.6. (a) The California Economic Development Fund is hereby created in the State Treasury for the purpose of receiving federal, state, local, and private economic development funds, and receiving repayment of loans or grant proceeds and interest on those loans or grants.

(b) Upon appropriation by the Legislature, moneys in the Fund may be expended by the Secretary of Business, Transportation and Housing to provide matching funds for loans or grants to public agencies, nonprofit organizations, and private entities, and for other economic development purposes, consistent with the purposes for which the moneys were received.

SEC. 5. Notwithstanding any other provision of law, effective January 1, 2008, the Economic Adjustment Assistance grant funded through the United States Economic Development Administration under Title IX of the Public Works and Economic Development Act of 1965 (Grant No. 07-19-02709 and 07-19-2709.1) shall be administered by the Secretary of Business, Transportation and Housing, and for the purpose of state administration of this grant, the secretary shall be deemed to be the successor to the former Secretary of Technology, Trade and Commerce. The secretary may assign and contract administration of the grant to a public agency created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

CHAPTER 632

An act to amend Sections 13476, 13478, and 13480 of, and to add Section 13477.5 to, the Water Code, relating to water.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 13476 of the Water Code is amended to read:

13476. Unless the context otherwise requires, the following definitions govern the construction of this chapter:

(a) "Administration fund" means the State Water Pollution Control Revolving Fund Administration Fund.

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

(c) "Federal Clean Water Act" or "federal act" means the federal Water Pollution Control Act (33 U.S.C.A. Sec. 1251 et seq.) and acts amendatory thereof or supplemental thereto.

(d) "Fund" means the State Water Pollution Control Revolving Fund.

(e) "Matching funds" means money that equals that percentage of federal contributions required by the federal act to be matched with state funds.

(f) "Municipality" has the same meaning and construction as in the federal act and also includes all state, interstate, and intermunicipal agencies.

(g) "Publicly owned" means owned by a municipality.

SEC. 2. Section 13477.5 is added to the Water Code, to read:

13477.5. (a) The State Water Pollution Control Revolving Fund Administration Fund is hereby created in the State Treasury.

(b) The following moneys shall be deposited in the administration fund:

(1) Moneys transferred to the administration fund to pay the costs incurred by the board in connection with the administration of this chapter.

(2) The amounts collected for loan services pursuant to subdivision (c).

(3) Notwithstanding Section 16475 of the Government Code, any interest earned upon the moneys deposited in the administration fund.

(c) (1) For any loan made pursuant to paragraph (1) of subdivision (b) of Section 13480, the board may assess an annual charge for loan services with regard to the loan, not to exceed 1.0 percent of the loan balance computed according to the true interest cost method.

(2) Any amounts collected under this subdivision shall be deposited in the administration fund.

(3) The loan service rate authorized by this subdivision may be applied at any time during the term of the loan, and once applied, shall remain unchanged for the duration of the loan and shall not increase the loan repayment amount as set forth in the terms and conditions imposed pursuant to clause (i) of subparagraph (D) of paragraph (1) of subdivision (b) of Section 13480.

(d) Moneys in the administration fund, upon appropriation by the Legislature to the board, may be expended for payment of the reasonable costs of administering the fund.

(e) The board shall set the total amount of revenue collected each year through the charges authorized by subdivision (c) at an amount that is as equal as practicable to the revenue levels set forth in the annual Budget Act for this activity. At least once each fiscal year, the board

shall adjust the loan service rate imposed pursuant to subdivision (c) to conform with the revenue levels set forth in the annual Budget Act.

SEC. 3. Section 13478 of the Water Code is amended to read:

13478. The board may undertake any of the following:

(a) Enter into agreements with the federal government for federal contributions to the fund.

(b) Accept federal contributions to the fund.

(c) Enter into an agreement with, and accept matching funds from, a municipality. A municipality that seeks to enter into an agreement with the board and provide matching funds pursuant to this subdivision shall provide to the board evidence of the availability of those funds in the form of a written resolution adopted by the governing body of the municipality before it requests a preliminary loan commitment.

(d) Use moneys in the fund for the purposes permitted by the federal act.

(e) Provide for the deposit of matching funds and any other available and necessary moneys into the fund.

(f) Make requests on behalf of the state for deposit into the fund of available federal moneys under the federal act and determine on behalf of the state appropriate maintenance of progress toward compliance with the enforceable deadlines, goals, and requirements of the federal act.

(g) Determine on behalf of the state that publicly owned treatment works that receive financial assistance from the fund will meet the requirements of, and otherwise be treated as required by, the federal act.

(h) Provide for appropriate audit, accounting, and fiscal management services, plans, and reports relative to the fund.

(i) Take additional incidental action as appropriate for the adequate administration and operation of the fund.

(j) Charge municipalities that elect to provide matching funds a fee to cover the actual cost of obtaining the federal funds pursuant to Section 603(d)(7) of the federal act (33 U.S.C.A. Sec. 1383(d)(7)) and processing the loan application. The fee shall be waived by the board if sufficient funds to cover those costs are available from other sources.

(k) Use money returned to the fund under clause (ii) of subparagraph (D) of paragraph (1) of subdivision (b) of Section 13480, and any other source of matching funds, if not prohibited by statute, as matching funds for the federal administrative allowance under Section 603(d)(7) of the federal act (33 U.S.C.A. Sec. 1383(d)(7)).

(*l*) Expend money repaid by loan recipients for loan service under clauses (i) and (ii) of subparagraph (D) of paragraph (1) of subdivision (b) of Section 13480 to pay administrative costs incurred by the board under this chapter.

SEC. 4. Section 13480 of the Water Code is amended to read:

13480. (a) Moneys in the fund shall be used only for the permissible purposes allowed by the federal act, including providing financial assistance for the following purposes:

(1) The construction of publicly owned treatment works, as defined by Section 212 of the federal act (33 U.S.C.A. Sec. 1292), by any municipality.

(2) Implementation of a management program pursuant to Section 319 of the federal act (33 U.S.C.A. Sec. 1329).

(3) Development and implementation of a conservation and management plan under Section 320 of the federal act (33 U.S.C.A. Sec. 1330).

(4) Financial assistance, other than a loan, toward the nonfederal share of costs of any grant-funded treatment works project, but only if that assistance is necessary to permit the project to proceed.

(b) Consistent with expenditure for authorized purposes, moneys in the fund may be used for the following purposes:

(1) Loans that meet all of the following requirements:

(A) Are made at or below market interest rates.

(B) Require annual payments of principal and any interest, with repayment commencing not later than one year after completion of the project for which the loan is made and full amortization not later than 20 years after project completion.

(C) Require the loan recipient to establish an acceptable dedicated source of revenue for repayment of any loan.

(D) (i) Contain other terms and conditions required by the board or the federal act or applicable rules, regulations, guidelines, and policies. To the extent permitted by federal law, the combined interest and loan service rate shall be set at a rate that does not exceed 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds and the combined interest and loan service rate shall be computed according to the true interest cost method. If the combined interest and loan service rate so determined is not a multiple of one-tenth of 1 percent, the combined interest and loan service rate shall be set at the multiple of one-tenth of 1 percent next above the combined interest and loan service rate so determined. Any loan from the fund used to finance costs of facilities planning, or the preparation of plans, specifications, or estimates for construction of publicly owned treatment works shall comply with Section 603(e) of the federal act (33 U.S.C.A. Sec. 1383(e)).

(ii) Notwithstanding clause (i), if the loan applicant is a municipality, an applicant for a loan for the implementation of a management program pursuant to Section 319 of the Clean Water Act (33 U.S.C. Sec. 1329), or an applicant for a loan for nonpoint source or estuary enhancement

pursuant to Section 320 of the Clean Water Act (33 U.S.C. Sec. 1330), and the applicant provides matching funds, the combined interest and loan service rate on the loan shall be 0 percent. A loan recipient that returns to the fund an amount of money equal to 20 percent of the remaining unpaid federal balance of an existing loan shall have the remaining unpaid loan balance refinanced at a combined interest and loan service rate of 0 percent over the time remaining in the original loan contract.

(2) To buy or refinance the debt obligations of municipalities within the state at or below market rates if those debt obligations were incurred after March 7, 1985.

(3) To guarantee, or purchase insurance for, local obligations where that action would improve credit market access or reduce interest rates.

(4) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, if the proceeds of the sale of those bonds will be deposited in the fund.

(5) To establish loan guarantees for similar revolving funds established by municipalities.

(6) To earn interest.

(7) For payment of the reasonable costs of administering the fund and conducting activities under Subchapter VI (commencing with Section 601) of the federal act (33 U.S.C.A. Sec. 1381 et seq.). Those costs shall not exceed 4 percent of all federal contributions to the fund, except that if permitted by federal and state law, interest repayments into the fund and other moneys in the fund may be used to defray additional administrative and activity costs to the extent permitted by the federal government and approved by the Legislature in the Budget Act.

(8) For financial assistance toward the nonfederal share of the costs of grant-funded treatment works projects to the extent permitted by the federal act.

CHAPTER 633

An act to amend Sections 65582, 65583, and 65589.5 of the Government Code, relating to local planning.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) Homelessness is a statewide problem that affects many cities and counties. There are an estimated 360,000 homeless individuals and families in California. In some counties, like Los Angeles, an estimated 254,000 men, women, and children experience homelessness over the course of each year. Some of the causes of homelessness are mental illness, substance abuse, prison release, and lack of affordable housing.

(b) Because homelessness affects people of all races, gender, age, and geographic location there is a growing need for every city and county to plan for the location of adequate emergency shelters. Many people experiencing homelessness, primarily youth and single individuals, need shelter but also have a need for residential substance abuse and mental health services.

(c) The lack or shortage of emergency shelters for homeless individuals and families in cities and counties across the state leads to the concentration of services in inner cities and poor communities, like the skid row area in downtown Los Angeles.

(d) In order to ensure access to services in every city and county for homeless individuals and families, it is important that cities and counties plan for these services to address the special needs and circumstances of this threatened population.

(e) It is the responsibility of cities and counties to plan and identify areas for emergency shelters. Cities and counties should include this as part of their planning process and locate emergency shelters where most appropriate in their community. The state should not dictate where these emergency shelters should be located.

(f) It is the responsibility of the Legislature to promote strong communities and ensure that housing and residential services are available in all communities.

SEC. 2. Section 65582 of the Government Code is amended to read:

65582. As used in this article, the following definitions apply:

(a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.

(b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.

(c) "Department" means the Department of Housing and Community Development.

(d) "Emergency shelter" has the same meaning as defined in subdivision (e) of Section 50801 of the Health and Safety Code.

(e) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.

(f) "Supportive housing" has the same meaning as defined in subdivision (b) of Section 50675.14 of the Health and Safety Code.

(g) "Transitional housing" has the same meaning as defined in subdivision (h) of Section 50675.2 of the Health and Safety Code.

SEC. 3. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones shall include sufficient

capacity to accommodate the need for emergency shelter identified in paragraph (7), except that each local government shall identify a zone or zones that can accommodate at least one year-round emergency shelter. If the local government cannot identify a zone or zones with sufficient capacity, the local government shall include a program to amend its zoning ordinance to meet the requirements of this paragraph within one year of the adoption of the housing element. The local government may identify additional zones where emergency shelters are permitted with a conditional use permit. The local government shall also demonstrate that existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters. Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

(i) The maximum number of beds or persons permitted to be served nightly by the facility.

(ii) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.

(iii) The size and location of exterior and interior onsite waiting and client intake areas.

(iv) The provision of onsite management.

(v) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.

(vi) The length of stay.

(vii) Lighting.

(viii) Security during hours that the emergency shelter is in operation.

(B) The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(C) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction's need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

(D) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action to identify zones for emergency shelters. The housing element must only

describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (6). Transitional housing and supportive housing shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

(6) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(7) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. The need for emergency shelter shall be assessed based on annual and seasonal need. The need for emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period.

(8) An analysis of opportunities for energy conservation with respect to residential development.

(9) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that

were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2.

(B) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing

designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(7) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) (1) A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters pursuant to paragraph (4) of subdivision (a) by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one year-round emergency shelter within two years of the beginning of the planning period.

(2) The agreement shall allocate a portion of the new shelter capacity to each jurisdiction as credit towards its emergency shelter need, and each jurisdiction shall describe how the capacity was allocated as part of its housing element.

(3) Each member jurisdiction of a multijurisdictional agreement shall describe in its housing element all of the following:

(A) How the joint facility will meet the jurisdiction's emergency shelter need.

(B) The jurisdiction's contribution to the facility for both the development and ongoing operation and management of the facility.

(C) The amount and source of the funding that the jurisdiction contributes to the facility.

(4) The aggregate capacity claimed by the participating jurisdictions in their housing elements shall not exceed the actual capacity of the shelter.

(e) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:

(1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when a city, county, or city and county submits a draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

SEC. 4. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy

of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project or emergency shelter as proposed 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 without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning

ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the

need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project or emergency shelter.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) The applicant or any person who would be eligible to apply for residency in the development or emergency shelter may bring an action to enforce this section. If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the

development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project or emergency shelter. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development or emergency shelter, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.

(*l*) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court in addition to any other remedies provided by this section, may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. For purposes of this section, "bad faith" shall mean an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency.

Upon entry of the trial court's order, a party shall, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 5. 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 634

An act to add and repeal Section 44099 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 44099 is added to the Health and Safety Code, to read:

44099. (a) As used in this section, "district" means the San Joaquin Valley Unified Air Pollution Control District.

(b) The district shall develop and administer, in consultation with the state board, a voluntary program to improve air quality by exchanging

high polluter vehicles within the district, for donated vehicles. The program shall do all of the following:

(1) Permit any person or business entity within the state to donate to the district any low-emission motor vehicle that has passed its last required smog test. If the vehicle is registered at a residence located outside of the district, the donor shall deliver the vehicle to the district.

(2) Permit the owner of a motor vehicle who lives within the jurisdiction of the district to apply to the district for a replacement vehicle if both of the following conditions are met:

(A) The motor vehicle did not pass its most recent smog check inspection.

(B) The motor vehicle has been registered in any county encompassed by the San Joaquin district for a period of at least two years immediately preceding the application.

(c) The district shall give priority for vehicle replacement to persons whose family income does not exceed 225 percent of the federal poverty level.

(d) The district may authorize, by contract, any entity to administer any portion of the program.

(e) The district shall certify that the exchange of any two vehicles results in quantified lower net emissions.

(f) The vehicle replacement program shall be a supplement to, and not a replacement for, other high polluter repair or removal programs, pursuant to this article.

(g) The program shall be limited to 200 vehicle exchanges, as described in subdivision (a), annually.

(h) The district shall store the replacement vehicles in a central facility.

(i) The district shall ensure that high polluter vehicles replaced under this program are removed from operation and scrapped or crushed by a dismantler participating in the "Partners in the Solution" program of the State of California Auto Dismantlers Association (SCADA) and operating under contract with the district.

(j) The district shall include protections in the program against abuse of the program by recipients of the donated cars.

(k) Any interest generated from the funds allocated to the district from the Traffic Congestion Relief Fund, established by Section 14556.5 of the Government Code, for the purposes of paragraph (100) of subdivision (a) of Section 14556.40 of the Government Code may be used, upon appropriation by the Legislature, by the district for the purpose of administering the program established in this section.

(*l*) On or before January 1, 2012, the district shall submit a report to the Legislature on the implementation and status of the program, including, but not limited to, the number of vehicles donated, the number

of vehicles that participated in the program, the number of donated vehicles on hand, the costs of operating the program, the estimated emission reductions achieved through the program, the cost to achieve a one ton reduction in emissions, the expected costs of the program if the program were statewide, and the costs of the program compared to other efforts to reduce vehicular emissions.

(m) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, 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 difficulties faced by the San Joaquin Valley Unified Air Pollution Control District in attempting in good faith to preserve its air quality, and the uniquely severe public consequences that would be faced by the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare in the absence of the relief provided by this act.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 4. This act shall become operative only if Senate Bill 719 of the 2007–08 Regular Session is enacted and becomes effective on or before January 1, 2008.

CHAPTER 635

An act to amend Sections 1, 2, 3, 9, and 10 of Chapter 67 of the Statutes of 2007, relating to private postsecondary education, and making an appropriation therefor.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 1 of Chapter 67 of the Statutes of 2007 is amended to read:

Section 1. (a) It is the intent of the Legislature to provide, through the enactment of subdivision (b), for the protection of the interests of students and institutions having any matter pending before the Bureau for Private Postsecondary and Vocational Education as of June 30, 2007. The Legislature further encourages the Department of Consumer Affairs to provide information to students and institutions during this time period to ensure their understanding of their rights and responsibilities, and that student complaints received during this time period continue to be duly recorded and, to the extent practicable, investigated, so that no Californian is harmed by the delay in the provision of full services.

(b) Notwithstanding any other provision of law:

(1) Each matter pending before the Bureau for Private Postsecondary and Vocational Education as of the close of business on June 30, 2007, shall be deemed to remain pending before the bureau or a successor agency as of July 1, 2008, irrespective of any applicable deadlines. With respect to any deadline applicable to a pending matter, no time shall be deemed to have elapsed between July 1, 2007, and July 1, 2008, inclusive.

(A) For the purposes of this paragraph, "matter" includes, but is not necessarily limited to, an appeal, a complaint, an evaluation, a hearing, or an investigation.

(B) For the purposes of this paragraph, "matter" does not include a Student Tuition Recovery Fund Claim. Nothing in this paragraph shall be construed to prevent the payment of existing Student Tuition Recovery Fund claims that have been filed with the Bureau for Private Postsecondary and Vocational Education as of June 30, 2007.

(2) Any institution, program, or course of study that is approved by the bureau or authorized pursuant to former Section 94905 of the Education Code, as it read on June 30, 2007, as of the close of business on June 30, 2007, shall be deemed to be approved as of July 1, 2008, irrespective of any applicable conditions, deadlines, or additional requirements. With respect to any deadline applicable to the approval, renewal of approval, or conditional approval of an institution, program, or course of study, no time shall be deemed to have elapsed between July 1, 2007, and July 1, 2008, inclusive.

(3) From July 1, 2007, to July 1, 2008, inclusive, the Director of Consumer Affairs may enter into voluntary agreements with institutions that state that the institutions agree to comply with state statutes, rules, and regulations pertaining to private postsecondary institutions or pertaining to non-WASC regionally accredited institutions as defined in former Section 94740.5 of the Education Code, as it read on June 30, 2007, for the purpose of ensuring continued student protection after former Chapter 7 (commencing with Section 94700) of Part 59 of

Division 10 of Title 3 of the Education Code, as it read on June 30, 2007, became inoperative.

(4) From July 1, 2007, to July 1, 2008, inclusive, the Director of Consumer Affairs shall administer the Student Tuition Recovery Fund.

SEC. 2. Section 2 of Chapter 67 of the Statutes of 2007 is amended to read:

Sec. 2. (a) The Private Postsecondary and Vocational Education Administration Fund is continued in existence under the administration of the Department of Consumer Affairs.

(b) (1) The Student Tuition Recovery Fund is continued in existence under the administration of the Department of Consumer Affairs. The fund shall consist of only one educational institution account for payment of approved claims.

(2) The moneys in the Student Tuition Recovery Fund are continuously appropriated, without regard to fiscal years, to the Director of Consumer Affairs for the purpose of paying claims that were filed with the former Bureau for Private Postsecondary and Vocational Education prior to July 1, 2007, under the provisions of former Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of Title 3 of the Education Code, as it read on June 30, 2007. A claim that has been filed with the Bureau for Private Postsecondary and Vocational Education prior to July 1, 2007, but not paid by the Director of Consumer Affairs between July 1, 2007, and July 1, 2008, inclusive, shall be deemed pending before a successor agency on July 1, 2008.

(3) From July 1, 2007, to July 1, 2008, inclusive, an institution is not liable for payments to the Student Tuition Recovery Fund. During that period, an institution shall not collect money from its students for purposes of making payments to that fund. If any collections are made for an academic term falling within that period, the institution making the collection shall refund those moneys to the student from whom they were collected. Any funds collected by an institution from its students for the purposes of making payments to the Student Tuition Recovery Fund on or before June 30, 2007, and still in the possession of the institution as of July 1, 2007, shall be remitted by the institution to the Director of Consumer Affairs.

(4) It is the intent of the Legislature that, to the extent possible, the Department of Consumer Affairs shall pay claims found to be owed and payable by the Bureau for Private Postsecondary and Vocational Education to students from the Student Tuition Recovery Fund between June 30, 2007, and July 1, 2008, inclusive.

SEC. 3. Section 3 of Chapter 67 of the Statutes of 2007 is amended to read:

Sec. 3. (a) Any institution that is approved by an accrediting agency recognized by the United States Department of Education, that has entered into a voluntary agreement under paragraph (3) of subdivision (b) of Section 1 of Chapter 67 of the Statutes of 2007, is authorized to add or modify a degree, diploma, certificate, add or change a location, change or modify the institution's name, or undergo a change of ownership or control from July 1, 2007, to July 1, 2008, inclusive, and, thereafter, upon the filing of notice to the Department of Consumer Affairs accompanied by documentation of the approval of that action by that institution's accrediting agency, if that approval is required by the institution's accrediting agency.

(b) From close of business on June 30, 2007, until close of business on July 1, 2008, inclusive, wherever in law there is a reference to an institution "approved by the Bureau for Private Postsecondary and Vocational Education," this shall mean any school that has entered into, and is complying with, a voluntary agreement under paragraph (3) of subdivision (b) of Section 1 of Chapter 67 of the Statutes of 2007.

(c) Until July 1, 2008, the Board of Barbering and Cosmetology may approve a school that has not been licensed by the Bureau for Private Postsecondary and Vocational Education pursuant to subdivision (a) of Section 7362 of the Business and Professions Code, if the school does all of the following:

(1) Commences operations between July 1, 2007, and December 31, 2008.

(2) Enters into a voluntary agreement with the Director of Consumer Affairs under paragraph (3) of subdivision (b) of Section 1 of Chapter 67 of the Statutes of 2007.

(3) Provides a course of instruction approved by the board.

(4) Complies with all laws, rules, and regulations applicable to schools approved by the board.

(5) Obtains a license or approval from the bureau or its successor agency no later than six months after the bureau is reauthorized.

SEC. 4. Section 9 of Chapter 67 of the Statutes of 2007 is amended to read:

Sec. 9. Private postsecondary educational institutions that have a valid approval to operate, including, but not necessarily limited to, a license to operate, and instructors holding a valid certificate of authorization for service, from the Bureau for Private Postsecondary and Vocational Education as of June 30, 2007, shall retain those approvals, licenses, or certificates of authorization for purposes of interpreting other provisions of applicable law that refer or relate to the issuance of a license or registration and meeting qualifications for licensing examinations.

Those approvals shall be effective through January 1, 2009, unless a later enacted statute modifies, extends, or deletes that date.

SEC. 5. Section 10 of Chapter 67 of the Statutes of 2007 is amended to read:

Sec. 10. Sections 1 to 8, inclusive, of Chapter 67 of the Statutes of 2007 shall be repealed on July 1, 2008, unless a later enacted statute, that is enacted before July 1, 2008, deletes or extends that date.

SEC. 6. (a) (1) The Bureau for Private Postsecondary Education is hereby established in the Department of Consumer Affairs.

(2) The bureau shall not commence operations unless and until a statute is enacted that creates a new California Private Postsecondary Education Act that provides functions and responsibilities of the bureau. The bureau shall have the following general duties and responsibilities, including, but not necessarily limited to, all of the following:

(A) Review and approval of private postsecondary and vocational educational institutions.

(B) Review and investigation of student complaints.

(C) Administration of the Student Tuition Recovery Fund.

(D) Outreach to students.

(E) The collection and dissemination of appropriate information regarding regulations required by any subsequent legislation.

(F) Establishing a reasonable fee structure that will fund its operations.

(G) The collection of fees relating to, and general responsibility for, the oversight of private postsecondary and vocational educational institutions in the State of California.

(3) The bureau shall succeed to any and all rights and claims of the former Bureau for Private Postsecondary and Vocational Education that may have been asserted in any judicial or administrative action pending on July 1, 2007, and shall take any action reasonably necessary to assert and realize those rights and claims in its own name.

(b) The bureau shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the former bureau in the performance of the duties, powers, purposes, responsibilities, and jurisdictions that are vested in the bureau.

(c) The bureau has the responsibility for approving and regulating private postsecondary educational institutions. The bureau shall have, as its objective, the development of a strong, vigorous, and widely respected sector of private postsecondary and vocational education.

(d) Protection of the public shall be the highest priority for the Bureau for Private Postsecondary and Vocational Education in exercising its approval, regulatory, and disciplinary functions. Whenever the protection

of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

(e) The Director of Consumer Affairs may assign and delegate his or her duties under Chapter 67 of the Statutes of 2007, as it is amended by this act, and under Section 6 of this act, to a bureau chief, subject to the other provisions of this section.

(f) The bureau chief may redelegate any of his or her powers under this section to a designee. The bureau chief shall be appointed by the Governor and confirmed by vote of a majority of the membership of the Senate, and is exempt from the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(g) The director, in accordance with the State Civil Service Act, may appoint and fix the compensation of clerical, inspection, investigation, evaluation, and auditing personnel of the bureau, as may be necessary to carry out this section.

CHAPTER 636

An act to add Section 14105.181 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 14105.181 is added to the Welfare and Institutions Code, to read:

14105.181. (a) For purposes of this section, the following definitions shall apply:

(1) "The Family Planning, Access, Care, and Treatment (Family PACT) waiver" or "Family PACT waiver" means the program described in subdivision (aa) of Section 14132, as approved by a federal demonstration waiver.

(2) "Comprehensive clinical family planning services" means those services described in paragraph (8) of subdivision (aa) of Section 14132.

(3) "Office visits" means those procedures billed under Common Procedure Terminology codes 99201, 99202, 99203, 99204, 99211, 99212, 99213, and 99214.

(b) Reimbursement rates for office visits billed as comprehensive clinical family planning services by Family PACT waiver providers and

for office visits billed as family planning services by Medi-Cal providers shall receive a rate augmentation equal to the weighted average of at least 80 percent of the amount that the federal Medicare program reimburses for these same or similar office visits. The rate augmentation shall be based upon Medicare rates in effect on December 31, 2007.

(c) The augmentation of reimbursement rates described in subdivision (b) shall be made for office visits rendered on or after January 1, 2008.

(d) (1) The director may adopt regulations as necessary to implement this section. 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 section, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or the general welfare.

(2) As an alternative to paragraph (1), and notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the director may administer this section, in whole or in part, by means of a provider bulletin, or other similar instructions, without taking regulatory action.

CHAPTER 637

An act to add Section 380.1 to the Streets and Highways Code, relating to transportation.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 380.1 is added to the Streets and Highways Code, to read:

380.1. (a) The Legislature finds and declares the following:

(1) It is in the interest of the well-being of the traveling public in the state to bring the ramps connecting Yerba Buena Island to the San Francisco-Oakland Bay Bridge under the ownership and control of the State of California, and to ensure the reconstruction of those ramps according to contemporary design standards.

(2) It is in the best interest of the traveling public to begin work on the ramps as soon as possible in order to coordinate this work with the

design and construction of the new east span of the San Francisco-Oakland Bay Bridge.

(b) (1) The department shall work in cooperation with the authority on the design and engineering of replacement ramps connecting Yerba Buena Island to the San Francisco-Oakland Bay Bridge.

(2) The department shall work in cooperation with the authority and the San Francisco County Transportation Authority to ensure that the design of the new ramps and the new eastern span of the San Francisco-Oakland Bay Bridge are compatible.

(c) Upon the transfer of any portion of former Naval Station Treasure Island to the authority that includes the ramp connections on the eastern side of Yerba Buena Island connecting the island to the San Francisco-Oakland Bay Bridge, the department is authorized to accept from the authority title, easements, and other interests in land that may be necessary for the state to own and operate one or more of the ramps.

(d) The transfer of a ramp from the authority to the state is contingent on all of the following:

(1) A finding by the California Transportation Commission that the transfer is in the best interests of the state.

(2) Approval by the California Transportation Commission of the terms and conditions of the transfer agreement entered into between the authority and the department.

(3) Completion of work on the ramp, in accordance with current seismic, engineering, and safety design standards as approved by the department, prior to the transfer.

(e) In accordance with state requirements, a project study report on the reconstruction of the ramps shall be finalized on or before December 31, 2008. The San Francisco County Transportation Authority shall be the lead agency for the development of the project study report and it shall work in coordination with the authority, the Mayor of the City of San Francisco, and the Bay Area Toll Authority.

(f) Nothing in this section shall require a commitment of state funding from (1) the State Highway Account or (2) toll revenues or other sources of funding under the jurisdiction of the Toll Bridge Program Oversight Committee established pursuant to Section 30952.1. This does not preclude a local entity from seeking any available funds for the reconstruction of the ramps, including state funds available to the local entity.

(g) For purposes of this section, "authority" means the Treasure Island Development Authority, a nonprofit public benefit corporation established by the legislative body of the City and County of San Francisco and the Treasure Island Conversion Act of 1997 (Chapter 898 of the Statutes of 1997).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 638

An act to amend Section 14132.100 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 14132.100 of the Welfare and Institutions Code is amended to read:

14132.100. (a) The federally qualified health center services described in Section 1396d(a)(2)(C) of Title 42 of the United States Code are covered benefits.

(b) The rural health clinic services described in Section 1396d (a)(2)(B) of Title 42 of the United States Code are covered benefits.

(c) Federally qualified health center services and rural health clinic services shall be reimbursed on a per-visit basis in accordance with the definition of "visit" set forth in subdivision (g).

(d) Effective October 1, 2004, and on each October 1, thereafter, until no longer required by federal law, federally qualified health center (FQHC) and rural health clinic (RHC) per-visit rates shall be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in Section 1396a(bb)(3)(A) of Title 42 of the United States Code. Prior to January 1, 2004, FQHC and RHC per-visit rates shall be adjusted by the Medicare Economic Index in accordance with the methodology set forth in the state plan in effect on October 1, 2001.

(e) (1) An FQHC or RHC may apply for an adjustment to its per-visit rate based on a change in the scope of services provided by the FQHC or RHC. Rate changes based on a change in the scope of services provided by an FQHC or RHC shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing

with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successor.

(2) Subject to the conditions set forth in subparagraphs (A) to (D), inclusive, of paragraph (3), a change in scope of service means any of the following:

(A) The addition of a new FQHC or RHC service that is not incorporated in the baseline prospective payment system (PPS) rate, or a deletion of an FQHC or RHC service that is incorporated in the baseline PPS rate.

(B) A change in service due to amended regulatory requirements or rules.

(C) A change in service resulting from relocating or remodeling an FQHC or RHC.

(D) A change in types of services due to a change in applicable technology and medical practice utilized by the center or clinic.

(E) An increase in service intensity attributable to changes in the types of patients served, including, but not limited to, populations with HIV or AIDS, or other chronic diseases, or homeless, elderly, migrant, or other special populations.

(F) Any changes in any of the services described in subdivision (a) or (b), or in the provider mix of an FQHC or RHC or one of its sites.

(G) Changes in operating costs attributable to capital expenditures associated with a modification of the scope of any of the services described in subdivision (a) or (b), including new or expanded service facilities, regulatory compliance, or changes in technology or medical practices at the center or clinic.

(H) Indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents.

(I) Any changes in the scope of a project approved by the federal Health Resources and Service Administration (HRSA).

(3) No change in costs shall, in and of itself, be considered a scope-of-service change unless all of the following apply:

(A) The increase or decrease in cost is attributable to an increase or decrease in the scope of services defined in subdivisions (a) and (b), as applicable.

(B) The cost is allowable under Medicare reasonable cost principles set forth in Part 413 (commencing with Section 413) of Subchapter B of Chapter 4 of Title 42 of the Code of Federal Regulations, or its successor.

(C) The change in the scope of services is a change in the type, intensity, duration, or amount of services, or any combination thereof.

(D) The net change in the FQHC's or RHC's rate equals or exceeds 1.75 percent for the affected FQHC or RHC site. For FQHCs and RHCs that filed consolidated cost reports for multiple sites to establish the initial prospective payment reimbursement rate, the 1.75-percent threshold shall be applied to the average per-visit rate of all sites for the purposes of calculating the cost associated with a scope-of-service change. "Net change" means the per-visit rate change attributable to the cumulative effect of all increases and decreases for a particular fiscal year.

(4) An FQHC or RHC may submit requests for scope-of-service changes once per fiscal year, only within 90 days following the beginning of the FQHC's or RHC's fiscal year. Any approved increase or decrease in the provider's rate shall be retroactive to the beginning of the FQHC's or RHC's fiscal year in which the request is submitted.

(5) An FQHC or RHC shall submit a scope-of-service rate change request within 90 days of the beginning of any FQHC or RHC fiscal year occurring after the effective date of this section, if, during the FQHC's or RHC's prior fiscal year, the FQHC or RHC experienced a decrease in the scope of services provided that the FQHC or RHC either knew or should have known would have resulted in a significantly lower per-visit rate. If an FQHC or RHC discontinues providing onsite pharmacy or dental services, it shall submit a scope-of-service rate change request within 90 days of the beginning of the following fiscal year. The rate change shall be effective as provided for in paragraph (4). As used in this paragraph, "significantly lower" means an average per-visit rate decrease in excess of 2.5 percent.

(6) Notwithstanding paragraph (4), if the approved scope-of-service change or changes were initially implemented on or after the first day of an FQHC's or RHC's fiscal year ending in calendar year 2001, but before the adoption and issuance of written instructions for applying for a scope-of-service change, the adjusted reimbursement rate for that scope-of-service change shall be made retroactive to the date the scope-of-service change was initially implemented. Scope-of-service changes under this paragraph shall be required to be submitted within the later of 150 days after the adoption and issuance of the written instructions by the department, or 150 days after the end of the FQHC's or RHC's fiscal year ending in 2003.

(7) All references in this subdivision to "fiscal year" shall be construed to be references to the fiscal year of the individual FQHC or RHC, as the case may be.

(f) (1) An FQHC or RHC may request a supplemental payment if extraordinary circumstances beyond the control of the FQHC or RHC occur after December 31, 2001, and PPS payments are insufficient due

to these extraordinary circumstances. Supplemental payments arising from extraordinary circumstances under this subdivision shall be solely and exclusively within the discretion of the department and shall not be subject to subdivision (*l*). These supplemental payments shall be determined separately from the scope-of-service adjustments described in subdivision (e). Extraordinary circumstances include, but are not limited to, acts of nature, changes in applicable requirements in the Health and Safety Code, changes in applicable licensure requirements, and changes in applicable rules or regulations. Mere inflation of costs alone, absent extraordinary circumstances, shall not be grounds for supplemental payment. If an FQHC's or RHC's PPS rate is sufficient to cover its overall costs, including those associated with the extraordinary circumstances, then a supplemental payment is not warranted.

(2) The department shall accept requests for supplemental payment at any time throughout the prospective payment rate year.

(3) Requests for supplemental payments shall be submitted in writing to the department and shall set forth the reasons for the request. Each request shall be accompanied by sufficient documentation to enable the department to act upon the request. Documentation shall include the data necessary to demonstrate that the circumstances for which supplemental payment is requested meet the requirements set forth in this section. Documentation shall include all of the following:

(A) A presentation of data to demonstrate reasons for the FQHC's or RHC's request for a supplemental payment.

(B) Documentation showing the cost implications. The cost impact shall be material and significant, two hundred thousand dollars ($200,000) or 1 percent of a facility's total costs, whichever is less.

(4) A request shall be submitted for each affected year.

(5) Amounts granted for supplemental payment requests shall be paid as lump-sum amounts for those years and not as revised PPS rates, and shall be repaid by the FQHC or RHC to the extent that it is not expended for the specified purposes.

(6) The department shall notify the provider of the department's discretionary decision in writing.

(g) (1) An FQHC or RHC "visit" means a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse. For purposes of this section, "physician" shall be interpreted in a manner consistent with the Centers for Medicare and Medicaid Services' Medicare Rural Health Clinic and Federally Qualified Health Center Manual (Publication 27), or its successor, only to the extent that it defines the professionals whose

services are reimbursable on a per-visit basis and not as to the types of services that these professionals may render during these visits and shall include a medical doctor, osteopath, podiatrist, dentist, optometrist, and chiropractor. A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a comprehensive perinatal services practitioner, as defined in Section 51179.1 of Title 22 of the California Code of Regulations, providing comprehensive perinatal services, a four-hour day of attendance at an adult day health care center, and any other provider identified in the state plan's definition of an FQHC or RHC visit.

(2) (A) A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a dental hygienist or a dental hygienist in alternative practice.

(B) Notwithstanding subdivision (e), an FQHC or RHC that currently includes the cost of the services of a dental hygienist in alternative practice for the purposes of establishing its FQHC or RHC rate shall apply for an adjustment to its per-visit rate, and, after the rate adjustment has been approved by the department, shall bill these services as a separate visit. However, multiple encounters with dental professionals that take place on the same day shall constitute a single visit. The department shall develop the appropriate forms to determine which FQHC's or RHC rates shall be adjusted and to facilitate the calculation of the adjusted rates. An FQHC's or RHC's application for, or the department's approval of, a rate adjustment pursuant to this subparagraph shall not constitute a change in scope of service within the meaning of subdivision (e). An FQHC or RHC that applies for an adjustment to its rate pursuant to this subparagraph may continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment for visits between an FQHC or RHC patient and a dental hygienist or a dental hygienist in alternative practice has been approved. Any approved increase or decrease in the provider's rate shall be made within six months after the date of receipt of the department's rate adjustment forms pursuant to this subparagraph and shall be retroactive to the beginning of the fiscal year in which the FQHC or RHC submits the request, but in no case shall the effective date be earlier than January 1, 2008.

(C) An FQHC or RHC that does not provide dental hygienist or dental hygienist in alternative practice services, and later elects to add these services, shall process the addition of these services as a change in scope of service pursuant to subdivision (e).

(h) If FQHC or RHC services are partially reimbursed by a third-party payer, such as a managed care entity (as defined in Section 1396u-2(a)(1)(B) of Title 42 of the United States Code), the Medicare

Program, or the Child Health and Disability Prevention (CHDP) program, the department shall reimburse an FQHC or RHC for the difference between its per-visit PPS rate and receipts from other plans or programs on a contract-by-contract basis and not in the aggregate, and may not include managed care financial incentive payments that are required by federal law to be excluded from the calculation.

(i) (1) An entity that first qualifies as an FQHC or RHC in the year 2001 or later, a newly licensed facility at a new location added to an existing FQHC or RHC, and any entity that is an existing FQHC or RHC that is relocated to a new site shall each have its reimbursement rate established in accordance with one of the following methods, as selected by the FQHC or RHC:

(A) The rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or adjacent area with a similar caseload.

(B) In the absence of three comparable FQHCs or RHCs with a similar caseload, the rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or an adjacent service area, or in a reasonably similar geographic area with respect to relevant social, health care, and economic characteristics.

(C) At a new entity's one-time election, the department shall establish a reimbursement rate, calculated on a per-visit basis, that is equal to 100 percent of the projected allowable costs to the FQHC or RHC of furnishing FQHC or RHC services during the first 12 months of operation as an FQHC or RHC. After the first 12-month period, the projected per-visit rate shall be increased by the Medicare Economic Index then in effect. The projected allowable costs for the first 12 months shall be cost settled and the prospective payment reimbursement rate shall be adjusted based on actual and allowable cost per visit.

(D) The department may adopt any further and additional methods of setting reimbursement rates for newly qualified FQHCs or RHCs as are consistent with Section 1396a(bb)(4) of Title 42 of the United States Code.

(2) In order for an FQHC or RHC to establish the comparability of its caseload for purposes of subparagraph (A) or (B) of paragraph (1), the department shall require that the FQHC or RHC submit its most recent annual utilization report as submitted to the Office of Statewide Health Planning and Development, unless the FQHC or RHC was not required to file an annual utilization report. FQHCs or RHCs that have experienced changes in their services or caseload subsequent to the filing of the annual utilization report may submit to the department a completed report in the format applicable to the prior calendar year. FQHCs or

RHCs that have not previously submitted an annual utilization report shall submit to the department a completed report in the format applicable to the prior calendar year. The FQHC or RHC shall not be required to submit the annual utilization report for the comparable FQHCs or RHCs to the department, but shall be required to identify the comparable FQHCs or RHCs.

(3) The rate for any newly qualified entity set forth under this subdivision shall be effective retroactively to the later of the date that the entity was first qualified by the applicable federal agency as an FQHC or RHC, the date a new facility at a new location was added to an existing FQHC or RHC, or the date on which an existing FQHC or RHC was relocated to a new site. The FQHC or RHC shall be permitted to continue billing for Medi-Cal covered benefits on a fee-for-service basis until it is informed of its enrollment as an FQHC or RHC, and the department shall reconcile the difference between the fee-for-service payments and the FQHC's or RHC's prospective payment rate at that time.

(j) Visits occurring at an intermittent clinic site, as defined in subdivision (h) of Section 1206 of the Health and Safety Code, of an existing FQHC or RHC, or in a mobile unit as defined by paragraph (2) of subdivision (b) of Section 1765.105 of the Health and Safety Code, shall be billed by and reimbursed at the same rate as the FQHC or RHC establishing the intermittent clinic site or the mobile unit, subject to the right of the FQHC or RHC to request a scope-of-service adjustment to the rate.

(k) An FQHC or RHC may elect to have pharmacy or dental services reimbursed on a fee-for-service basis, utilizing the current fee schedules established for those services. These costs shall be adjusted out of the FQHC's or RHC's clinic base rate as scope-of-service changes. An FQHC or RHC that reverses its election under this subdivision shall revert to its prior rate, subject to an increase to account for all MEI increases occurring during the intervening time period, and subject to any increase or decrease associated with applicable scope-of-services adjustments as provided in subdivision (e).

(*l*) FQHCs and RHCs may appeal a grievance or complaint concerning ratesetting, scope-of-service changes, and settlement of cost report audits, in the manner prescribed by Section 14171. The rights and remedies provided under this subdivision are cumulative to the rights and remedies available under all other provisions of law of this state.

(m) The department shall, by no later than March 30, 2008, promptly seek all necessary federal approvals in order to implement this section, including any amendments to the state plan. To the extent that any element or requirement of this section is not approved, the department shall submit a request to the federal Centers for Medicare and Medicaid

Services for any waivers that would be necessary to implement this section.

(n) The department shall implement this section only to the extent that federal financial participation is obtained.

SEC. 1.5. Section 14132.100 of the Welfare and Institutions Code is amended to read:

14132.100. (a) The federally qualified health center services described in Section 1396d(a)(2)(C) of Title 42 of the United States Code are covered benefits.

(b) The rural health clinic services described in Section 1396d (a)(2)(B) of Title 42 of the United States Code are covered benefits.

(c) Federally qualified health center services and rural health clinic services shall be reimbursed on a per-visit basis in accordance with the definition of "visit" set forth in subdivision (g).

(d) Effective October 1, 2004, and on each October 1, thereafter, until no longer required by federal law, federally qualified health center (FQHC) and rural health clinic (RHC) per-visit rates shall be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in Section 1396a(bb)(3)(A) of Title 42 of the United States Code. Prior to January 1, 2004, FQHC and RHC per-visit rates shall be adjusted by the Medicare Economic Index in accordance with the methodology set forth in the state plan in effect on October 1, 2001.

(e) (1) An FQHC or RHC may apply for an adjustment to its per-visit rate based on a change in the scope of services provided by the FQHC or RHC. Rate changes based on a change in the scope of services provided by an FQHC or RHC shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successor.

(2) Subject to the conditions set forth in subparagraphs (A) to (D), inclusive, of paragraph (3), a change in scope of service means any of the following:

(A) The addition of a new FQHC or RHC service that is not incorporated in the baseline prospective payment system (PPS) rate, or a deletion of an FQHC or RHC service that is incorporated in the baseline PPS rate.

(B) A change in service due to amended regulatory requirements or rules.

(C) A change in service resulting from relocating or remodeling an FQHC or RHC.

(D) A change in types of services due to a change in applicable technology and medical practice utilized by the center or clinic.

(E) An increase in service intensity attributable to changes in the types of patients served, including, but not limited to, populations with HIV or AIDS, or other chronic diseases, or homeless, elderly, migrant, or other special populations.

(F) Any changes in any of the services described in subdivision (a) or (b), or in the provider mix of an FQHC or RHC or one of its sites.

(G) Changes in operating costs attributable to capital expenditures associated with a modification of the scope of any of the services described in subdivision (a) or (b), including new or expanded service facilities, regulatory compliance, or changes in technology or medical practices at the center or clinic.

(H) Indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents.

(I) Any changes in the scope of a project approved by the federal Health Resources and Service Administration (HRSA).

(3) No change in costs shall, in and of itself, be considered a scope-of-service change unless all of the following apply:

(A) The increase or decrease in cost is attributable to an increase or decrease in the scope of services defined in subdivisions (a) and (b), as applicable.

(B) The cost is allowable under Medicare reasonable cost principles set forth in Part 413 (commencing with Section 413) of Subchapter B of Chapter 4 of Title 42 of the Code of Federal Regulations, or its successor.

(C) The change in the scope of services is a change in the type, intensity, duration, or amount of services, or any combination thereof.

(D) The net change in the FQHC's or RHC's rate equals or exceeds 1.75 percent for the affected FQHC or RHC site. For FQHCs and RHCs that filed consolidated cost reports for multiple sites to establish the initial prospective payment reimbursement rate, the 1.75-percent threshold shall be applied to the average per-visit rate of all sites for the purposes of calculating the cost associated with a scope-of-service change. "Net change" means the per-visit rate change attributable to the cumulative effect of all increases and decreases for a particular fiscal year.

(4) An FQHC or RHC may submit requests for scope-of-service changes once per fiscal year, only within 90 days following the beginning of the FQHC's or RHC's fiscal year. Any approved increase or decrease in the provider's rate shall be retroactive to the beginning of the FQHC's or RHC's fiscal year in which the request is submitted.

(5) An FQHC or RHC shall submit a scope-of-service rate change request within 90 days of the beginning of any FQHC or RHC fiscal

year occurring after the effective date of this section, if, during the FQHC's or RHC's prior fiscal year, the FQHC or RHC experienced a decrease in the scope of services provided that the FQHC or RHC either knew or should have known would have resulted in a significantly lower per-visit rate. If an FQHC or RHC discontinues providing onsite pharmacy or dental services, it shall submit a scope-of-service rate change request within 90 days of the beginning of the following fiscal year. The rate change shall be effective as provided for in paragraph (4). As used in this paragraph, "significantly lower" means an average per-visit rate decrease in excess of 2.5 percent.

(6) Notwithstanding paragraph (4), if the approved scope-of-service change or changes were initially implemented on or after the first day of an FQHC's or RHC's fiscal year ending in calendar year 2001, but before the adoption and issuance of written instructions for applying for a scope-of-service change, the adjusted reimbursement rate for that scope-of-service change shall be made retroactive to the date the scope-of-service change was initially implemented. Scope-of-service changes under this paragraph shall be required to be submitted within the later of 150 days after the adoption and issuance of the written instructions by the department, or 150 days after the end of the FQHC's or RHC's fiscal year ending in 2003.

(7) All references in this subdivision to "fiscal year" shall be construed to be references to the fiscal year of the individual FQHC or RHC, as the case may be.

(f) (1) An FQHC or RHC may request a supplemental payment if extraordinary circumstances beyond the control of the FQHC or RHC occur after December 31, 2001, and PPS payments are insufficient due to these extraordinary circumstances. Supplemental payments arising from extraordinary circumstances under this subdivision shall be solely and exclusively within the discretion of the department and shall not be subject to subdivision (m). These supplemental payments shall be determined separately from the scope-of-service adjustments described in subdivision (e). Extraordinary circumstances include, but are not limited to, acts of nature, changes in applicable requirements in the Health and Safety Code, changes in applicable licensure requirements, and changes in applicable rules or regulations. Mere inflation of costs alone, absent extraordinary circumstances, shall not be grounds for supplemental payment. If an FQHC's or RHC's PPS rate is sufficient to cover its overall costs, including those associated with the extraordinary circumstances, then a supplemental payment is not warranted.

(2) The department shall accept requests for supplemental payment at any time throughout the prospective payment rate year.

(3) Requests for supplemental payments shall be submitted in writing to the department and shall set forth the reasons for the request. Each request shall be accompanied by sufficient documentation to enable the department to act upon the request. Documentation shall include the data necessary to demonstrate that the circumstances for which supplemental payment is requested meet the requirements set forth in this section. Documentation shall include all of the following:

(A) A presentation of data to demonstrate reasons for the FQHC's or RHC's request for a supplemental payment.

(B) Documentation showing the cost implications. The cost impact shall be material and significant, two hundred thousand dollars ($200,000) or 1 percent of a facility's total costs, whichever is less.

(4) A request shall be submitted for each affected year.

(5) Amounts granted for supplemental payment requests shall be paid as lump-sum amounts for those years and not as revised PPS rates, and shall be repaid by the FQHC or RHC to the extent that it is not expended for the specified purposes.

(6) The department shall notify the provider of the department's discretionary decision in writing.

(g) (1) An FQHC or RHC "visit" means a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse. For purposes of this section, "physician" shall be interpreted in a manner consistent with the Centers for Medicare and Medicaid Services' Medicare Rural Health Clinic and Federally Qualified Health Center Manual (Publication 27), or its successor, only to the extent that it defines the professionals whose services are reimbursable on a per-visit basis and not as to the types of services that these professionals may render during these visits and shall include a medical doctor, osteopath, podiatrist, dentist, optometrist, and chiropractor. A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a comprehensive perinatal services practitioner, as defined in Section 51179.1 of Title 22 of the California Code of Regulations, providing comprehensive perinatal services, a four-hour day of attendance at an adult day health care center, and any other provider identified in the state plan's definition of an FQHC or RHC visit.

(2) (A) A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a dental hygienist or a dental hygienist in alternative practice.

(B) Notwithstanding subdivision (e), an FQHC or RHC that currently includes the cost of the services of a dental hygienist in alternative practice for the purposes of establishing its FQHC or RHC rate shall

apply for an adjustment to its per-visit rate, and, after the rate adjustment has been approved by the department, shall bill these services as a separate visit. However, multiple encounters with dental professionals that take place on the same day shall constitute a single visit. The department shall develop the appropriate forms to determine which FQHC's or RHC rates shall be adjusted and to facilitate the calculation of the adjusted rates. An FQHC's or RHC's application for, or the department's approval of, a rate adjustment pursuant to this subparagraph shall not constitute a change in scope of service within the meaning of subdivision (e). An FQHC or RHC that applies for an adjustment to its rate pursuant to this subparagraph may continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment for visits between an FQHC or RHC patient and a dental hygienist or a dental hygienist in alternative practice has been approved. Any approved increase or decrease in the provider's rate shall be made within six months after the date of receipt of the department's rate adjustment forms pursuant to this subparagraph and shall be retroactive to the beginning of the fiscal year in which the FQHC or RHC submits the request, but in no case shall the effective date be earlier than January 1, 2008.

(C) An FQHC or RHC that does not provide dental hygienist or dental hygienist in alternative practice services, and later elects to add these services, shall process the addition of these services as a change in scope of service pursuant to subdivision (e).

(h) If FQHC or RHC services are partially reimbursed by a third-party payer, such as a managed care entity (as defined in Section 1396u-2(a)(1)(B) of Title 42 of the United States Code), the Medicare Program, or the Child Health and Disability Prevention (CHDP) program, the department shall reimburse an FQHC or RHC for the difference between its per-visit PPS rate and receipts from other plans or programs on a contract-by-contract basis and not in the aggregate, and may not include managed care financial incentive payments that are required by federal law to be excluded from the calculation.

(i) (1) An entity that first qualifies as an FQHC or RHC in the year 2001 or later, a newly licensed facility at a new location added to an existing FQHC or RHC, and any entity that is an existing FQHC or RHC that is relocated to a new site shall each have its reimbursement rate established in accordance with one of the following methods, as selected by the FQHC or RHC:

(A) The rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or adjacent area with a similar caseload.

(B) In the absence of three comparable FQHCs or RHCs with a similar caseload, the rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or an adjacent service area, or in a reasonably similar geographic area with respect to relevant social, health care, and economic characteristics.

(C) At a new entity's one-time election, the department shall establish a reimbursement rate, calculated on a per-visit basis, that is equal to 100 percent of the projected allowable costs to the FQHC or RHC of furnishing FQHC or RHC services during the first 12 months of operation as an FQHC or RHC. After the first 12-month period, the projected per-visit rate shall be increased by the Medicare Economic Index then in effect. The projected allowable costs for the first 12 months shall be cost settled and the prospective payment reimbursement rate shall be adjusted based on actual and allowable cost per visit.

(D) The department may adopt any further and additional methods of setting reimbursement rates for newly qualified FQHCs or RHCs as are consistent with Section 1396a(bb)(4) of Title 42 of the United States Code.

(2) In order for an FQHC or RHC to establish the comparability of its caseload for purposes of subparagraph (A) or (B) of paragraph (1), the department shall require that the FQHC or RHC submit its most recent annual utilization report as submitted to the Office of Statewide Health Planning and Development, unless the FQHC or RHC was not required to file an annual utilization report. FQHCs or RHCs that have experienced changes in their services or caseload subsequent to the filing of the annual utilization report may submit to the department a completed report in the format applicable to the prior calendar year. FQHCs or RHCs that have not previously submitted an annual utilization report shall submit to the department a completed report in the format applicable to the prior calendar year. The FQHC or RHC shall not be required to submit the annual utilization report for the comparable FQHCs or RHCs to the department, but shall be required to identify the comparable FQHCs or RHCs.

(3) The rate for any newly qualified entity set forth under this subdivision shall be effective retroactively to the later of the date that the entity was first qualified by the applicable federal agency as an FQHC or RHC, the date a new facility at a new location was added to an existing FQHC or RHC, or the date on which an existing FQHC or RHC was relocated to a new site. The FQHC or RHC shall be permitted to continue billing for Medi-Cal covered benefits on a fee-for-service basis until it is informed of its enrollment as an FQHC or RHC, and the department

shall reconcile the difference between the fee-for-service payments and the FQHC's or RHC's prospective payment rate at that time.

(j) Visits occurring at an intermittent clinic site, as defined in subdivision (h) of Section 1206 of the Health and Safety Code, of an existing FQHC or RHC, or in a mobile unit as defined by paragraph (2) of subdivision (b) of Section 1765.105 of the Health and Safety Code, shall be billed by and reimbursed at the same rate as the FQHC or RHC establishing the intermittent clinic site or the mobile unit, subject to the right of the FQHC or RHC to request a scope-of-service adjustment to the rate.

(k) More than one encounter with the same health care professional, of the type described in subdivision (g), that takes place on the same day and at a single location may be separately reimbursed as a visit if after the first encounter, the health center or clinic patient suffers illness or injury requiring additional diagnosis or treatment. Multiple visits on the same day of services may be billed and separately reimbursed if the health center or clinic patient receives services from more than one health care professional, of the type described in subdivision (g), and the nature of the services or the patient diagnoses are unrelated. A medical visit and a mental health services visit with a licensed professional that takes place on the same day may be billed as two separate visits. A medical visit and a visit with a dental professional, as authorized by subdivision (g), on the same day may be billed as two separate visits.

(*l*) An FQHC or RHC may elect to have pharmacy or dental services reimbursed on a fee-for-service basis, utilizing the current fee schedules established for those services. These costs shall be adjusted out of the FQHC's or RHC's clinic base rate as scope-of-service changes. An FQHC or RHC that reverses its election under this subdivision shall revert to its prior rate, subject to an increase to account for all MEI increases occurring during the intervening time period, and subject to any increase or decrease associated with applicable scope-of-services adjustments as provided in subdivision (e).

(m) FQHCs and RHCs may appeal a grievance or complaint concerning ratesetting, scope-of-service changes, and settlement of cost report audits, in the manner prescribed by Section 14171. The rights and remedies provided under this subdivision are cumulative to the rights and remedies available under all other provisions of law of this state.

(n) (1) The department shall, by no later than March 30, 2008, promptly seek all necessary federal approvals in order to implement this section, including any amendments to the state plan.

(2) To the extent that any element or requirement of this section is not approved, the department shall submit a request to the federal Centers

for Medicare and Medicaid Services for any waivers that would be necessary to implement this section.

(o) The department shall implement this section only to the extent that federal financial participation is obtained.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 14132.100 of the Welfare and Institutions Code proposed by both this bill and SB 260. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 14132.100 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 260, in which case Section 1 of this bill shall not become operative.

CHAPTER 639

An act to add Section 11108.10 to the Penal Code, relating to firearms.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 11108.10 is added to the Penal Code, to read:

11108.10. (a) In addition to the requirements of Sections 11108 and 11108.3, commencing January 1, 2009, every local law enforcement agency may cause to be entered into the United States Department of Justice, National Integrated Ballistic Information Network (NIBIN) information to ensure that representative samples of fired bullets and cartridge cases collected at crime scenes, from test-fires of firearms recovered at crime scenes, and other firearm information needed to investigate crimes, are recorded into the NIBIN in accordance with the protocol set forth in subdivision (b).

(b) The Attorney General, in cooperation with those law enforcement agencies that choose to do so, shall develop a protocol for the implementation of this section. The protocol shall be completed on or before July 1, 2008.

(c) The Attorney General shall have the authority to issue guidelines to further the purposes of this section.

CHAPTER 640

An act to amend Section 1749.5 of the Civil Code, relating to gift certificates.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

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

SECTION 1. Section 1749.5 of the Civil Code is amended to read:

1749.5. (a) It is unlawful for any person or entity to sell a gift certificate to a purchaser that contains any of the following:

(1) An expiration date.

(2) A service fee, including, but not limited to, a service fee for dormancy, except as provided in subdivision (e).

(b) (1) Any gift certificate sold after January 1, 1997, is redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder.

(2) Notwithstanding paragraph (1), any gift certificate with a cash value of less than ten dollars ($10) is redeemable in cash for its cash value.

(c) A gift certificate sold without an expiration date is valid until redeemed or replaced.

(d) This section does not apply to any of the following gift certificates issued on or after January 1, 1998, provided the expiration date appears in capital letters in at least 10-point font on the front of the gift certificate:

(1) Gift certificates that are distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or other thing of value being given in exchange for the gift certificate by the consumer.

(2) Gift certificates that are donated or sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes if the expiration date on those gift certificates is not more than 30 days after the date of sale.

(3) Gift certificates that are issued for perishable food products.

(e) Paragraph (2) of subdivision (a) does not apply to a dormancy fee on a gift card that meets all of the following criteria:

(1) The remaining value of the gift card is five dollars ($5) or less each time the fee is assessed.

(2) The fee does not exceed one dollar ($1) per month.

(3) There has been no activity on the gift card for 24 consecutive months, including, but not limited to, purchases, the adding of value, or balance inquiries.

(4) The holder may reload or add value to the gift card.

(5) A statement is printed on the gift card in at least 10-point font stating the amount of the fee, how often the fee will occur, that the fee is triggered by inactivity of the gift card, and at what point the fee will be charged. The statement may appear on the front or back of the gift card, but shall appear in a location where it is visible to any purchaser prior to the purchase thereof.

(f) An issuer of gift certificates may accept funds from one or more contributors toward the purchase of a gift certificate intended to be a gift for a recipient, provided that each contributor is provided with a full refund of the amount that he or she paid toward the purchase of the gift certificate upon the occurrence of all of the following:

(1) The funds are contributed for the purpose of being redeemed by the recipient by purchasing a gift certificate.

(2) The time in which the recipient may redeem the funds by purchasing a gift certificate is clearly disclosed in writing to the contributors and the recipient.

(3) The recipient does not redeem the funds within the time described in paragraph (2).

(g) The changes made to this section by the act adding this subdivision shall apply only to gift certificates issued on or after January 1, 2004.

(h) For purposes of this section, "cash" includes, but is not limited to, currency or check. If accepted by both parties, an electronic funds transfer or an application of the balance to a subscriber's wireless telecommunications account is permissible.

CHAPTER 641

An act to amend Sections 12670.14 and 12670.16 of the Water Code, relating to water.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) Sacramento was founded over 150 years ago in a flood plain at the confluence of the Sacramento and American Rivers. Commercially dependent on river transport, the city suffered from flood disasters because of inadequate flood protection. Construction of the present day levee system and Folsom Dam have spared modern Sacramento from catastrophic flooding. However, the record floods of 1986 and 1997 exposed significant deficiencies in this flood control system, making the state capital region the most at-risk urban area in the country.

(b) Since 1986, the State of California has participated in a cost-sharing partnership with the federal government and the Sacramento Area Flood Control Agency that has produced substantial investments in improved flood protection for the people and property occupying the historic flood plain, including the State Capitol and more than 1,300 other government-owned buildings and infrastructure.

(c) Although the state capital region is now better protected than at any time in its history, intensive development of the flood plain has significantly increased the potential consequences of an uncontrolled flood and heightened the state's interest in continuing to invest in a defined cost-shared program to provide the region with an adequate level of flood protection. Without state funding, federal and local flood control investments will not be secured, the risk of flooding will remain unacceptably high, and the region's economic development and environmental health will be imperiled.

(d) The Congress and the President of the United States have recognized the national importance of improving the state capital's flood protection system by authorizing projects in the Defense Appropriations Act of 1993, the Water Resources Development Act of 1996, the Water Resources Development Act of 1999, and the Energy and Water Development Appropriations Act of 2004.

(e) In 2000, in response to the Legislature's expressed desire to develop a long-term policy to guide the state's participation in future flood management projects, Assembly Bill 1147 was passed by the Legislature, signed by Governor Gray Davis, and enacted as Chapter 1071 of the Statutes of 2000.

(f) The legislation added Section 12670.14 to the Water Code. This section authorized flood control projects for the protection of specific areas within the Sacramento region against a catastrophic flood event, including the project for flood control along the American and Sacramento Rivers, the project for flood control in the Natomas and North Sacramento area, and the project to modify Folsom Dam.

(g) The legislation also added Section 12585.7 to the Water Code. Section 12585.7 changed the formula for the sharing of the nonfederal

capital costs of all projects authorized by the Legislature on or after January 1, 2002, two years after the effective date of the legislation.

(h) The project for flood control along the American and Sacramento Rivers, including improvements to the Natomas levees, and the project to modify Folsom Dam were authorized by both the state and federal governments prior to January 1, 2002. Subsequently, in order to address changing engineering standards and conditions, the United States Army Corps of Engineers recommended, and Congress approved, postauthorization changes to these projects.

(i) In April 2007, the Sacramento Area Flood Control Agency secured the support of property owners in the Sacramento region for the imposition of a special benefit assessment to fund the local share of the cost of the levee improvement projects along the American and Sacramento Rivers, including the Natomas area, and the project to modify Folsom Dam to provide the Sacramento region with at least a 200-year level of flood protection based on current estimates of the runoff likely to be produced by such a flood event.

(j) This act modifies existing state authorizations for these projects to ensure that the historic federal-state-local cost-sharing partnership which has sustained these projects is continued and project construction moves forward as quickly as possible. The constructed projects will increase the ability of the existing flood control system to protect heavily urbanized areas within the City of Sacramento and the Counties of Sacramento and Sutter against very rare floods.

(k) As evidenced by the environmental impact reports certified in connection with these projects, including the hydrology and hydraulics impact analysis set forth in the environmental impact report prepared by the Sacramento Area Flood Control Agency with regard to local funding mechanisms for comprehensive flood control improvements for the Sacramento area dated February 2007, the increase in flood protection associated with improving the American and Sacramento River levees and modifying Folsom Dam will be accomplished without altering or otherwise impairing the design flows and water surface elevations prescribed as part of the Sacramento River Flood Control Project. Accordingly, these improvements will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project. Thus, it is not necessary or appropriate to require these projects to include hydraulic mitigation.

(*l*) The projects authorized in Section 12670.14 of the Water Code will increase the ability of the existing flood control system in the lower Sacramento Valley to protect heavily urbanized areas within the City of Sacramento and the Counties of Sacramento and Sutter against very rare floods without altering the design flows and water surface elevations

prescribed as part of the Sacramento River Flood Control Project or impairing the capacity of other segments of the Sacramento River Flood Control Project to contain these design flows and to maintain water surface elevations. Accordingly, the projects authorized in that section will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project and neither the Reclamation Board nor any other state agency shall require the authorized projects to include hydraulic mitigation for these protected lands.

SEC. 2. 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 (Public Law 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, and as further modified to include the project features necessary to provide a 200-year level of flood protection along the American and Sacramento Rivers and within the Natomas Basin as described in the final engineer's report dated April 19, 2007, adopted by the Sacramento Area Flood Control Agency.

(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, and as further modified by the Post-Authorization Change Report, American River Watershed Project (Folsom Dam Modification and Folsom Dam Raise Projects), dated March 2007, adopted by Congress in Section 3023 of the Water Resources Development Act of 2007.

(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.

SEC. 3. Section 12670.16 of the Water Code is amended to read:

12670.16. (a) Notwithstanding any other provision of law, the Sacramento Area Flood Control Agency's share of the nonfederal capital costs of the projects for flood control authorized in Section 12670.14 shall be calculated in accordance with Section 12585.5, and the agency shall be reimbursed pursuant to Section 12585.5 for any costs of project features that the agency advances on behalf of the department or Reclamation Board if either of the following requirements is met:

(1) The advances are made in response to a federal request for payment of the nonfederal share of the cost of the project.

(2) If the advances are made for project features that have not yet been authorized by Congress, the Reclamation Board has received a written determination by the federal government that the project features will likely be authorized by Congress and, if so authorized, the advances will be eligible for credit toward the nonfederal share of the cost of these features.

(b) Prior to any reimbursement pursuant to subdivision (a), the agency shall execute an agreement with the department under which it agrees to indemnify and hold the state harmless from damages due to the construction, operation, or maintenance of those projects and agrees to operate, maintain, repair, replace, and rehabilitate those projects, or provide the agreement of its appropriate member agency to do so.

CHAPTER 642

An act to amend Section 129765 of, and to add Section 130061.5 to, the Health and Safety Code, relating to health facilities.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 129765 of the Health and Safety Code is amended to read:

129765. (a) Except as set forth in subdivision (b), the application for approval of the plans shall be accompanied by the plans, including full, complete, and accurate specifications, and structural design computations, which shall comply with the requirements prescribed by the office. The office may permit electronic submission of plans.

(b) Notwithstanding subdivision (a), the office, in its sole discretion, may enter into a written agreement with the hospital governing authority for the phased submittal and approval of plans. The office shall charge a fee for the review and approval of plans submitted pursuant to this subdivision. This fee shall be based on the estimated cost, but shall not exceed the actual cost, of the entire phased review and approval process for those plans. This fee shall be deducted from the application fee pursuant to Section 129785.

SEC. 2. Section 130061.5 is added to the Health and Safety Code, to read:

130061.5. (a) The Legislature finds and declares the following:

(1) By enacting this section, the Legislature reinforces its commitment to ensuring the seismic safety of hospitals in California. In order to meet that commitment, this section provides a mechanism for hospitals that lack the financial capacity to retrofit Structural Performance Category-1 (SPC-1) buildings by 2013 to, instead, redirect available capital and borrowing capacity to replace those building by 2020. The mechanism is intended to allow these hospitals to meet the seismic requirements, and provide state agencies and the public with more timely and detailed information about the progress these hospitals are making toward seismic safety compliance.

(2) This section requires hospitals seeking this assistance to demonstrate that their financial condition does not allow them to retrofit these buildings by 2013, and requires them to meet specified benchmarks in order to be eligible for the extended timelines set forth in this section. Failure to meet any of these benchmarks shall result in the hospital being noncompliant and subject the hospital to loss of licensure.

(3) It is the intent of the Legislature to ensure the continuation of services in medically underserved communities in which the closure of the hospital would have significant negative impacts on access to health care services in the community.

(4) It is also the intent of the Legislature that this section be implemented very narrowly to target only facilities that are essential

providers in underserved communities and that lack the financial capacity to retrofit SPC-1 buildings by 2013.

(b) A hospital owner may meet the requirements of subdivision (a) of Section 130060 by replacing all of its buildings subject to that subdivision by January 1, 2020, if it meets all of the following conditions:

(1) The hospital owner has requested an extension of the deadline described in subdivision (a) or (b) of Section 130060.

(2) (A) The office certifies that the hospital owner lacks the financial capacity to meet the requirements of subdivision (a) of Section 130060 for that building. In order to receive the certification, the hospital owner shall file with the office by January 1, 2009, financial information as required by the office. This information shall include a schedule demonstrating that, as of the end of the hospital owner's most recent fiscal year for which the hospital owner has filed its annual financial data with the office by July 1, 2007, the hospital owner's annual financial data for that fiscal year show that the hospital owner meets all of the following financial conditions:

(i) The owner's net long-term debt to capitalization ratio, as measured by the ratio of net long-term debt to net long-term debt plus equity, was above 60 percent.

(ii) The owner's debt service coverage, as measured by the ratio of net income plus depreciation expense plus interest expense to current maturities on long-term debt plus interest expense, was below 4.5.

(iii) The owner's cash-to-debt ratio, as measured by the ratio of cash plus marketable securities plus limited use cash plus limited use investments to current maturities on long-term debt plus net long-term debt, was below 90 percent.

(B) The office shall certify that a hospital owner applying for relief under this subdivision meets each of these financial conditions. For the purposes of this subdivision, a hospital owner shall be eligible for certification only if the annual financial data required by this paragraph for the hospital owners and all of its hospital affiliates, considered in total, meets all of these financial conditions. For purposes of this section, "hospital affiliate" means any hospital owned by an entity that controls, is controlled by, or is under the common control of, directly or through intermediate entity, the entity that owns the specified hospital. The applicant hospital owner shall bear all costs for review, but not to exceed the costs of review, of its financial information.

(3) The hospital owner files with the office, by January 1, 2009, a declaration that the hospital for which the hospital owner is seeking relief under this subdivision shall satisfy all of the following conditions:

(A) The hospital shall maintain a contract with the California Medical Assistance Commission (CMAC) under the selective provider contracting program, unless in an open area as established by CMAC.

(B) The hospital shall maintain at least basic emergency medical services if the hospital provided emergency medical services at the basic or higher level as of July 1, 2007.

(C) The hospital meets any of the following criteria:

(i) The hospital is located within a Medically Underserved Area or a Health Professions Shortage Area designated by the federal government pursuant to Sections 330 and 332 of the federal Public Health Service Act (42 U.S.C. Secs. 254b and 254e).

(ii) The office determines, by means of a health impact assessment, that removal of the building or buildings from service may diminish significantly the availability or accessibility of health care services to an underserved community.

(iii) The CMAC determines that the hospital is essential to providing and maintaining Medi-Cal services in the hospital's service area.

(iv) The hospital demonstrates that, based on annual utilization data submitted to the office for 2006 or later, the hospital had in one year over 30 percent of all discharges for either Medi-Cal or indigent patients in the county in which the hospital is located.

(4) The hospital owner submits, by January 1, 2010, a facility master plan for all the buildings that are subject to subdivision (a) of Section 130060 that the hospital intends to replace by January 1, 2020. The facility master plan shall identify at least all of the following:

(A) Each building that is subject to subdivision (a) of Section 130060.

(B) The plan to replace each building with buildings that would be in compliance with subdivision (a) of Section 130065.

(C) The building or buildings to be removed from acute care service and the projected date or dates of that action.

(D) The location for any new building or buildings, including, but not limited to, whether the owner has received a permit for that location. The replacement buildings shall be planned within the same service area as the buildings to be removed from service.

(E) A copy of the preliminary design for the new building or buildings.

(F) The number of beds available for acute care use in each new building.

(G) The timeline for completed plan submission.

(H) The proposed construction timeline.

(I) The proposed cost at the time of submission.

(J) A copy of any records indicating the hospital governing board's approval of the facility plan.

(5) By January 1, 2013, the hospital owner submits to the office a building plan that is deemed ready for review by the office, for each building.

(6) By January 1, 2015, the hospital owner receives a building permit to begin construction, for each building that the owner intends to replace pursuant to the master plan.

(7) Within six months of receipt of the building permit, the hospital owner submits a construction timeline that identifies at least all of the following:

(A) Each building that is subject to subdivision (a) of Section 130060.

(B) The project number or numbers for replacement of each building.

(C) The projected construction start date or dates and projected construction completion date or dates.

(D) The building or buildings to be removed from acute care.

(E) The estimated cost of construction.

(F) The name of the contractor.

(8) Every six months thereafter, the hospital owner reports to the office on the status of the project, including any delays or circumstances that could materially affect the estimated completion date.

(9) The hospital owner pays to the office an additional fee, to be determined by the office, sufficient to cover the additional cost incurred by the office for maintaining all reporting requirements established under this section, including, but not limited to, the costs of reviewing and verifying the financial information submitted pursuant to paragraph (2). This additional fee shall not include any cost for review of the plans or other duties related to receiving a building or occupancy permit.

(c) The office may also approve an extension of the deadline described in subdivision (a) or (b) of Section 130060 for a general acute care hospital building that is classified as a nonconforming SPC-1 building and is owned or operated by a county, city, or county and city that has requested an extension of this deadline by June 30, 2009, if the owner files a declaration with the office stating that as of the date of that filing the owner lacks the ability to meet the requirements of subdivision (a) of Section 130060 for that building pursuant to subdivision (b) of that section. The declaration shall state the commitment of the hospital to replace those buildings by January 1, 2020, with other buildings that meet the requirements of Section 130065 and shall meet the requirements of paragraphs (4) to (9), inclusive, of subdivision (b).

(d) A hospital filing a declaration pursuant to this section but failing to meet any of the deadlines set forth in this section shall be deemed in violation of this section and Section 130060, and shall be subject to loss of licensure.

SEC. 2. The Office of Statewide Health Planning and Development shall prepare and provide a report to the Legislature prior to April 1, 2008, that details how the field review and approval process referenced in Section 129890 of the Health and Safety Code will be implemented without undue delay.

CHAPTER 643

An act to amend Section 7075 of the Government Code, relating to economic development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 7075 of the Government Code is amended to read:

7075. (a) For preliminary applications filed before October 1, 2007, the following shall apply:

(1) Upon filing a preliminary application, the applicant city, county, or city and county, as lead agency, shall submit an initial study and a notice of preparation to the department, the state clearinghouse, and all responsible agencies.

(2) Only an applicant lead agency chosen by the department as a final applicant shall prepare, or cause to be prepared, a draft environmental impact report, which shall set forth the potential environmental impacts of any and all development planned within the enterprise zone. The draft environmental impact report shall be submitted to the department with the final application.

(3) Prior to final designation by the department, the applicant shall complete and certify the final environmental impact report.

(4) The environmental impact report shall comply with Division 13 (commencing with Section 21000) of the Public Resources Code.

(5) No further environmental impact report shall be required if the effects of the project were any of the following:

(A) Mitigated or avoided as a result of the environmental impact report prepared for the area.

(B) Examined at a sufficient level of detail in the environmental impact report for the area to enable those effects to be mitigated or

avoided by specific site revisions, the imposition of conditions, or other means in connection with the designation of the area.

(C) Identified in the final environmental impact report and the lead agency made written findings that specific economic, social, or other considerations made the mitigation measures or project alternatives identified in the final environmental impact report unfeasible.

(b) For preliminary applications filed on and after October 1, 2007, the following shall apply:

(1) Upon filing a preliminary application, the applicant, city, county, or city and county, as lead agency, shall submit an initial study and a notice of preparation if an environmental impact report is to be prepared, to the department, the state clearinghouse, and all responsible agencies.

(2) Only an applicant lead agency chosen by the department as a final applicant shall prepare, or cause to be prepared, a draft environmental impact report, negative declaration, or mitigated negative declaration, as required by Division 13 (commencing with Section 21000) of the Public Resources Code, which shall be submitted to the department with the final application.

(3) Prior to final designation by the department, the applicant lead agency shall complete and certify the final environmental impact report, or approve the negative declaration or mitigated negative declaration.

(4) The environmental impact report, negative declaration, or mitigated negative declaration shall comply with Division 13 (commencing with Section 21000) of the Public Resources Code.

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

In order that the provisions governing the submission of applications for designation as enterprise zones set forth in Section 7075 of the Government Code, as amended by Section 1 of this act, may take affect at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 644

An act to add Section 2831 to the Fish and Game Code, relating to wildlife resources.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) The basis for the lands currently designated as open space by the City of San Diego is a Multiple Species Conservation Program (MSCP) for the City of San Diego.

(b) In 1997, the City of San Diego signed a 50-year agreement with the Department of Fish and Game and the United States Fish and Wildlife Service to conserve approximately 55,000 acres of open space within the City of San Diego under the MSCP. Included in the MSCP are designated and dedicated open-space parcels. The City of San Diego has identified in excess of 15,000 acres of city-owned parcels that were intended to be dedicated open space under the city charter, but have not been converted from designated to dedicated open space. Dedicated open space cannot be sold or exchanged without a two-thirds vote of the people. The Mayor of the City of San Diego and, by a unanimous vote, the city council, have passed a resolution to support this effort to convert those parcels from designated to dedicated open space.

(c) Therefore, in keeping with the desire of the City of San Diego to ensure that the lands currently designated as open space cannot be sold or exchanged without a vote of the people, and consistent with the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), these lands should become dedicated land under state law and the City Charter of the City of San Diego.

SEC. 2. Section 2831 is added to the Fish and Game Code, to read:

2831. (a) Notwithstanding any other provision of law, lands designated as of January 1, 2008, as open-space lands in a document entitled "Declaration of the Dedication of Land" approved by a resolution of the San Diego City Council in the same manner in which the city council processes approval of dedicated open space, reserving to the city council the authority to grant easements for utility purposes in, under, and across dedicated property, if those easements and facilities to be located thereon do not significantly interfere with the park and recreational use of the property, and filed with the Office of the City Clerk for the City of San Diego, and, if required, at the Office of the County of San Diego Recorder/Clerk, are dedicated land under the City Charter of the City of San Diego.

(b) Upon filing of that document in accordance with subdivision (a), the Office of the City Clerk for the City of San Diego, and, if applicable,

the County of San Diego Recorder/Clerk, shall make the document available for inspection by the public upon request.

CHAPTER 645

An act to add Sections 3060.9, 3069, and 3069.5 to the Penal Code, relating to corrections.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 3060.9 is added to the Penal Code, to read:

3060.9. (a) The Department of Corrections and Rehabilitation is hereby authorized to expand the use of parole programs or services to improve the rehabilitation of parolees, reduce recidivism, reduce prison overcrowding, and improve public safety through the following:

(1) The use of intermediate sanctions for offenders who commit a violation of parole.

(2) The use of parole programs or services, in addition to supervision, for any offender who is in need of services to reduce the parolee's likelihood to reoffend.

(b) For purposes of this section, the expansion of parole programs or services may include, but shall not be limited to, the following:

(1) Counseling.

(2) Electronic monitoring.

(3) Halfway house services.

(4) Home detention.

(5) Intensive supervision.

(6) Mandatory community service assignments.

(7) Increased drug testing.

(8) Participation in one or more components of the Preventing Parolee Crime Program pursuant to Section 3068.

(9) Rehabilitation programs, such as substance abuse treatment.

(10) Restitution.

(c) As used in this section:

(1) "Department" means the Department of Corrections and Rehabilitation.

(2) "Parole authority" means the Board of Parole Hearings.

(d) The department or the parole authority may assign the programs or services specified in subdivision (b) to offenders who meet the criteria

of paragraph (1) or (2). This section shall not alter the existing discretion of the parole authority regarding the reporting by the department of parole violations or conditions of parole. In exercising its authority pursuant to paragraphs (2) and (3) of subdivision (e) and subdivision (f), the parole authority or the department in exercising its authority pursuant to paragraph (1) of subdivision (e) may determine an individual parolee's eligibility for parole programs or services by considering the totality of the circumstances including, but not limited to, the instant violation offense, the history of parole adjustment, current commitment offense, the risk needs assessment of the offender, and prior criminal history, with public safety and offender accountability as primary considerations.

(e) (1) Subject to the provisions of this section, the parole authority, in the absence of a new conviction and commitment of the parolee to the state prison under other provisions of law, may assign a parolee who violates a condition of his or her parole to parole programs or services in lieu of revocation of parole.

(2) In addition to the alternatives provided in this section, the parole authority may, as an alternative to ordering a revoked parolee returned to custody, suspend the period of revocation pending the parolee's successful completion of parole programs or services assigned by the parole authority.

(3) The department shall not establish a special condition of parole, assigning a parolee to parole programs or services in lieu of initiating revocation proceedings, if the department reasonably believes that the violation of the condition of parole involves commission of a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, or involves the control or use of a firearm.

(f) A special condition of parole imposed pursuant to this section to participate in residential programs shall not be established without a hearing by the parole authority in accordance with Section 3068 and regulations of the parole authority. A special condition of parole providing an assignment to a parole program or service that does not consist of a residential component may be established without a hearing.

(g) Expansion of parole programs or services pursuant to this section by the department is subject to the appropriation of funding for this purpose as provided in the Budget Act of 2007, and subsequent budget acts.

(h) The department, in consultation with the Legislative Analyst's Office, shall, contingent upon funding, conduct an evaluation regarding the effect of parole programs or services on public safety, parolee recidivism, and prison and parole costs and report the results to the

Legislature three years after funding is provided pursuant to subdivision (g). Until that date, the department shall report annually to the Legislature, beginning January 1, 2009, regarding the status of the expansion of parole programs or services and the number of offenders assigned and participating in parole programs or services in the preceding fiscal year.

SEC. 2. Section 3069 is added to the Penal Code, to read:

3069. (a) The Department of Corrections and Rehabilitation is hereby authorized to create the Parole Violation Intermediate Sanctions (PVIS) program. The purpose of the program shall be to improve the rehabilitation of parolees, reduce recidivism, reduce prison overcrowding, and improve public safety through the use of intermediate sanctions for offenders who violate parole. The PVIS program will allow the department to provide parole agents an early opportunity to intervene with parolees who are not in compliance with the conditions of parole and facing return to prison. The program will include key components used by drug and collaborative courts under a highly structured model, including close supervision and monitoring by a hearing officer, dedicated calendars, nonadversarial proceedings, frequent appearances before the hearing officer, utilization of incentives and sanctions, frequent drug and alcohol testing, immediate entry into treatment and rehabilitation programs, and close collaboration between the program, parole, and treatment to improve offender outcomes. The program shall be local and community based.

(b) As used in this section:

(1) "Department" means the Department of Corrections and Rehabilitation.

(2) "Parole authority" means the Board of Parole Hearings.

(3) "Program" means the Parole Violation Intermediate Sanctions program.

(c) (1) A parolee who is deemed eligible by the department to participate in this program, and who would otherwise be referred to the parole authority to have his or her parole revoked for a parole violation shall be referred by his or her parole officer for participation in the program in lieu of parole revocation.

(2) If the alleged violation of parole involves the commission of a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, or involves the control or use of a firearm, the parolee shall not be eligible for referral to the program in lieu of revocation of parole.

(d) The department is authorized to establish local PVIS programs. Each local program may have, but shall not be limited to, the following characteristics:

(1) An assigned hearing officer who is a retired superior court judge or commissioner and who is experienced in using the drug court model and collaborative court model.

(2) The use of a dedicated calendar.

(3) Close coordination between the hearing officer, department, counsel, community treatment and rehabilitation programs participating in the program and adherence to a team approach in working with parolees.

(4) Enhanced accountability through the use of frequent program appearances by parolees in the program, at least one per month, with more frequent appearances in the time period immediately following the initial referral to the program and thereafter in the discretion of the hearing officer.

(5) Reviews of progress by the parolee as to his or her treatment and rehabilitation plan and abstinence from the use of drugs and alcohol through progress reports provided by the parole agent as well as all treatment and rehabilitation providers.

(6) Mandatory frequent drug and alcohol testing.

(7) Graduated in-custody sanctions may be imposed after a hearing in which it is found the parolee failed treatment and rehabilitation programs or continued in the use of drugs or alcohol while in the program.

(8) A problemsolving focus and team approach to decisionmaking.

(9) Direct interaction between the parolee and the hearing officer.

(10) Accessibility of the hearing officer to parole agents and parole employees as well as treatment and rehabilitation providers.

(e) Upon successful completion of the program, the parolee shall continue on parole, or be granted other relief as shall be determined in the sole discretion of the department or as authorized by law.

(f) The department is authorized to develop the programs. The parole authority is directed to convene in each county where the programs are selected to be established, all local stakeholders, including, but not limited to, a retired superior court judge or commissioner, designated by the Administrative Office of the Courts, who shall be compensated by the department at the present rate of pay for retired judges and commissioners, local parole agents and other parole employees, the district attorney, the public defender, an attorney actively representing parolees in the county and a private defense attorney designated by the public defenders association, the county director of alcohol and drug services, behavioral health, mental health, and any other local stakeholders deemed appropriate. Specifically, persons directly involved in the areas of substance abuse treatment, cognitive skills development, education, life skills, vocational training and support, victim impact

awareness, anger management, family reunification, counseling, residential care, placement in affordable housing, employment development and placement are encouraged to be included in the meeting.

(g) The department, in consultation with local stakeholders, shall develop a plan that is consistent with this section. The plan shall address at a minimum the following components:

(1) The method by which each parolee eligible for the program shall be referred to the program.

(2) The method by which each parolee is to be individually assessed as to his or her treatment and rehabilitative needs and level of community and court monitoring required, participation of counsel, and the development of a treatment and rehabilitation plan for each parolee.

(3) The specific treatment and rehabilitation programs that will be made available to the parolees and the process to ensure that they receive the appropriate level of treatment and rehabilitative services.

(4) The criteria for continuing participation in, and successful completion of, the program, as well as the criteria for termination from the program and return to the parole revocation process.

(5) The development of a program team, as well as a plan for ongoing training in utilizing the drug court and collaborative court nonadversarial model.

(h) (1) If a parolee is referred to the program by his or her parole agent, as specified in this section, the hearing officer in charge of the local program to which the parolee is referred shall determine whether the parolee will be admitted to the program.

(2) A parolee may be excluded from admission to the program if the hearing officer determines that the parolee poses a risk to the community or would not benefit from the program. The hearing officer may consider the history of the offender, the nature of the committing offense, and the nature of the violation. The hearing officer shall state its findings, and the reasons for those findings, on the record.

(3) If the hearing officer agrees to admit the parolee into the program, any pending parole revocation proceedings shall be suspended contingent upon successful completion of the program as determined by the program hearing officer.

(i) A special condition of parole imposed as a condition of admission into the program consisting of a residential program shall not be established without a hearing in front of the hearing officer in accordance with Section 3068 and regulations of the parole authority. A special condition of parole providing an admission to the program that does not consist of a residential component may be established without a hearing.

(j) Implementation of this section by the department is subject to the appropriation of funding for this purpose as provided in the Budget Act of 2008, and subsequent budget acts.

SEC. 3. Section 3069.5 is added to the Penal Code, to read:

3069.5. (a) The department, in consultation with the Legislative Analyst's Office, shall, contingent upon funding, conduct an evaluation of the PVIS program.

(b) A final report shall be due to the Legislature three years after funding is provided pursuant to subdivision (h) of Section 3069. Until that date, the department shall report annually to the Legislature, beginning January 1, 2009, regarding the status of implementation of the PVIS program and the number of offenders assigned and participating in the program in the preceding fiscal year.

CHAPTER 646

An act to amend Sections 32631, 32632, 32633, 32634, 32639, 32645, 32646, and 32661 of the Public Resources Code, relating to the San Diego River Conservancy.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 32631 of the Public Resources Code is amended to read:

32631. (a) The San Diego River is a natural, historic, and recreational resource in the heart of San Diego. From its headwaters near the town of Julian in east San Diego County, it runs 52 miles through Mission Valley and the first settlement in California at Old Town San Diego before it empties into the Pacific Ocean at Ocean Beach. The river has been subjected to intense development in some parts; it runs through one of San Diego's most populated neighborhoods and is in need of restoration, conservation, and enhancement all along its length. The area presents excellent opportunities for recreation, scientific research, historic preservation of the first aqueduct in the United States, and educational and cultural activities, of value to California and the nation. Reestablishing the cultural and historic connections between the San Diego River, Old Town San Diego State Historic Park, the Military Presidio, and the Kumeyaay Nation will provide the public with the opportunity to appreciate the state's historic beginnings.

(b) Given the opportunities available, the state recognizes the importance of holding this land in trust to be preserved and enhanced for the enjoyment of present and future generations.

(c) The San Diego River Conservancy has developed a Five Year Strategic and Infrastructure Plan which has been endorsed by its board of directors, as well as by the San Diego River Parkway Coalition, representing diverse state and local interests. The strategic plan is consistent with the San Diego River Parkway Concept Plan and outlines and establishes four programmatic areas: land conservation; recreation and education; natural and cultural resources preservation and restoration; and, water quality and natural flood conveyance.

SEC. 2. Section 32632 of the Public Resources Code is amended to read:

32632. For the purposes of this division, the following terms have the following meanings:

(a) "Conservancy" means the San Diego River Conservancy established by this division.

(b) "Fund" means the San Diego River Conservancy Fund established pursuant to Section 32657.

(c) "Governing board" means the governing board of the conservancy.

(d) "Historic flumes" means both of the following:

(1) The Padre Dam flume built by Native Americans along the San Diego River to convey water from the Mission Dam to the Mission San Diego de Alcala in the early 1800s.

(2) The flume built by the San Diego Flume Company in the late 1880s to convey water from a diverting dam on the upper San Diego River to the eastern edge of the City of San Diego.

(e) "Local public agency" means a city, county, district, or joint powers agency.

(f) "Nonprofit organization" means a private, nonprofit organization that qualifies for exempt status under Section 501(c)(3) of the Internal Revenue Code, as amended, and that has among its principal charitable purposes the preservation of land for scientific, historic, educational, recreational, scenic, or open-space opportunities, the protection of the natural environment, or preservation or enhancement of wildlife.

(g) "San Diego River area" or "area" means those lands or other areas that are donated to, or otherwise acquired by, or operated by, the conservancy, which are located within one-half mile on either side of the thread of the river and its tributaries including the historic flumes emanating from the river, from its headwaters near Julian to the Pacific Ocean at Dog Beach in San Diego, and other properties within the watershed of the San Diego River that meet the intent of this division

as approved on a case-by-case basis by a two-thirds majority vote of the governing board.

SEC. 3. Section 32633 of the Public Resources Code is amended to read:

32633. There is in the Resources Agency, the San Diego River Conservancy, which is created for the following purposes:

(a) To acquire and manage public lands within the San Diego River area, and to provide recreational opportunities, open space, wildlife habitat and species restoration and protection, wetland protection and restoration, protection of historical and cultural resources, and protection, maintenance and improvements of the quality of the waters in the San Diego River and its watershed, its tributaries and historic flumes emanating from the river for all beneficial uses, lands for educational uses within the area, and natural floodwater conveyance.

(b) To provide for the public's enjoyment, and to enhance the recreational and educational experience and historic interpretation on public lands in the territory in a manner consistent with the protection of land and natural resources, as well as economic resources, in the area.

SEC. 4. Section 32634 of the Public Resources Code is amended to read:

32634. (a) The governing board of the conservancy shall consist of 11 voting members and two nonvoting members.

(b) The voting members of the board shall consist of the following:

(1) The Secretary of the Resources Agency, or his or her designee.

(2) The Director of Finance, or his or her designee.

(3) The Director of Parks and Recreation, or his or her designee.

(4) Five members of the public at large, three of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, and one of whom shall be appointed by the Speaker of the Assembly.

(5) The Mayor of San Diego.

(6) One member of the City Council of San Diego, elected by a majority of the membership of the council.

(7) One member of the Board of Supervisors of the County of San Diego, whose district includes the preponderance of the San Diego River watershed.

(c) The two nonvoting members shall consist of the following:

(1) The Executive Director of the Wildlife Conservation Board, or his or her designee.

(2) A representative selected by the San Diego Regional Water Quality Control Board.

(d) Two of the three initial appointments by the Governor pursuant to paragraph (4) of subdivision (b) shall be for three-year terms and the

third appointment shall be for a two-year term. All subsequent appointments shall be for four-year terms.

(e) No person shall continue as a member of the governing board if that person ceases to hold the office that qualifies that person for membership. Upon the occurrence of those events, the person's membership on the governing board shall automatically terminate.

SEC. 5. Section 32639 of the Public Resources Code is amended to read:

32639. The conservancy shall establish and maintain an office within the area. The conservancy may rent or own real and personal property and equipment pursuant to applicable statutes and regulations. The conservancy may not levy a tax or regulate land use.

SEC. 6. Section 32645 of the Public Resources Code is amended to read:

32645. The conservancy may take any of the following actions for the purposes of this division:

(a) Select and acquire real property or interests in real property in the name of the state pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(b) Acquire interests in land by various means, including, but not limited to, land exchanges, easements, development rights, life estates, leases, and leaseback agreements.

(c) Accept and hold real property or an interest in real property that is acquired through gift, exchange, donation, or dedication.

(d) Local public agencies shall retain exclusive authority over all zoning or land use regulations within their jurisdiction.

SEC. 7. Section 32646 of the Public Resources Code is amended to read:

32646. Notwithstanding any other provision of law, the conservancy has the first right of refusal to acquire any public lands that are suitable for park and open space within the conservancy's jurisdiction when those lands become available. The conservancy may not exercise the power of eminent domain.

SEC. 8. Section 32661 of the Public Resources Code is amended to read:

32661. This division shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

CHAPTER 647

An act to add Section 5006.15 to the Public Resources Code, relating to parks.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 5006.15 is added to the Public Resources Code, to read:

5006.15. The department may acquire real property by donation or purchase that is subject to a conservation easement, deed restriction, or other limitation, if the director determines that the conservation easement, deed restriction, or other limitation is consistent with and promotes the purposes for which the property is to be acquired.

CHAPTER 648

An act to add Section 49431.7 to the Education Code, relating to pupil nutrition.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Trans fatty acids, also known as trans fats, have a detrimental impact on a person's health by doing all of the following:

(1) Increasing blood insulin level in response to glucose load.

(2) Affecting immune response.

(3) Decreasing the response of the red blood cells to insulin.

(4) Causing alterations in physiological properties of biological membranes.

(5) Causing alterations in adipose cell size, cell number, lipid class, and fatty acid composition.

(6) Lowering serum HDL cholesterol.

(7) Impairing endothelial function.

(b) In 1997, a New England Journal of Medicine study found eating one gram of trans fats a day for a decade increased the risk of cardiovascular disease by 20 percent.

(c) Recent research by Harvard Medical School shows that high trans fat intake represents a significant risk for developing premature diabetes.

(d) Trans fats increase the risk of heart disease and stroke by increasing levels of so-called bad cholesterol, known as LDL, and reducing levels of so-called good cholesterol, known as HDL.

(e) There is an overwhelming amount of evidence revealing the damage trans fat can do to the health of an individual.

SEC. 2. Section 49431.7 is added to the Education Code, to read:

49431.7. (a) Commencing on July 1, 2009, a school or school district, through a vending machine or school food service establishment during school hours and up to one-half of an hour before and after school hours, shall not make available to pupils enrolled in kindergarten, or any of grades 1 to 12, inclusive, food containing artificial trans fat, as defined in subdivision (b), or use food containing artificial trans fat in the preparation of a food item served to those pupils.

(b) For purposes of this section, a food contains artificial trans fat if a food contains vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 grams of trans fat per serving.

(c) For purposes of this section, "school food service establishment" means a place that regularly sells or serves a food item or meal on a school campus.

(d) This section does not apply to food provided as part of a USDA meal program.

SEC. 3. 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.

CHAPTER 649

An act to add Article 1.5 (commencing with Section 224.70) to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

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

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

(a) Youth confined in a facility of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, are harmed by discrimination based on actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, and HIV status.

(b) Youth are committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities in order to provide them an opportunity for rehabilitation. These rehabilitation opportunities shall include the provision of educational, therapeutic, and other necessary services to ensure that these youth can become successful and productive members of their communities.

(c) All youth confined in the Division of Juvenile Facilities have the constitutional right to a safe and secure environment.

(d) The Division of Juvenile Facilities is committed to treating all people with dignity, respect, and consideration and demonstrating behavior which is fair, honest, and ethical.

(e) There is a need to inform youth confined in the Division of Juvenile Facilities about their rights.

SEC. 2. Article 1.5 (commencing with Section 224.70) is added to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, to read:

Article 1.5. Youth Bill of Rights

224.70. For the purposes of this article:

(a) "Committed" means placed in a facility of the Division of Juvenile Facilities pursuant to a court order, independent of, or in connection with, other sentencing alternatives.

(b) "Detained" means held in secure confinement in a juvenile facility of the Division of Juvenile Facilities.

(c) "Extended family member" means any adult related to the youth by blood, adoption, or marriage, and any adult who has an established familial or mentoring relationship with the youth, including, but not limited to, godparents, clergy, teachers, neighbors, and family friends.

(d) "Facility of the Division of Juvenile Facilities" means a place of confinement that is operated by, or contracted for, the Department of Corrections and Rehabilitation, for the purpose of the detention or

commitment of youth who are taken into custody and alleged to be within the description of Section 601 or 602 or who are adjudged to be a ward of the court.

(e) "Youth" means any person detained in a facility of the Division of Juvenile Facilities.

224.71. It is the policy of the state that all youth confined in a facility of the Division of Juvenile Facilities shall have the following rights:

(a) To live in a safe, healthy, and clean environment conducive to treatment and rehabilitation and where they are treated with dignity and respect.

(b) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

(c) To receive adequate and healthy food and water, sufficient personal hygiene items, and clothing that is adequate and clean.

(d) To receive adequate and appropriate medical, dental, vision, and mental health services.

(e) To refuse the administration of psychotropic and other medications consistent with applicable law or unless immediately necessary for the preservation of life or the prevention of serious bodily harm.

(f) To not be searched for the purpose of harassment or humiliation or as a form of discipline or punishment.

(g) To maintain frequent and continuing contact with parents, guardians, siblings, children, and extended family members, through visits, telephone calls, and mail.

(h) To make and receive confidential telephone calls, send and receive confidential mail, and have confidential visits with attorneys and their authorized representatives, ombudspersons and other advocates, holders of public office, state and federal court personnel, and legal service organizations.

(i) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(j) To have regular opportunity for age-appropriate physical exercise and recreation, including time spent outdoors.

(k) To contact attorneys, ombudspersons and other advocates, and representatives of state or local agencies, regarding conditions of confinement or violations of rights, and to be free from retaliation for making these contacts or complaints.

(*l*) To participate in religious services and activities of their choice.

(m) To not be deprived of any of the following as a disciplinary measure: food, contact with parents, guardians, or attorneys, sleep,

exercise, education, bedding, access to religious services, a daily shower, a drinking fountain, a toilet, medical services, reading material, or the right to send and receive mail.

(n) To receive a quality education that complies with state law, to attend age-appropriate school classes and vocational training, and to continue to receive educational services while on disciplinary or medical status.

(o) To attend all court hearings pertaining to them.

(p) To have counsel and a prompt probable cause hearing when detained on probation or parole violations.

(q) To make at least two free telephone calls within an hour after initially being placed in a facility of the Division of Juvenile Facilities following an arrest.

224.72. (a) Every facility of the Division of Juvenile Facilities shall provide each youth who is placed in the facility with an age and developmentally appropriate orientation that includes an explanation and a copy of the rights of the youth, as specified in Section 224.71, and that addresses the youth's questions and concerns.

(b) Each facility of the Division of Juvenile Facilities shall post a listing of the rights provided by Section 224.71 in a conspicuous location. The Office of the Ombudspersons of the Division of Juvenile Facilities shall design posters and provide the posters to each Division of Juvenile Facilities facility subject to this subdivision. These posters shall include the toll-free telephone number of the Office of the Ombudspersons of the Division of Juvenile Facilities.

224.73. All facilities of the Division of Juvenile Facilities shall ensure the safety and dignity of all youth in their care and shall provide care, placement, and services to youth without discriminating on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

224.74. (a) The Office of the Ombudspersons of the Division of Juvenile Facilities shall do all of the following:

(1) Disseminate information on the rights of children and youth in the custody of the Division of Juvenile Facilities, as provided in Section 224.71, and the services provided by the office.

(2) Investigate and attempt to resolve complaints made by or on behalf of youth in the custody of the Division of Juvenile Facilities, related to their care, placement, or services, or in the alternative, refer appropriate complaints to another agency for investigation.

(3) Notify the complainant in writing of the intention to investigate or the decision to refer the complaint to another agency within 15 days of receiving the complaint. If the office declines to investigate a

complaint, the office shall notify the complainant of the reason for this decision.

(4) Update the complainant on the progress of the investigation and notify the complainant in writing of the final outcome, steps taken during the investigation, basis for the decision, and any action to be taken as a result of the complaint.

(5) Document the number, source, origin, location, and nature of complaints.

(6) Provide a toll-free telephone number for the Office of the Ombudspersons of the Division of Juvenile Facilities.

(7) Compile and make available to the Legislature and the public all data collected over the course of the year, including, but not limited to, the number of contacts to the toll-free telephone number, the number of complaints made, the number of investigations performed by the office, the number of referrals made, the issues complained about, the number of sustained complaints, the actions taken as a result of sustained complaints, and the number of unresolved complaints, including the reasons the complaints could not be resolved.

(b) (1) The Office of the Ombudspersons of the Division of Juvenile Facilities, in consultation with youth advocate and support groups, and groups representing children, families, children's facilities, and other interested parties, shall develop, no later than July 1, 2008, standardized information explaining the rights specified in Section 224.71. The information developed shall be age-appropriate.

(2) The Office of the Ombudspersons of the Division of Juvenile Facilities and other interested parties may use the information developed in paragraph (1) in carrying out their responsibilities to inform youth of their rights provided under Section 224.71.

CHAPTER 650

An act to amend Section 47613 of the Education Code, relating to charter schools.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 47613 of the Education Code is amended to read:

47613. (a) Except as set forth in subdivision (b), a chartering authority may charge for the actual costs of supervisorial oversight of a charter school not to exceed 1 percent of the revenue of the charter school.

(b) A chartering authority may charge for the actual costs of supervisorial oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering authority.

(c) A local agency that is given the responsibility for supervisorial oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, may charge for the actual costs of supervisorial oversight, and administrative costs necessary to secure charter school funding. A charter school that is charged for costs under this subdivision may not be charged pursuant to subdivision (a) or (b).

(d) This section does not prevent the charter school from separately purchasing administrative or other services from the chartering authority or any other source.

(e) For purposes of this section, a chartering authority means a school district, county board of education, or the state board, that granted the charter to the charter school.

(f) For purposes of this section, "revenue of the charter school" means the general purpose entitlement and categorical block grant, as defined in subdivisions (a) and (b) of Section 47632.

(g) (1) The California Research Bureau of the California State Library shall prepare and submit to the Legislature on or before January 8, 2009, a report on the key elements and actual costs of charter school oversight. For purposes of the report, the bureau shall define fiscal and academic oversight and shall include any financial relationship between a charter school and its chartering authority that has the effect of furthering the operations of the charter school and that may provide opportunities to oversee the charter school. The report, at a minimum, shall address all of the following issues:

(A) The range of annual activities that entities providing supervisorial oversight of charter schools are expected to perform.

(B) Staff time spent on reviewing charter petitions measured by the size of school districts and the number of charter petitions reviewed.

(C) Staff time spent on oversight responsibilities measured by the size of school districts and the number of charter schools.

(D) Best practices for charter school oversight measured by efficiency and effectiveness. A cost analysis of those best practices after being measured by efficiency and effectiveness.

(E) Comparison of school district costs and revenues attributable to charter school oversight.

(F) Administrative services provided to a charter school by a chartering authority, such as human resources, that may be useful in the oversight of the charter school and chartering authority revenues attributable to those services.

(G) Length of time required to review a single charter petition.

(H) Recommendations for structuring charter school oversight and accountability in California, including an assessment of whether or not the associated costs specified in subdivisions (a) and (b) and subparagraph (F) are adequate to support appropriate supervisorial oversight.

(2) In preparing its report, the California Research Bureau shall consult with an advisory panel to ensure technical accuracy.

CHAPTER 651

An act to add Section 16641.5 to, to add Article 7 (commencing with Section 50980) to Chapter 4.5 of Part 1 of Division 1 of Title 5 of, and to repeal and add Chapter 4.5 (commencing with Section 50950) of Part 1 of Division 1 of Title 5 of, the Government Code, relating to firefighters.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 16641.5 is added to the Government Code, to read:

16641.5. The Public Employees' Retirement System, as a public entity, and the present, future, and former board members of the Public Employees' Retirement System, jointly and individually, and state officers and employees, shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including, but not limited to, court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, and employees shall or may at any time sustain as a result of the transfer of the Volunteer Firefighters Length of Service Award System as described in Chapter 4.5 (commencing with Section 50950).

SEC. 2. Chapter 4.5 (commencing with Section 50950) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

Chapter 4.5. Volunteer Firefighters Length of Service Award Act

Article 1. General Provisions

50950. The Legislature finds and declares all of the following:

(a) The Volunteer Firefighters Length of Service Award System is not a retirement system but an incentive program for volunteer firefighters.

(b) The purpose of the award system can be achieved more efficiently and at a lower cost than the current program by transferring the award system and responsibility for administering that system from the Board of Administration of the Public Employees' Retirement System to the board of the California State Fire Employees Welfare Benefit Corporation.

(c) On and after the date of the transfer or termination of the award system, the Board of Administration of the Public Employees' Retirement System shall have no responsibility to administer the award system and shall take no action related to past, present, or future obligations of administering the system. On and after the date of the transfer or termination of the award system, the Board of Administration of the Public Employees' Retirement System shall have no liability related to the administration of the award system.

(d) Because trust fund moneys in the award system are to be used for the exclusive benefit of the participants in the award system, the Board of Administration of the Public Employees' Retirement System shall not pay or transfer any trust fund moneys related to any claims, demands, actions, damages, judgments, costs, charges, and expenses, including, but not limited to, court costs and attorney's fees, regarding claims arising out of or incurred as a result of the transfer of the award system. However, nothing in this chapter shall prevent the Board of Administration of the Public Employees' Retirement System from charging and receiving administrative fees in connection with transferring the administration of the award system from the Board of Administration of the Public Employees' Retirement System to the board of the California State Fire Employees Welfare Benefit Corporation.

(e) It is the intent of the Legislature that the Board of Administration of the Public Employees' Retirement System and the board of the California State Fire Employees Welfare Benefit Corporation work cooperatively with each other to transfer the administration of the award system and establish systems and accounts necessary to transfer participant information, assets, and liabilities regarding the award system.

(f) The purpose of this chapter is to provide cities, counties, cities and counties, or districts, that have fire departments with volunteer firefighting members, the opportunity to offer these members an award for life as an incentive. Nothing contained in this chapter shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies that establish and regulate the activities of these fire departments. This chapter is intended, instead, to strengthen these departments through the creation of an incentive for the volunteer to respond to emergency calls and attend official department training drills and meetings. It is the further intention of this chapter to provide a means for local communities to bestow fitting reward and recognition for long and faithful volunteer service.

50951. (a) This chapter establishes the Volunteer Firefighters Length of Service Award System and may be cited as the Volunteer Firefighters Length of Service Award Act.

(b) Notwithstanding any other contrary law, enrollment for an award shall not be construed as a retirement, the receipt of an award shall not be construed as the receipt of a retirement allowance or benefit, and service credited under the Volunteer Firefighters Length of Service Award System shall not be construed as service credited to a retirement system for purposes of duplicating service credit or benefits in other public retirement systems.

50952. For the purposes of this chapter, unless the context otherwise requires, the definitions set forth below shall mean the following:

(a) "Actuarial interest rate" means the interest rate fixed by the board for purposes of actuarial valuation of the assets and liabilities of the award system.

(b) "Annual interest rate" means the interest rate fixed by the board for purposes of crediting interest.

(c) "Award" means monthly payments for life derived from contributions by a department.

(d) "Award recipient" means a former member who satisfied all the requirements as determined by the board to be eligible to receive an award, and is receiving an award.

(e) "Award system" means the Volunteer Firefighters Length of Service Award System established by this chapter.

(f) "Board" means the board of the California State Fire Employees Welfare Benefit Corporation.

(g) "Certified prior service credit" means credit for service performed prior to the contract operative date as certified by a qualifications review commission. That prior service shall be credited in the award system to the extent that prior service qualifies as certified service credit pursuant to the rules and regulations established by the board.

(h) "Certified service credit" means credit certified pursuant to Section 50960 for services rendered by a member.

(i) "Contract operative date" means the first day of the month next following the date on which the contract becomes effective.

(j) "Custodian of the fund" means a financial institution or other entity that qualifies under the laws of this state to act as a trustee of and establish a trust described in Internal Revenue Service Revenue Procedure 92-64.

(k) "Department" means any of the following:

(1) A regularly organized fire department of a city, county, city and county, or district having official recognition of the government of the city, county, city and county, or district in which the department is located.

(2) A regularly organized fire department of an unincorporated town.

(*l*) "Fund" means an account or trust described in Internal Revenue Service Revenue Procedure 92-64, which is maintained by the custodian of the fund.

(m) "Member" means a volunteer of a department, the governing body of which has contracted with the board under this chapter, and who has been certified by a qualifications review commission as having satisfied all the requirements for membership as set established by the board. Membership, once established, continues indefinitely until the award system is terminated and the funds disbursed pursuant to 50974.

(n) "Service credit" means the aggregate of certified service credit.

(o) "Service year" means the period beginning July 1 and ending June 30 of the following year.

(p) "Volunteer" means a person registered as a volunteer member of a regularly organized fire department as defined in subdivision (k).

Article 2. Administration, Award System, and Membership

50953. (a) The award system shall be administered by the board and the board shall comply with the following requirements:

(1) The board shall maintain a plan as described in Section 457(e)(11) of Title 26 of the United States Code.

(2) The representatives on the board shall be elected.

(3) The representatives on the board shall administer the award system with the reasonable care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the award system would use in the conduct of an enterprise of a like character and with like aims.

(4) The representatives on the board shall be subject to the prudent investor standard with regard to the fund.

(5) The award system shall be administered for the exclusive purpose of providing benefits to members of the award system.

(6) The board shall select a custodian of the fund, as described in subdivision (j) of Section 50952.

(b) Notwithstanding subdivision (a), the assets of the fund attributable to the benefit of registered volunteers of a department are subject to the claims of creditors of the department in the case of the insolvency of the department. The assets of the fund that are not attributable to the benefits of registered volunteers of an insolvent department are not subject to the claims of the creditors of the insolvent department.

50954. (a) The board shall adopt rules and regulations to administer the award system, including, but not limited to, all of the following:

(1) Eligibility requirements for a member to receive an award, including, but not limited to, minimum age and minimum years of certified service credit.

(2) Eligibility requirements for a member to include certified prior service credit as certified service credit in calculating the amount of his or her award or to qualify for an award.

(3) The amount of an award payable under this chapter and any cost-of-living adjustments or supplemental payments based upon that award.

(4) Eligibility requirements for membership in the award system.

(5) The maximum years of certified service credit a member may accrue under the award system.

(6) Other rules and regulations that the board determines are appropriate to administer this chapter.

(b) In addition to those powers and duties, the board shall determine if participation in the award system is adequate to ensure that sufficient funds will be available for the payment of awards on an actuarial reserve basis before any awards are paid. If the board determines that participation in the award system is inadequate to assure the financial success of the system, the board may terminate the award system pursuant to Section 50974 or may amend the award system pursuant to the rules and regulations of the board.

50955. (a) The board shall, from time to time, determine and fix the annual interest rate and actuarial interest rate.

(b) The board shall keep in convenient form the data necessary for the actuarial valuation of the award system. The board shall, at least quadrennially, cause to be made an actuarial investigation into the mortality and service experience of members and persons receiving awards and an actuarial valuation of the assets and liabilities of the award system.

(c) When there is insufficient data upon which to establish mortality rates or other actuarial assumptions required to evaluate the obligations of the award system, the board may adopt appropriate assumptions that, upon the advice and recommendation of the actuary, are necessary.

50956. (a) On the basis of investigation and valuation, the board shall adopt the mortality, service, and other tables as it deems necessary, and shall make changes in the contributions required from contracting departments as the board considers appropriate in order to assure the actuarial soundness of this award system.

(b) The board shall credit all contributions of departments in the fund with interest at the annual interest rate compounded at each June 30.

(c) Data filed by a member or department with the board is confidential, and no individual record shall be divulged by an official or employee having access to that data to a person other than the member to whom the information relates or his or her authorized representative, or the department that employs the member. That information shall be used by the board for the sole purpose of carrying into effect the provisions of this chapter.

(d) Each volunteer member and department shall file with the board the information and evidence as may be required by the board in administration of this award system.

50957. The custodian of the fund shall be subject to the exclusive control of the board to administer and invest the assets of the fund. The assets in the fund shall be used to pay the costs of administration and for the payment of awards under this chapter.

Article 3. Service Credit and Contributions

50958. Only members may accumulate service credit in the award system. A volunteer becomes a member when he or she satisfies the minimum requirements for membership, as established by the board, and the minimum service requirements as certified by a qualifications review commission. Membership shall terminate on the day prior to the effective date of an award pursuant to Section 50962.

50959. (a) The award system shall be funded by contributions paid by contracting departments and income from the fund. The award system is a noncontributory system, and no contributions shall be required from members of the award system.

(b) As determined by actuarial valuation reported to the contracting department by the award system, each contracting department shall make contributions annually, not later than October 1 of each year, sufficient to meet the prescribed amount with respect to volunteers of the

contracting department, in accordance with the conditions provided in its contract under the award system.

(c) Contributions of all contracting departments shall be applied by the board during each fiscal year to meet the obligations of all departments collectively, pursuant to the following order:

(1) In an amount equal to the liabilities accruing on account of awards payable on account of current service.

(2) The balance of contributions on any other liability incurred under this chapter.

50960. (a) Only those volunteers who have been certified by their contracting department as having satisfactorily completed a service year shall be credited with current service for that year. A member is not required to qualify in consecutive years.

(b) Members of departments contracting on or after the effective date of this chapter may initially be credited with a full service year if the board authorizes credit for that service and the member and his or her department satisfy the other requirements established by the board, including, but not limited to, certification by the department's qualifications review commission.

(c) A satisfactory service year credit shall be determined by a member's active participation in all of the following fire department activities.

(1) Training drills.

(2) Responses to emergency calls.

(3) Attendance at official department and association meetings.

(d) Contracting departments shall maintain adequate records to show that a credited member was a participating member of the department during the year of certification. The records may include, but are not limited to, the following:

(1) Department run logs.

(2) Department training records.

(3) Certificates of training.

(4) Records of exposures to hazardous products.

(5) Minutes of departmental or association meetings.

50961. (a) The governing body of each contracting department shall establish a qualifications review commission that shall include the fire chief, one member of the governing body appointed by the governing body, and one volunteer elected by the volunteers employed by the contracting department.

(b) The qualifications review commission shall review the list of department members each year, and prior to October 1 of each year shall certify to the board those volunteers who have qualified.

(c) In no event shall a member be credited with more than the maximum number of years of service allowed in the award system, as established by the rules and regulations of the board.

(d) With respect to each contracting department that provides benefits for prior service credit, the qualifications review commission shall promulgate and publish guidelines for computing prior service credit. The guidelines shall require the prior service credit to be verified and certified and, in the event that there are no records in existence, the members of the commission and the volunteer shall sign an affidavit certifying that the prior service met the criteria prescribed in Section 50960. The affidavit shall be signed under penalty of perjury. Thereafter, the qualifications review commission shall certify to the board certified prior service credit that has been earned by each member.

50962. When the member's application for an award is received by the board, an award shall be granted to accrue and become effective pursuant to the terms, conditions, and eligibility requirements established by the board.

50963. The board shall determine the terms, conditions, and eligibility requirements for all of the following:

(a) The amount of an award payable under the award system.

(b) If a member is entitled to a cost-of-living adjustment and the amount of that cost-of-living adjustment.

(c) If a member is entitled to receive an award and the amounts of supplemental payments based upon that award.

(d) Any death benefits payable to a member's designated beneficiary or the estate of the member.

(e) All other benefits authorized by the board under this chapter.

Article 4. Contract Provisions

50964. (a) Except as described in subdivision (b), a department may participate in and make all of its volunteers members of the award system by a contract entered into between the governing body of the department and the board pursuant to this chapter.

(b) The board may prohibit a new contract with or may establish terms and conditions regarding a new contract for a department that has previously terminated a contract for participation under this chapter.

50965. When the governing body of a department desires to consider participation in the award system, the governing body shall ask the board for a quotation of the approximate contribution to the award system that would be required by the department for participation in the award system.

50966. An employee organization, recognized under the provisions of appropriate authority, may request the governing body of the department to ask the board for a quotation of the approximate contribution to the award system that would be required of the department for participation in the award system, and if the employee organization is willing to pay for the cost of that quotation, the department shall make the request. The board shall furnish copies of the quotation to both the department and the employee organization.

50967. On request of the board, the department shall furnish the data concerning its volunteers as the board requires to make the necessary valuations and investigations into the experience among the volunteers.

50968. The approximate contribution quoted by the board and the actual contribution to be made if a contract results shall be determined by actuarial valuations of the future service liability under the award system, on account of the volunteers involved in the computation, and in consideration of other circumstances that may be adopted by the board, upon recommendation of the actuary.

50969. The approximate and actual contributions payable by a contracting department shall be similar to premiums under insurance policies. The approximate contribution quoted by the board to the department is subject to the contingency that the actual contribution certified by the board after the approval of a contract may differ from the approximate contribution because of any of the following:

(a) Time elapsed between the quotation and operative date of the contract.

(b) Any changes in the facts or assumptions upon which the quotation was based.

50970. (a) Approval of the contract by the governing body of the department shall be by resolution or by any other means permitted by law.

(b) The board shall inform the governing body of the projected costs of the program.

50971. Errors in a contract may be corrected through amendments approved by the adoption of suitable resolutions by the contracting parties. All contract amendments shall be made in the same manner as prescribed for the approval of the initial contract.

Article 5. Termination and Limitations

50972. The contract may be terminated by the governing body of a contracting department by resolution or by any other means permitted by law. All liability of the department with respect to its volunteer members of the award system shall cease. All moneys deposited in the

fund shall be held for the continued payment of previously granted awards and the costs of administration.

50973. The board may provide that an award under this chapter shall not be payable, or begin to accrue, until the board establishes, by appropriate resolution, that the fund contains sufficient net assets to make the payments provided by this chapter based upon an actuarial reserve basis.

50974. Upon termination of the award system, assets in the fund shall be disbursed in the following order:

(a) An amount sufficient to pay awards previously granted shall be retained by the board.

(b) An amount sufficient to pay reasonable administrative expenses shall be retained by the board.

(c) From any balance in the fund after the above amounts have been retained or disbursed, each department's accumulated contributions, less a proportionate share of the amount retained for reasonable administrative expenses, less the amount retained to pay awards of that department's volunteers, shall be refunded to the department.

Article 6. Indemnity

50975. The Public Employees' Retirement System, as a public entity, and the present, future, and former board members of the Public Employees' Retirement System, jointly and individually, and state officers and employees, shall be indemnified from the General Fund as described in Section 16641.5 for all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses as a result of the transfer of the award system from the Board of Administration of the Public Employees' Retirement System to the board of the California State Fire Employees Welfare Benefit Corporation.

50976. (a) The Board of Administration of the Public Employees' Retirement System shall not be liable for any action or failure to act by the board of the California State Fire Employees Welfare Benefit Corporation. Upon transfer of the award system, the board of the California State Fire Employees Welfare Benefit Corporation shall assume all responsibilities and liabilities related to the award system.

(b) As of the date of the transfer or termination of the award system, the Board of Administration of the Public Employees' Retirement System shall have no liability or responsibility for the administration of the award system.

Article 7. Termination of the Award System by the Public Employees' Retirement System

50977. If the transfer of the Volunteer Firefighters Length of Service Award System from the Board of Administration of the Public Employees' Retirement System to the board of the California State Fire Employees Welfare Benefit Corporation is not completed on or before March 1, 2008, the Board of Administration of the Public Employees' Retirement System shall terminate the award system and disburse the assets in the award system in the following order of priority:

(a) An amount sufficient to pay reasonable administrative expenses shall be retained by the Board of Administration of the Public Employees' Retirement System.

(b) (1) Except as described in paragraph (2), an amount sufficient to pay current award recipients or members and former members who have satisfied, on or before March 1, 2008, all the requirements to be eligible to receive an award, a one-time lump-sum payment in an amount equal to the actuarial present value of the monthly benefit paid to an award recipient. This amount to be paid shall be in lieu of an ongoing monthly benefit previously provided by the Board of Administration of the Public Employees' Retirement System pursuant to Chapter 4.5 (commencing with Section 50950) of Part 1 of Division 1 of Title 5, as added by Chapter 1145 of the Statutes of 1979, and as that chapter read on December 31, 2007.

(2) If the award system does not contain assets sufficient to pay the amounts described in paragraph (1), the current award recipients or members and former members shall be paid a pro rata share of the remaining award system assets. The pro rata share for a current award recipient, member, or former member described in paragraph (1) shall be calculated as a ratio of the amount calculated for an individual payment under paragraph (1) as that amount bears to the total of all payments under paragraph (1).

(c) (1) Except as described in paragraph (2), if a member has earned service credit necessary to receive a service award but the member has not attained 60 years of age on or before March 1, 2008, he or she shall be paid a one-time lump-sum payment in an amount equal to the actuarial present value of the monthly benefit that would have been paid to an award recipient at 60 years of age. This amount to be paid shall be in lieu of an ongoing monthly benefit previously provided by the Board of Administration of the Public Employees' Retirement System pursuant to Chapter 4.5 (commencing with Section 50950) of Part 1 of Division 1 of Title 5, as added by Chapter 1145 of the Statutes of 1979, and as that chapter read on December 31, 2007.

(2) If the award system does not contain assets sufficient to pay the amounts described in paragraph (1), a member described in paragraph (1) shall be paid a pro rata share of the remaining award system assets. The pro rata share for that member shall be calculated as a ratio of the amount calculated for an individual payment under paragraph (1) as that amount bears to the total of all payments under paragraph (1).

(d) From any balance of the assets after the amounts described in subdivisions (a) to (c), inclusive, each department shall receive a pro rata share of the remaining award system assets. The pro rata share for each department shall be calculated as a ratio of the accumulated contributions of that department, less the distributions made to pay the awards of that department's volunteers as described in this section, as that amount bears to the total of all payments under this subdivision.

50978. For purposes of this chapter, if the Board of Administration of the Public Employees' Retirement System transfers the data and files that are necessary to effect the transfer of and relate to members and beneficiaries who participate in the award system to the board of the California State Fire Employees Welfare Benefit Corporation, the transfer of the award system shall be deemed complete on the date that the Board of Administration of the Public Employees' Retirement System transfers the assets of the award system to the board of the California State Fire Employees Welfare Benefit Corporation.

50979. This chapter shall become operative on March 1, 2008.

SEC. 3. Article 7 (commencing with Section 50980) is added to Chapter 4.5 of Part 1 of Division 1 of Title 5 of the Government Code, as added by Chapter 1145 of the Statutes of 1979, to read:

Article 7. Transfer of the Award System

50980. (a) On or before January 31, 2008, the Board of Administration of the Public Employees' Retirement System shall do both of the following:

(1) Notwithstanding Section 20230, divulge and transfer to the board of the California State Fire Employees Welfare Benefit Corporation the data and files of the Volunteer Firefighters Length of Service Award System that relate to members or beneficiaries who participate in the award system.

(2) Divulge and transfer data and files that are necessary to effect the transfer of the administration of the Volunteer Firefighters Length of Service Award System from the Board of Administration of the Public Employees' Retirement System to the board of the California State Fire Employees Welfare Benefit Corporation.

(b) On or before March 1, 2008, the Board of Administration of the Public Employees' Retirement System and the board of the California State Fire Employees Welfare Benefit Corporation shall take all steps necessary to transfer the award system including, but not limited to, all of the following:

(1) The board of the California State Fire Employees Welfare Benefit Corporation shall select a custodian of a fund for the transfer of funds pursuant to Section 50981 from the Board of Administration of the Public Employees' Retirement System and ensure that this custodian is available to establish an account or trust described in Internal Revenue Service Revenue Procedure 92-64 to receive those funds.

(2) Complete the transfer of the assets and liabilities of the award system as described in Section 50981.

(3) The Board of Administration of the Public Employees' Retirement System or the board of the California State Fire Employees Welfare Benefit Corporation shall provide written notice of the transfer of the award system and when the transfer will occur to award recipients and departments that participate in the award system. The notice described in this paragraph shall include, but is not limited to, the contact information for the board of the California State Fire Employees Welfare Benefit Corporation, and information that the Board of Administration of the Public Employees' Retirement System will no longer have the responsibility to administer the award system.

(4) In addition to the notice described in paragraph (3), the board of the California State Fire Employees Welfare Benefit Corporation shall send written notice to award recipients and departments that participate in the award system regarding the revised rules, regulations, and procedures for the administration of the award system.

(5) The departments that participate in the award system shall send written notice to their volunteers informing them of the information described in paragraphs (3) and (4).

(6) The board of the California State Fire Employees Welfare Benefit Corporation shall establish administrative systems and accounts necessary to receive participant information, assets, and liabilities that will be transferred by the Board of Administration of the Public Employees' Retirement System.

(c) The transfer of the award system shall be deemed complete as of the date described in Section 50985.

50981. (a) On or before March 1, 2008, the Board of Administration of the Public Employees' Retirement System shall transfer any assets held for the benefit of the award system, including, but not limited to, cash and securities, to the custodian of a fund described in Section 50980.

(b) The Board of Administration of the Public Employees' Retirement System may only deduct from the assets described in subdivision (a) award benefit payments and reasonable administrative expenses to cover the period up through the date of the transfer.

(c) On or before March 1, 2008, the Board of Administration of the Public Employees' Retirement System shall notify and send any documents related to any liabilities of the award system, including, but not limited to, claims, demands, actions, damages, judgments, costs, charges, expenses, or obligations, to the board of the California State Fire Employees Welfare Benefit Corporation.

50982. (a) In order to expedite the transfer of the award system from the Board of Administration of the Public Employees' Retirement System to the board of the California State Fire Employees Welfare Benefit Corporation, the board of the California State Fire Employees Welfare Benefit Corporation shall, to the extent necessary to transfer the award system, and prior to March 1, 2008, comply with the following requirements:

(1) The board of the California State Fire Employees Welfare Benefit Corporation shall maintain a plan as described in Section 457(e)(11) of Title 26 of the United States Code.

(2) The representatives on the board of the California State Fire Employees Welfare Benefit Corporation shall be elected.

(3) The representatives on the board of the California State Fire Employees Welfare Benefit Corporation shall administer any funds with the reasonable care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of a like character and with like aims.

(4) The representatives on the board of the California State Fire Employees Welfare Benefit Corporation shall be subject to the prudent investor standard with regard to any funds.

(5) Any funds shall be administered for the exclusive benefit of members of the award system.

(6) The board of the California State Fire Employees Welfare Benefit Corporation shall select a financial institution or other entity that qualifies under the laws of this state to act as a trustee of and establish a trust described in Internal Revenue Service Revenue Procedure 92-64.

(b) The board of the California State Fire Employees Welfare Benefit Corporation shall adopt rules and regulations regarding all of the following:

(1) Eligibility requirements for a member to receive an award under the new system, including, but not limited to, minimum age and minimum years of certified service credit.

(2) Eligibility requirements for a member to include certified prior service credit as certified service credit in calculating the amount of his or her award or to qualify for an award under the new system.

(3) The amount of an award under the new system and any cost-of-living adjustments or supplemental payments based upon that award.

(4) Eligibility requirements for membership in the award system.

(5) The maximum years of certified service credit a member may accrue under the award system.

(6) Other rules and regulations that the board of the California State Fire Employees Welfare Benefit Corporation determines are appropriate.

(c) Notwithstanding subdivision (a), the assets received from the Board of Administration of the Public Employees' Retirement System by the board of the California State Fire Employees Welfare Benefit Corporation attributable to the benefit of registered volunteers of a department are subject to the claims of creditors of the department in the case of the insolvency of the department. Any assets that are not attributable to the benefits of registered volunteers of an insolvent department are not subject to the claims of the creditors of the insolvent department.

(d) Data filed by a member or department with the board of the California State Fire Employees Welfare Benefit Corporation is confidential, and no individual record shall be divulged by an official or employee having access to that data to a person other than the member to whom the information relates or his or her authorized representative, or the department that employs the member.

(e) The custodian of a fund described in Section 50980, subject to the exclusive control of the board of the California State Fire Employees Welfare Benefit Corporation to administer and invest the assets of the new system fund, shall be a financial institution eligible to establish and administer a trust described in Internal Revenue Service Revenue Procedure 92-64. The assets in a fund for the new system shall be used to pay the costs of administration and for the payment of awards under the new system.

50983. Present, future, and former board members of the Public Employees' Retirement System, jointly and individually, and state officers and employees, shall be indemnified from the General Fund as described in Section 16641.5 as a result of the transfer of the award system from the Board of Administration of the Public Employees' Retirement System to the board of the California State Fire Employees Welfare Benefit Corporation.

50984. The Board of Administration of the Public Employees' Retirement System shall not be liable for any action or failure to act by

the board of the California State Fire Employees Welfare Benefit Corporation. Upon transfer of the award system, the board of the California State Fire Employees Welfare Benefit Corporation shall assume all responsibilities and liabilities related to the award system.

50985. For purposes of this chapter, if the Board of Administration of the Public Employees' Retirement System transfers the data and files to the board of the California State Fire Employees Welfare Benefit Corporation as described in Section 50980, the transfer of the award system shall be deemed complete on the date that the Board of Administration of the Public Employees' Retirement System transfers the assets of the system as described in Section 50981, regardless of whether the notices described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 50980 are sent.

50986. This chapter shall become inoperative on March 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 652

An act to add Section 53545.9 to, and to add Chapter 8.5 (commencing with Section 50705) to Part 2 of Division 31 of, the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. (a) The Legislature hereby finds and declares that the Housing and Emergency Shelter Trust Fund Act of 2006 allocates the amount of one hundred million dollars ($100,000,000) to the Affordable Housing Innovation Fund established in the State Treasury under

subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545 of the Health and Safety Code and states that the expenditure of those funds is subject to the enactment of a subsequent statute approved by a ⅔ vote of each house of the Legislature.

(b) Accordingly, it is the intent of the Legislature in enacting this act to program the funds made available under subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545 of the Health and Safety Code from the Affordable Housing Innovation Fund.

SEC. 2. Chapter 8.5 (commencing with Section 50705) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

Chapter 8.5. Affordable Housing Revolving Development and Acquisition Program

50705. (a) The Affordable Housing Revolving Development and Acquisition Program is hereby established for the purpose of funding the acquisition of property to develop or preserve affordable housing. The program will be comprised of a Loan Fund and a Practitioner Fund.

(b) The department shall adopt guidelines and regulations for the operation of the program and may administer the program under those guidelines for 24 months after the date of adoption of the guidelines. The guidelines 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.

50706. (a) (1) The department shall issue a request for qualification to select a private sector entity to manage the Loan Fund for a period of five years, and the agreement may be extended in additional five-year increments. The selected fund manager shall be responsible for reviewing and approving loan applications, originating and servicing loans, and establishing terms and conditions for loan applications. The fund manager shall meet all of the following criteria:

(A) Be a nonprofit lender with experience making similar loans in this state.

(B) Have originated and serviced loans in the aggregate amount of not less than thirty million dollars ($30,000,000) that were used to develop or acquire affordable housing, including at least ten million dollars ($10,000,000) or more in acquisition loans.

(C) Have at least twenty-five million dollars ($25,000,000) of its own capital invested in loans to affordable housing developers whose characteristics are similar to the criteria the fund manager will be implementing under the new gap acquisition fund.

(D) Be the originator of loans in the aggregate amount of twenty-five million dollars ($25,000,000) or more using bank or other investor capital.

(2) Applicants for fund manager shall submit a detailed business plan describing how the entity intends to meet the requirements of the Loan Fund. The business plan shall include a description of appropriate financial and internal controls and underwriting standards and procedures. The plan shall also demonstrate how the lender will close loans quickly.

(b) Applicants may apply to the fund manager for loans to purchase real property for the development or preservation of housing affordable to low-income households. Loans made under this section shall be for a maximum term of five years.

(c) Applicants shall demonstrate all of the following:

(1) The support of the local government in which the real property is located for the proposed development project. Support may be demonstrated through a letter from the governing board or the manager of the housing or community development department.

(2) Availability of additional funds equal to three times the loan amount.

(3) Sufficient organizational stability and capacity to carry out the proposed development project for which the property is being purchased. Capacity may be demonstrated by substantial successful experience performing similar activities, or through other means acceptable to the department.

(4) Completion of not less than five housing development projects, with each project having not less than 40 percent of the units sold at an affordable housing cost, as defined in Section 50052.5, or rented at an affordable rent, as defined by Section 50053.

(d) The guidelines and regulations, at a minimum, shall do all of the following:

(1) Establish the minimum criteria required of the fund manager and applicants.

(2) Establish a point system for prioritizing requests in the event that requests exceed the funds available for the program in any given year.

(3) Give priority to applicants that propose development projects with the greatest level of affordability.

(4) Provide that any equity not originally contributed by the borrower shall return to the state for the purposes of this program if the property is sold or transferred for purposes other than affordable housing.

(5) Establish a reasonable fund manager administrative fee.

(e) Funds not lent by the fund manager within 48 months after availability to the fund manager shall be disencumbered and transferred to the Self-Help Housing Fund established under Section 50697.1, to be

expended for the purposes of the CalHome Program established under Chapter 6 (commencing with Section 50650).

50707. (a) The department shall issue a request for qualification to select one or more nonprofit entities that qualify under Section 501(c)(3) of the Internal Revenue Code to borrow moneys from the Practitioner Fund to purchase real property for the development or preservation of housing affordable to low- and moderate-income households. The selection of one or more nonprofit entities that qualify shall be made by the department, based on the review and recommendation of the department's Loan and Grant Committee. The loan from the Practitioner Fund will be for a maximum of five years.

(b) The entity or entities selected pursuant to subdivision (a) shall demonstrate all of the following:

(1) Operation as a nonprofit entity that qualifies under Section 501(c)(3) of the Internal Revenue Code with housing development experience in this state and a minimum of 25 employees.

(2) Availability of additional funds of at least three times the loan amount.

(3) Completion of not less than 2,500 total housing units, with each housing development project having a majority of its units affordable to low- and moderate-income families, as defined in Section 50052.5 or 50053. For purposes of this requirement, the applicant shall be the developer of record with primary day-to-day management and financial responsibility for the development.

(4) Sufficient organizational stability and capacity to use the Practitioner Fund to achieve scale economies in the development and preservation of affordable housing. Capacity may be demonstrated by substantial successful experience in affordable housing development and management, including successful partnerships with local government entities.

(5) Assets worth at least two hundred million dollars ($200,000,000), to demonstrate evidence of sufficient net worth for assurance of repayment of the loan.

(c) The guidelines and regulations, at a minimum, shall do all of the following:

(1) Establish the minimum criteria required of the practitioner and a point system for rating and ranking responses.

(2) Provide that any equity not originally contributed by the borrower shall be returned to the state for the purposes of this program, if property acquired with state funds is sold or transferred for purposes other than affordable housing.

(3) Give priority to those respondents who demonstrate an immediate need of funds from the committee and who can demonstrate the greatest levels of efficiency and economies of scale.

(4) Establish a reasonable practitioner administrative fee.

(d) Funds not used by a practitioner within 36 months after their availability to the practitioner shall be disencumbered and transferred to the Loan Fund.

(e) The guidelines and regulations shall require that before expending any state funds, the borrower shall obtain binding commitments for at least three dollars ($3) of nonstate acquisition capital to leverage every dollar of loan funds. To be considered nonstate acquisition capital, those funds shall be committed for a term at least equal to the term of the loan made under this section, and shall be available to be used for the purposes of this section. Equity from the anticipated sale of either federal or state low-income housing tax credits shall not be considered nonstate acquisition capital. If the selected entity is unable to meet these capital leveraging requirements within 180 days after selection, the loan shall be repaid, with accumulated interest, to the department, deposited in the fund, and made available to the next highest rated qualified project sponsor. If, within 270 days after selection, there is no remaining qualified applicant available in the case of the Practioner Fund, any unexpended funds shall be made available for the purposes of Section 50706.

(f) The department shall establish a schedule for the timely expenditure of funds by the applicant. The department may require repayment in the event that a selected entity fails to use the funds consistently with the schedule and the other terms of the program.

50708. The department shall collect all of the following from each borrower and include a summary of this information in its last annual report submitted to the Legislature on or before December 31, 2013, pursuant to Section 50408:

(a) A general description of activities undertaken pursuant to this chapter.

(b) For each property acquired, the acquisition price; the amount and terms of the nonstate funds leveraged, and a statement as to whether the state acquisition funds were essential to the leveraging of these other acquisition funds; a description of the expiration date of the project's rent or sales restrictions; the number of assisted units created or preserved; the amount of state funds required for each assisted unit created or preserved; and the level of affordability maintained.

(c) If any borrower sells any property acquired with assistance through these state funds, a description of the name and location of the purchaser, the purchase price, and the total transaction costs.

(d) A comparison of the cost of creating or preserving units under Section 50706 with that of Section 50707.

(e) An overall assessment of the effectiveness of these funds as tools in creating and preserving affordable housing.

SEC. 3. Section 53545.9 is added to the Health and Safety Code, to read:

53545.9. Of the one hundred million dollars ($100,000,000) transferred to the Affordable Housing Innovation Fund established in the State Treasury under subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545, the following amounts shall be allocated as follows:

(a) (1) The department shall make available the amount of fifty million dollars ($50,000,000) for the Affordable Housing Revolving Development and Acquisition Program.

(2) Of the amount made available for the program, twenty-five million dollars ($25,000,000) shall be made available for the Loan Fund and twenty-five million dollars ($25,000,000) shall be made available for the Practitioner Fund.

(b) The department shall make available the amount of five million dollars ($5,000,000) for the Construction Liability Insurance Reform Pilot Program, which is hereby established in the Department of Housing and Community Development. The purpose of the program is to promote best practices for residential construction quality control in housing programs sponsored by the department or the California Housing Finance Agency, as a means of reducing insurance rates for condominium developers in this state. Funds shall be made available in the form of grants for predevelopment costs of condominium projects funded by the department or the California Housing Finance Agency that utilize enhanced construction oversight and monitoring programs and processes including, but not limited to, video recording of the construction process, use of quality control manuals, and increased quality control inspections.

(c) The department shall make available the amount of thirty-five million dollars ($35,000,000) for the local housing trust fund matching grant program established under Section 50843.5. The department shall make available 50 percent of this amount exclusively for newly established housing trust funds.

(1) When awarding grants from the funds allocated under this subdivision to existing trust funds, the department shall grant preference to a housing trust fund that agrees to expend more than 65 percent of state funds for the purpose of downpayment assistance to first-time homebuyers.

(2) When awarding grants from the funds allocated under this subdivision to newly established housing trust funds, the department shall set aside funding for a period of 36 months from the date funds are

first made available for newly established housing trust funds that are in a county with a population of less than 425,000 persons.

(d) The department shall make available the amount of ten million dollars ($10,000,000) for the Innovative Homeownership Program, which the department shall develop and implement as follows:

(1) The program shall be designed to increase or maintain affordable homeownership opportunities for Californians with lower incomes.

(2) The department shall adopt guidelines for the program that, among other things, shall maximize the number of units assisted, limit the expenditure of funds for administrative costs, and maximize the leverage of public and private financing sources.

(3) The guidelines adopted by the department shall provide for the issuance of a notice of funding availability soliciting competitive proposals for the use of funds consistent with those guidelines and with subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545.

(4) The guidelines adopted by the department shall not be subject to the requirements of Chapter 6.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) The department shall include within the annual report required under Section 50408 a detailed summary and description of the manner in which funds made available under this subdivision were expended during the previous year and a statement regarding the manner in which those expenditures meet the intent of the Legislature and the voters that funds from the Innovative Housing Fund be expended in support of innovative, cost-saving approaches to creating or preserving affordable housing.

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 make available at the earliest possible time funds to address the state's pressing need for affordable housing, it is necessary that this act take effect immediately.

CHAPTER 653

An act to amend Sections 22951, 22952, 22953, 22957, and 22958 of, and to add Section 22950.5 to, the Business and Professions Code, relating to tobacco.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 22950.5 is added to the Business and Professions Code, to read:

22950.5. For purposes of this division, the following terms have the following meanings:

(a) "Department" means the State Department of Public Health.

(b) "Enforcing agency" means the State Department of Public Health, another state agency, including, but not limited to, the office of the Attorney General, or a local law enforcement agency, including, but not limited to, a city attorney, district attorney, or county counsel.

SEC. 2. Section 22951 of the Business and Professions Code is amended to read:

22951. The Legislature finds and declares that reducing and eventually eliminating the illegal purchase and consumption of tobacco products by minors is critical to ensuring the long-term health of our state's citizens. Accordingly, California must fully comply with federal regulations, particularly the "Synar Amendment," that restrict tobacco sales to minors and require states to vigorously enforce their laws prohibiting the sale and distribution of tobacco products to persons under 18 years of age. Full compliance and vigorous enforcement of the "Synar Amendment" requires the collaboration of multiple state and local agencies that license, inspect, or otherwise conduct business with retailers, distributors, or wholesalers that sell tobacco.

SEC. 3. Section 22952 of the Business and Professions Code is amended to read:

22952. On or before July 1, 1995, the State Department of Public Health shall do all of the following:

(a) Establish and develop a program to reduce the availability of tobacco products to persons under 18 years of age through the enforcement activities authorized by this division.

(b) Establish requirements that retailers of tobacco products post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 18 years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under 18 years of age. The warning signs shall include a toll-free telephone number to the department for persons to report unlawful sales of tobacco products to minors.

(c) Provide that primary responsibility for enforcement of this division shall be with the department. In carrying out its enforcement responsibilities, the department shall conduct random, onsite sting

inspections at retail sites and shall enlist the assistance of persons that are 15 and 16 years of age in conducting these enforcement activities. The department may conduct onsite sting inspections in response to public complaints or at retail sites where violations have previously occurred, and investigate illegal sales of tobacco products to minors by telephone, mail, or the Internet. Participation in these enforcement activities by a person under 18 years of age does not constitute a violation of subdivision (b) of Section 308 of the Penal Code for the person under 18 years of age, and the person under 18 years of age is immune from prosecution thereunder, or under any other provision of law prohibiting the purchase of these products by a person under 18 years of age.

(d) In accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall adopt and publish guidelines for the use of persons under 18 years of age in inspections conducted pursuant to subdivision (c) that shall include, but not be limited to, all of the following:

(1) An enforcing agency may use persons under 18 years of age who are 15 or 16 years of age in random inspections to determine if sales of cigarettes or other tobacco products are being made to persons under 18 years of age.

(2) A photograph or video recording of the person under 18 years of age shall be taken prior to each inspection or shift of inspections and retained by the enforcing agency for purposes of verifying appearances.

(3) An enforcing agency may use video recording equipment when conducting the inspections to record and document illegal sales or attempted sales.

(4) The person under 18 years of age, if questioned about his or her age, need not state his or her actual age but shall present a true and correct identification if verbally asked to present it. Any failure on the part of the person under 18 years of age to provide true and correct identification, if verbally asked for it, shall be a defense to an action pursuant to this section.

(5) The person under 18 years of age shall be under the supervision of a regularly employed peace officer during the inspection.

(6) All persons under 18 years of age used in this manner by an enforcing agency shall display the appearance of a person under 18 years of age. It shall be a defense to an action under this division that the person's appearance was not that which could be generally expected of a person under 18 years of age, under the actual circumstances presented to the seller of the cigarettes or other tobacco products at the time of the alleged offense.

(7) Following the completion of the sale, the peace officer accompanying the person under 18 years of age shall reenter the retail

establishment and shall inform the seller of the random inspection. Following an attempted sale, the enforcing agency shall notify the retail establishment of the inspection.

(8) Failure to comply with the procedures set forth in this subdivision shall be a defense to an action brought pursuant to this section.

(e) Be responsible for ensuring and reporting the state's compliance with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services. A copy of this report shall be made available to the Governor and the Legislature.

(f) Provide that any civil penalties imposed pursuant to Section 22958 shall be enforced against the owner or owners of the retail business and not the employees of the business.

SEC. 4. Section 22953 of the Business and Professions Code is amended to read:

22953. All moneys collected as civil penalties by the department and other state agencies pursuant to this division shall be deposited in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account that is hereby established.

SEC. 5. Section 22957 of the Business and Professions Code is amended to read:

22957. (a) In addition to the primary enforcement responsibility assumed by the department, another enforcing agency may conduct inspections and assess penalties for violations of this division if the enforcing agency complies with this division and with all applicable laws and guidelines developed pursuant to this division.

(b) State and local enforcement agencies are encouraged, in order to avoid duplication, to share the results of inspections and coordinate with the department when enforcing this division.

SEC. 6. Section 22958 of the Business and Professions Code is amended to read:

22958. (a) An enforcing agency may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, any tobacco, cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, according to the following schedule: (1) a civil penalty of from four hundred dollars ($400) to six hundred dollars ($600) for the first violation, (2) a civil penalty of from nine hundred dollars ($900) to one thousand dollars ($1,000) for the second violation within a five-year period, (3) a civil penalty of from one thousand two hundred dollars ($1,200) to one thousand eight hundred dollars ($1,800)

for a third violation within a five-year period, (4) a civil penalty of from three thousand dollars ($3,000) to four thousand dollars ($4,000) for a fourth violation within a five-year period, or (5) a civil penalty of from five thousand dollars ($5,000) to six thousand dollars ($6,000) for a fifth or subsequent violation within a five-year period.

(b) The enforcing agency shall assess penalties in accordance with the schedule set forth in subdivision (a) against a person, firm, or corporation that sells, offers for sale, or distributes tobacco products from a cigarette or tobacco products vending machine, or a person, firm, or corporation that leases, furnishes, or services these machines in violation of Section 22960.

(c) An enforcing agency may assess civil penalties against a person, firm, or corporation that sells or deals in tobacco or any preparation thereof, and fails to post conspicuously and keep posted in the place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952. The civil penalty shall be in the amount of two hundred dollars ($200) for the first offense and five hundred dollars ($500) for each additional violation.

(d) An enforcing agency shall assess penalties in accordance with the schedule set forth in subdivision (a) against a person, firm, or corporation that advertises or causes to be advertised a tobacco product on an outdoor billboard in violation of Section 22961.

(e) If a civil penalty has been assessed pursuant to this section against a person, firm, or corporation for a single, specific violation of this division, the person, firm, or corporation shall not be prosecuted under Section 308 of the Penal Code for a violation based on the same facts or specific incident for which the civil penalty was assessed. If a person, firm, or corporation has been prosecuted for a single, specific violation of Section 308 of the Penal Code, the person, firm, or corporation shall not be assessed a civil penalty under this section based on the same facts or specific incident upon which the prosecution under Section 308 of the Penal Code was based.

(f) (1) In the case of a corporation or business with more than one retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subdivision (a), violations of this division by one retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) In the case of a retail location that operates pursuant to a franchise as defined in Section 20001, violations of this division accumulated and assessed against a prior owner of a single franchise location shall not be accumulated against a new owner of the same single franchise location for purposes of the penalty schedule set forth in subdivision (a).

(g) Proceedings under this section shall be conducted in accordance with Section 100171 of the Health and Safety Code, except in cases where a civil penalty is assessed by an enforcing agency other than the department, in which case, proceedings shall be conducted in accordance with the procedures of that agency that are consistent with Section 22957.

CHAPTER 654

An act to amend Section 22973 of the Business and Professions Code, relating to public health.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 22973 of the Business and Professions Code is amended to read:

22973. (a) An application for a license shall be filed on or before April 15, 2004, on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant.

(2) The business name, address, and telephone number of each retail location. For applicants who control more than one retail location, an address for receipt of correspondence or notices from the board, such as a headquarters or corporate office of the retailer, shall also be included on the application and listed on the license. Citations issued to licensees shall be forwarded to all addressees on the license.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) If any other licenses or permits have been issued by the board or the Department of Alcoholic Beverage Control to the applicant, the license or permit number of those licenses or permits then in effect.

(5) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement

pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars ($1,000), or both the imprisonment and the fine.

(6) The signature of the applicant.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application. The board may issue a license without further investigation to an applicant for a retail location if the applicant holds a valid license from the Department of Alcoholic Beverage Control for that same location.

(c) The board shall provide electronic means for applicants to download and submit applications.

(d) (1) A one-time license fee of one hundred dollars ($100) shall be submitted with each application. An applicant that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses with a one-time license fee of one hundred dollars ($100) per location.

(2) The one-time fee required by this subdivision does not apply to an application for renewal of a license for a retail location for which the one-time license fee has already been paid. If a license is reinstated after its expiration, the retailer, as a condition precedent to its reinstatement, shall pay a reinstatement fee of one hundred dollars ($100).

CHAPTER 655

An act to add Section 4575 to the Penal Code, relating to inmates.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 4575 is added to the Penal Code, to read:

4575. (a) Any person in a local correctional facility who possesses a wireless communication device, including, but not limited to, a cellular telephone, pager, or wireless Internet device, who is not authorized to possess that item is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000).

(b) Any person housed in a local correctional facility who possesses any tobacco products in any form, including snuff products, smoking

paraphernalia, any device that is intended to be used for ingesting or consuming tobacco, or any container or dispenser used for any of those products, is guilty of an infraction, punishable by a fine not exceeding two hundred fifty dollars ($250).

(c) Money collected pursuant to this section shall be placed into the inmate welfare fund, as specified in Section 4025.

(d) Subdivision (b) shall only apply to a person in a local correctional facility in a county in which the board of supervisors has adopted an ordinance or passed a resolution banning tobacco in its correctional facilities.

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 656

An act to add Section 655.7 to, and to repeal Section 655.6 of, the Business and Professions Code, relating to the healing arts.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 655.6 of the Business and Professions Code is repealed.

SEC. 2. Section 655.7 is added to the Business and Professions Code, to read:

655.7. (a) (1) A person licensed under this division or under an initiative act referred to in this division shall not charge, bill, or otherwise solicit payment, directly or indirectly, for anatomic pathology services if those services were not actually rendered by that person or under his or her direct supervision.

(2) Notwithstanding paragraph (1), a clinical laboratory may seek payment for anatomic pathology services provided directly or through arrangements with a physician and surgeon in compliance with Article 18 (commencing with Section 2400) of Chapter 5 or if it is required to

send a sample to another clinical laboratory for specialized testing or services and if that clinical laboratory has performed the services, directly or through arrangements with a physician and surgeon as set forth in this subdivision, described in subdivision (e) related to that sample.

(3) Notwithstanding paragraph (1), a clinical laboratory may bill for anatomic pathology services that were performed by an affiliated clinical laboratory. For purposes of this section, an "affiliated clinical laboratory" means a clinical laboratory that is wholly owned by, is the parent company of, or is under common ownership with, the clinical laboratory billing for the anatomic pathology services. For purposes of this section, "wholly owned" means 100 percent ownership directly or through one or more subsidiaries, and "common ownership" means 100 percent ownership by a common parent company.

(b) A clinical laboratory or a physician and surgeon performing anatomic pathology services shall seek payment for those services solely from the following:

(1) The patient.

(2) The insurer, health care service plan, or other third-party payer responsible for payment of the services.

(3) The hospital, public health clinic, or nonprofit health clinic ordering the services.

(4) The clinical laboratory that sent the sample for specialized testing or services only if that clinical laboratory has performed the services, directly or through arrangements with a physician and surgeon in compliance with Article 18 (commencing with Section 2400) of Chapter 5, described in subdivision (e) related to that sample.

(5) A governmental agency or its specified public or private agent, agency, or organization responsible for payment of the services.

(c) No person is required to reimburse a person licensed under this division or under an initiative act referred to in this division for a charge or claim made in violation of this section.

(d) This section shall not apply to any of the following:

(1) A person who, or a clinical laboratory that, contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if services are to be provided to enrollees of the plan on a prepaid basis.

(2) A person who, or a clinic that, provides anatomic pathology services without charge to the patient, or on a sliding scale payment basis if the patient's charge for services is determined by the patient's ability to pay.

(3) Health care programs operated by public entities, including, but not limited to, colleges and universities.

(4) Health care programs operated by private educational institutions to serve the health care needs of their students.

(5) A person who, or a clinic that, contracts with an employer to provide medical services to its employees if the anatomic pathology services relating to the examination of gynecologic slides are provided under the contract.

(e) For the purposes of this section, the term "anatomic pathology services" means any of the following:

(1) Histopathology, meaning the gross and microscopic examination of organ tissue performed by a physician and surgeon or under the supervision of a physician and surgeon.

(2) Cytopathology, meaning the examination of cells from fluids, aspirates, washings, brushings, or smears, including the Pap test examination, performed by a physician and surgeon or under the supervision of a physician and surgeon.

(3) Hematology, meaning the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician and surgeon, or under the supervision of a physician and surgeon, and peripheral blood smears when the attending or treating physician and surgeon or technologist requests that a blood smear be reviewed by a pathologist.

(4) Subcellular pathology and molecular pathology, when required to be reviewed by a pathologist.

(5) Surgical pathology, meaning the gross and microscopic examination of organ tissue performed by a physician and surgeon or under the supervision of a physician and surgeon.

(6) Transfusion medicine or blood banking services performed by a pathologist.

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 657

An act to add and repeal Division 10.5 (commencing with Section 12200) of the Public Resources Code, relating to forest resources.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

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

SECTION 1. Division 10.5 (commencing with Section 12200) is added to the Public Resources Code, to read:

DIVISION 10.5. CALIFORNIA FOREST LEGACY PROGRAM ACT OF 2007

Chapter 1. General Provisions

Article 1. Title

12200. This division shall be known and may be cited as the California Forest Legacy Program Act of 2007.

Article 2. Findings and Declarations

12210. The Legislature hereby finds and declares all of the following:

(a) Privately owned forest lands comprise nearly half of California's 32.6 million acres of forest land, and include some of the state's most important and productive forest resources, including timber, fish and wildlife habitat, watersheds, and climate benefits. It is in the interest of the state to provide and maintain a favorable climate for long-term investment in forest resources.

(b) The importance of private forest lands to California's economy and environment has been recognized for many years, and more recently for almost three decades by the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4), the California Timber Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code), and other statutes and policies.

(c) California's private forest lands and woodlands are threatened by continued population growth and changes in land use patterns, including parcel size reductions, residential and commercial development, and by changes in forest cover.

(d) Heirs of forest landowners frequently find it necessary to harvest their timber prematurely and excessively, in order to pay estate taxes that can account for up to 55 percent of an estate's value.

(e) Continuing statewide population growth, existing land use and tax policies, regulations, and other factors create significant pressure for

an increase in development conversions in forest lands of environmental and economic significance.

(f) Conservation easements have been successfully used around the United States to achieve voluntary protection of open space, historical sites, and natural and aquatic resources.

(g) Conservation easements enable landowners to receive financial benefits for voluntarily restricting specific development rights and land that, in turn, contributes to the conservation of natural resources for future generations. Financial benefits to landowners can be realized through a sale or donation, or a combination of both a sale or donation of a conservation easement.

(h) A program to encourage and make possible the long-term conservation of forest lands and all associated natural resources is a necessary part of the state's land protection policies and programs, and it is in the public interest to expend money for that purpose.

(i) Funding is a necessary component of this program.

(j) The federal Forest Legacy Program (16 U.S.C. Sec. 2103c) conserves forest land threatened with conversion and development by providing federal matching funds for the acquisition of conservation easements or other interests in land from willing landowners, subject to state guidelines.

(k) The state completed the "California Forest Legacy Program Assessment of Need" in 1995 following an extensive analysis and widespread public input. That assessment was submitted to and accepted by the United States Department of Agriculture.

(*l*) California's forests can play an important role in addressing global climate change and helping the state meet its emission reduction targets by removing and storing carbon dioxide, a key greenhouse gas.

(m) The California Forest Legacy Program Act of 2000, established pursuant to Senate Bill 1832 of the 1999–2000 Regular Session of the Legislature, which expired on January 1, 2007, was successful in helping to protect approximately 12,000 acres of California forests by facilitating the expenditure of almost four million dollars ($4,000,000) in federal funds.

12211. It is the intent of the Legislature, in enacting this division and the California Forest Legacy Program, to protect forest lands and aquatic resources in California by focusing on all of the following priorities:

(a) Encouraging the long-term conservation of productive forest lands by providing an incentive to owners of private forest lands to prevent future conversions of forest land and forest resources.

(b) Protection of wildlife habitat, rare plants, and biodiversity.

(c) Maintenance of habitat connectivity and related values needed to ensure the viability of wildlife populations across landscapes and regions.

(d) Protection of riparian habitats, oak woodlands, ecological old growth forests, and other key forest types and seral stages that are poorly represented across landscapes and regions, and that play a key role in supporting biodiversity.

(e) Protection of water quality, fisheries, and water supplies.

(f) Maintenance and restoration of natural ecosystem functions.

(g) Encouraging improvements to enhance long-term sustainable forest uses while providing forest areas with increased protection against other land uses that conflict with forest uses.

Article 3. Definitions

12220. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

(a) "Applicant" means a landowner who is eligible for cost-sharing grants pursuant to the federal Forest Legacy Program (16 U.S.C. Sec. 2103 et seq.) or who is eligible to participate in the California Forest Legacy Program and the operation of the program, with regard to that applicant, does not rely on federal funding.

(b) "Biodiversity" is a component and measure of ecosystem health and function. It is the number and genetic richness of different individuals found within the population of a species, of populations found within a species range, of different species found within a natural community or ecosystem, and of different communities and ecosystems found within a region.

(c) "Board" means the State Board of Forestry and Fire Protection.

(d) "Conservation easement" has the same meaning as found in Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

(e) "Conversions" is a generic term for situations in which forest lands become used for nonforest uses, particularly those uses that alter the landscape in a relatively permanent fashion.

(f) "Department" means the Department of Forestry and Fire Protection and "director" means the Director of Forestry and Fire Protection.

(g) "Forest land" is land that can support 10-percent native tree cover of any species, including hardwoods, under natural conditions, and that allows for management of one or more forest resources, including timber, aesthetics, fish and wildlife, biodiversity, water quality, recreation, and other public benefits.

(h) "Landowner" means an individual, partnership, private, public, or municipal corporation, Indian tribe, state agency, county, or local

government entity, educational institution, or association of individuals of whatever nature that own private forest lands or woodlands.

(i) "Local government" means a city, county, district, or city and county.

(j) "Nonprofit organization" means any qualified land trust organization, as defined in Section 170(h)(3) of Title 26 of the United States Code, that is organized for one of the purposes of Section 170(b)(1)(A)(vi) or 170(h)(3) of Title 26 of the United States Code, and that has, among its purposes, the conservation of forest lands.

(k) "Program" means the California Forest Legacy Program established under this division.

(*l*) "Woodlands" are forest lands composed mostly of hardwood species such as oak.

Article 4. Administration

12230. The department shall carry out the California Forest Legacy Program. Nothing in this division alters the department's responsibility for the administration of state, federal, or private funds that are allocated for the purpose of protecting private forest lands and all associated natural resources.

12231. Nothing in this chapter grants any new authority to the department to affect local policy or land use decisionmaking.

Chapter 2. California Forest Legacy Program

12240. The California Forest Legacy Program is hereby established. The department may acquire conservation easements by entering into a contract with the Wildlife Conservation Board to administer the purchase of conservation easements. The California Forest Legacy Program may also include those activities eligible for funding under the federal Forest Legacy Program (16 U.S.C. Sec. 2103c), and the state program shall be coordinated with the federal program to the maximum amount possible.

12241. Money to fund the California Forest Legacy Program shall be obtained from gifts, donations, federal grants and loans, other appropriate funding sources, and through the allocations for the California Wildlife Conservation Board, including those provided from the sale of general obligation bonds pursuant to the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001)) and made available by the board pursuant to subdivision (a) of Section 75055 and pursuant to the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act)

(Chapter 1.692 (commencing with Section 5096.300) of Division 5) and made available for appropriation pursuant to paragraph (4) of subdivision (a) of Section 5096.350.

12242. The implementation of the program includes the costs associated with the purchase or facilitated donation of conservation easements, technical assistance provided by the department, technology transfer activities of the department, and administrative costs incurred by the department in administering the program.

12244. Easements acquired under this program may be held by federal, state, or local government entities or by nonprofit land trust organizations. The director shall find that any recipient of a conservation easement is qualified to monitor and enforce the terms of the easement.

12245. The director shall not disburse any funds until the applicant agrees to both of the following:

(a) That any conservation easement acquired shall be used by the applicant only for the purpose for which the funds were requested.

(b) That the director shall find that any disposition of the easement is consistent with, and in furtherance of, the purposes of this division, that the recipient of the easement is qualified to monitor and enforce the easement, and that the conservation provisions of the easement remain in effect following the transfer.

12246. If a local, state, or national government agency or nonprofit land trust organization holding the easement is dissolved, the easement shall be transferred to an appropriate public or nonprofit land trust organization that is qualified to monitor and enforce the easement.

12247. The easement, or any of its terms, may only be amended with the consent of all of the necessary parties to the easement. The department shall determine that the amendment is consistent with this division.

12248. The director shall not disburse any funds unless the applicant agrees to restrict the use of the land in perpetuity.

12249. The board shall adopt rules and regulations for the implementation of this division, including the standards, criteria, and requirements necessary for acquiring conservation easements.

12249.5. Rules or regulations adopted by the board pursuant to Section 12249 shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

12249.6. The department shall review, and approve or disapprove, applications from landowners for the acquisition of conservation easements on forest lands or woodlands.

Chapter 3. Eligibility Criteria

12250. Every application for the acquisition of a conservation easement shall provide sufficient information to enable the department to verify the parcel's eligibility for the program and to understand the conservation objectives and the parcel's environmental value or potential to protect forest and aquatic resources.

12250.5. In reviewing applications pursuant to this division, the department shall determine whether the proposed conservation easement meets the eligibility and selection criteria set forth in this chapter and conforms with any rules or regulations adopted by the department pursuant to this chapter.

12251. Proposed conservation easements shall meet the eligibility criteria set forth in this section prior to review pursuant to the selection criteria set forth in Section 12260. To be eligible for participation, private forest land parcels proposed for protection under the program shall comply with all of the following:

(a) Be subject to potential conversion.

(b) Be owned by landowners who are willing and interested in selling or donating conservation easements.

(c) Be forested with at least 10-percent canopy cover by conifer or hardwood species, or be capable of being so forested under natural conditions.

(d) Possession of one or more environmental values of great concern to the public and the state:

(1) Important fish and wildlife habitat.

(2) Areas that can help maintain habitat connectivity across landscapes.

(3) Rare plants.

(4) Biodiversity.

(5) Riparian habitats.

(6) Oak woodlands.

(7) Ecological old growth forests.

(8) Other key forest types and seral stages that are poorly represented across California.

(9) Lands that directly affect water quality and other watershed values.

(e) Provision for continuity of one or more traditional forest uses, such as commodities production or habitat maintenance.

(f) Possession of environmental values that can be protected and managed effectively through conservation easements at reasonable costs.

12252. The easement shall not be required as a condition of any lease, permit, license, certificate, or other entitlement for use issued by one or more public agencies, including, but not limited to, mitigating

the significant effects on the environment of a project pursuant to an approved environmental impact report or mitigated negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or pursuant to an approved environmental impact statement or a finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C.A. Sec. 4321 et seq.) or the federal Endangered Species Act of 1973 (16 U.S.C.A. Sec. 1531 et seq.).

Chapter 4. Selection Criteria and Process

12260. If the department determines that the proposed conservation easement meets the eligibility criteria set forth in Section 12251, the application shall be reviewed based upon the extent to which it satisfies the following selection criteria:

(a) The nature of the environmental values proposed for protection, and whether they can be monitored efficiently and effectively.

(b) Whether the parcels are likely to become isolated from other areas maintained for key forest resources by development on adjacent parcels.

(c) Whether the landowner's management goal for his or her parcel is compatible with the resource protections he or she is proposing.

(d) Whether the landowner has developed, or commits to developing by the time the easement is finalized, a management plan equivalent to, or better than, a forest stewardship plan that governs management on the parcel.

(e) Whether a nonprofit land trust organization, public agency, or other suitable organization has expressed an interest in working with the department and the landowner to establish, hold, and monitor the easement.

(f) Whether other sources of funding for easement acquisition, closing costs, monitoring and other costs are available.

(g) Other relevant considerations established by the director.

12262. An applicant shall select and retain an independent real estate appraiser to determine the value of the conservation easement, which shall be calculated by determining the difference between the fair market value and the restricted value of the property.

12263. The department shall act on an application for the acquisition of a conservation easement within 180 days of its receipt, and shall notify the applicant in writing of approval or disapproval of the application within 10 days of the decision of the department. The written notice

regarding a disapproval decision shall state the reason for the disapproval of the application.

12264. The department may disapprove the application for the acquisition of a conservation easement in any of the following circumstances:

(a) The application does not satisfy the eligibility criteria set forth in Section 12251 or selection criteria set forth in Section 12260.

(b) Clear title to the conservation easement cannot be conveyed.

(c) There is insufficient money in the fund to carry out the acquisition.

(d) Other acquisitions have a higher priority.

(e) Other relevant considerations established by the director.

Chapter 5. Easement Monitoring and Management

12275. The department, local government entity, or nonprofit land trust organization acquiring an easement pursuant to this division shall monitor that easement in order to assess the condition of the resources being protected and to ensure that the terms of the easement are being followed. Entities acquiring easements may also enter into a cooperative agreement with another qualified entity to monitor the easement.

12276. The department shall ensure that any entity acquiring a conservation easement acquired pursuant to this division has adequate funding for, or otherwise adequately provides for, easement monitoring pursuant to this division, and is able to enforce the easement if its provisions are not satisfied.

Chapter 6. Miscellaneous Provisions

12290. Commencing on January 1, 2009, and each January 1 thereafter, the department shall report to the Governor and the Legislature on its implementation of this division during the preceding calendar year. The report shall include, but not be limited to, information concerning applications made pursuant to this division, participating landowners, easement holders under Section 12244, and a description of all easements purchased.

12291. The department shall make available to the public on its Internet Web site a list of conservation easements acquired through the program. The list shall include information specified in paragraphs (2) to (6), inclusive, of subdivision (c) of Section 5096.520. The list shall be updated biennially.

12292. This division shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 2. Notwithstanding the repeal of Division 10.5 (commencing with Section 12200) of the Public Resources Code on January 1, 2015, by Section 12292 of the Public Resources Code, the Department of Forestry and Fire Protection shall do both of the following:

(a) Provide for monitoring of conservation easements purchased pursuant to former Division 10.5 (commencing with Section 12200) of the Public Resources Code in order to assess the condition of resources being protected, and to ensure that the terms of the easement are being met pursuant to a given conservation easement.

(b) Annually report to the Governor and the Legislature by January 1 of each year on the number of easements purchased pursuant to former Division 10.5 (commencing with Section 12200) of the Public Resources Code, and a description of those easements.

CHAPTER 658

An act to add Section 50515.2 to the Health and Safety Code, relating to housing.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) Over the last 25 years the Legislature has authorized and funded a variety of multifamily rental programs, each designed to serve low- and very low income households having a different target group of at-risk individuals and households.

(b) Of these programs, three in particular are approaching the maximum loan term as provided in the respective authorizing legislation. There are currently 38 projects, with 1,167 units assisted through the Deferred Payment Rehabilitation Loan Program; 60 projects, with 1,904 units assisted through the Special User Housing Rehabilitation Loan Program; and 49 projects, with 1,344 units assisted through the original Rental Housing Construction Program. An additional 26 projects, with 1208 units, are assisted through the original Rental Housing Construction Program, with funds administered by the California Housing Finance Agency. Upon the end of the authorized loan terms, the project sponsor that has served as the borrower will be obligated to repay the outstanding loan amounts to the department, or to the agency, as applicable.

(c) While each of these programs has successfully achieved the public goal of providing decent, safe, and affordable housing for the periods specified in law, the repayment of these loan amounts will in a majority of cases require the sale of the property and the loss of the affordable housing asset. Many of the project sponsors are desirous of continuing the use of these projects for the purpose of providing housing to persons and families of low and very low incomes.

(d) In 1998, the Legislature consolidated all multifamily rental housing programs administered by the department into a single omnibus rental program known as the Multifamily Housing Program. The proceeds from any and all loan repayments from any of the department's multifamily rental housing programs are to be loaned to future projects pursuant to the terms of the Multifamily Housing Program. All funds received by the California Housing Finance Agency with respect to projects assisted through the original Rental Housing Construction Program with funds administered by the agency shall be used to provide assistance to existing or future projects financed by or through the agency pursuant to terms consistent with the agency's affordable multifamily housing lending programs.

(e) It is in the public interest to maintain these existing units and the state's affordable housing stock.

(f) It would be far more efficient for the public funds already invested in these projects to remain in the projects, rather than to have the moneys returned to the respective program's fund and be reloaned to the same projects and borrowers through the multifamily Housing Program.

(g) It is in the public's interest to protect the low and extremely low income residents of these older projects.

SEC. 2. Section 50515.2 is added to the Health and Safety Code, to read:

50515.2. (a) Notwithstanding any other law, the department may extend the term of an existing multifamily housing loan made by the department under the original Rental Housing Construction Program established by Chapter 9 (commencing with Section 50735); the Special User Housing Rehabilitation Program established by Section 50670; or the Deferred Payment Rehabilitation Loan Program established by Chapter 6.5 (commencing with Section 50660) upon the request of any borrower subject to the following conditions:

(1) The borrower shall provide to the department a complete report showing all existing tenants, their incomes, as reported in the most recent annual income certification, and the rents currently charged to each tenant.

(2) The borrower shall agree to an extension of the term of the loan by an additional 55 years from the date of departmental approval. If the

department determines that the remaining useful life of a project is less than 55 years, the loan may be extended for the remaining useful life of the project, but not less than 30 years. The department may convert the existing outstanding principal and any accrued interest into the new loan amount. The interest rate on the extended term shall be 3 percent simple interest. All future payments of principal and interest may be deferred except for a percentage of interest equal to the percentage charged in the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675)) for the department's ongoing monitoring and management responsibilities.

(3) The borrower shall agree to amend or replace the existing regulatory agreement to include terms generally equivalent to those used in the Multifamily Housing Program. In addition, the borrower shall agree to replace, amend, or revise any other loan documents as necessary to accomplish the purposes of this section.

(4) (A) The borrower shall agree to a rent schedule that ensures that all assisted units are affordable to households earning no more than 60 percent of the area median income and that at least 35 percent of all assisted units shall be reserved for, affordable to, and occupied by, households earning less than or equal to the midlevel target used by the Multifamily Housing Program, unless the department finds both of the following:

(i) That the project income is insufficient to maintain fiscal integrity, as that term is used in the Multifamily Housing Program, and is insufficient to maintain the rents required under this subparagraph pursuant to the terms of the Uniform Multifamily Regulations, or any successor regulations, except that commercial vacancy loss shall be projected based on the operating history of the project, commercial vacancy rates in the neighborhood, and similar factors typically used by commercial lenders.

(ii) That the borrower has exhausted all available potential sources of rental subsidies, including, but not limited to, federal, state, and local funds.

(B) If the department finds that a reduction in the percentage of assisted units to less than 35 percent of assisted units is justified, it shall ensure that the largest possible percentage is reserved for the targeted households.

(C) For the purposes of this paragraph, "midlevel target used by the Multifamily Housing Program" shall mean the following:

(i) For counties with an area median income of 110 percent or less of the state median income, it shall mean households earning 30 percent of state median income, expressed as a percentage of area median income.

(ii) For counties with an area median income that exceeds 110 percent of the state median income, it shall mean households earning less than 35 percent of state median income, expressed as a percentage of area median income.

(5) No tenant residing in a project at the time of an extension authorized by this section may be displaced as a result of the regulatory revisions authorized by this section, and, for the initial operating year after approval of the extension, that tenant may not have his or her rent increased above the amounts specified in his or her preexisting regulatory agreements, except that no tenant may pay less than 30 percent of his or her income, calculated pursuant to the Multifamily Housing Program criteria. If a rent increase authorized under this section would exceed a 10 percent increase in payment for a lower income tenant, the project owner shall phase in the increase so that it does not exceed 10 percent per year. After the initial operating year after the extension authorized under this section, the rents for all regulated units that are subject to the new agreement may be adjusted in the percentage calculated pursuant to the Multifamily Housing Program criteria, plus the amount necessary to bring an individual tenant up to the 30-percent-of-income standard, provided that the total annual increase does not exceed 10 percent. Rent adjustments for all tenants occupying assisted units at the time of the extension shall be based on the tenant's initial rent established under this paragraph. Upon vacancy of an assisted unit occupied at the time of the extension, the new base rent for that unit shall be established consistent with the standards used in the Multifamily Housing Program for the regulated income band, subject to the reservation of units required under paragraph (4).

(b) The department may approve an extension of a loan made by the department if it determines that the project has, or will have after rehabilitation or repairs, a potential remaining useful life of at least 30 years and that the project is deemed financially feasible pursuant to the terms of its Uniform Multifamily Regulations or successor regulations.

(c) The department may subordinate its loan or loans to refinance existing senior debt and to additional permanent financing if that additional senior debt is used only for rehabilitation, repairs, or improvements, or both, including related soft costs, that are modest in size, scope, and cost, as determined by the department and necessary to maintain and extend the useful life of the project.

(d) (1) For the purposes of this subdivision, the "agency projects" are the 26 projects assisted through the original Rental Housing Construction Program with funds administered by the California Housing Finance Agency.

(2) Upon the request of a borrower the agency may extend the term of an existing loan for an agency project by a period that is equal to the remaining useful life of the project, as determined by the agency, but not more than 55 years and not less than 30 years from the date of agency approval, under terms that are substantially consistent with the purposes of this section, if all of the following conditions are met:

(A) The borrower shall provide to the agency the report described in paragraph (1) of subdivision (a).

(B) The extension shall be subject to the conditions set forth in paragraph (2) of subdivision (a).

(C) The rent levels and tenant protections described in paragraphs (4) and (5) of subdivision (a) shall be satisfied, except that the agency, not the department, shall make the determination required under clause (i) of subparagraph (A) of paragraph (4) of subdivision (a) that the project income is insufficient to meet the agency's affordable multifamily lending program requirements.

(3) Any determination or approval under this section regarding the agency projects shall be by the agency rather than the department.

(4) The borrower and the agency shall amend, replace, or revise any other loan documents or agreements governing the loans for the agency projects as necessary to accomplish the purposes of this section.

(5) All funds received by the agency for the agency projects, whether by loan repayment, foreclosure, accrued interest, or otherwise, shall be used to provide assistance to existing or future projects financed by or through the agency pursuant to terms consistent with the agency's affordable multifamily lending programs.

(e) It is the intent of the Legislature in enacting this section that the department should manage its reserves for the original Rental Housing Construction Program in a manner that will allow for the continuation of current benefits to current low-income tenants for the longest period of time possible. Accordingly, rent subsidies shall be continued only for units occupied by lower income tenants who were in residence at the time of the extension authorized under this section.

(f) It is the intent of the Legislature in enacting this section to provide to the department the flexibility necessary to preserve the affordable rental units for which the state has already made a significant public investment. Accordingly, the department may implement this section through guidelines that shall not be subject to Chapter 2.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

(g) This section shall become operative on July 1, 2008.

CHAPTER 659

An act to amend Sections 25214.15 and 25214.16 of the Health and Safety Code, relating to hazardous packaging.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) The problem of lead contamination on various brands of soda bottles manufactured outside of the state represents a health risk to California consumers. In addition, there is a huge "grey market" industry in California.

(b) These imported soda products have become increasingly popular in the United States because of their distinctive taste, and because they are sold in distinctive "returnable" glass bottles.

(c) Some glass bottles manufactured outside this country and sold in this state are decorated with paint containing high levels of lead.

(d) Consumers, including children and pregnant women, are exposed to this lead through hand-to-mouth contact when they touch the bottles, or when they eat hand-held food, like sandwiches and chips, after touching the bottles.

(e) In addition, lead can occasionally find its way from the painted label into the soda itself.

(f) Lead poisoning is a very serious problem for children six years of age or younger because lead is a neurotoxin and causes irreversible neurological damage. There is no safe level of lead in the blood. By the time a child has five micrograms of lead per deciliter of blood, he or she has already lost seven IQ points.

(g) Children with lead poisoning not only lose IQ points but also suffer life-long behavior and learning problems.

(h) Lead is a listed carcinogen and a known reproductive toxin that can cause birth defects, serious developmental disorders in infants and children, and harm to the male and female reproductive systems.

(i) Lead is so toxic that even minuscule amounts can be hazardous to human health.

(j) Studies by the United States Health and Human Services Agency and the Agency for Toxic Substance and Disease Registry report that lead can be transferred to the growing fetus, and high levels of lead exposure may cause increased risk of spontaneous abortions, miscarriages, and stillbirths.

(k) Studies also show that even low levels of lead exposure can adversely affect a pregnancy, causing premature birth, shortened gestation, decreased fetal growth and retarded fetal mental development.

(*l*) Newborns can be exposed to lead through the mother's milk.

(m) Young children are more susceptible to the harmful effects of lead than adults because their brains, nervous systems, and other organs are still developing.

(n) High levels of lead exposure in young children's blood may lead to progressive loss of memory and cognitive ability, personality changes, inability to concentrate, lethargy, muscle weakness and atrophy, tremors, involuntary muscular twitching, rapid and involuntary eye movement, dementia, seizures, loss of ability to swallow or speak, and progressive loss of consciousness. In severe cases, retardation, experiencing recurrent convulsions and a higher risk of death may occur.

(o) Recent studies have shown that even low levels of childhood lead exposure can cause or contribute to anemia, slowed growth, impaired speech and hearing, learning disabilities, decreased intelligence, diminishment of balance, visual skills, fine motor skills, verbal skills, attention and concentration, and impulse control, early signs of attention deficit hyperactivity disorder or "ADHD" and increased criminal behavior.

(p) In 1991, the Childhood Lead Poisoning Act was enacted, which expressed that childhood lead exposure represents the most significant childhood environmental health problem in the state today.

(q) Lead exposure in adults affects principally the brain and central nervous system, but can also adversely impact the body's production of blood, impair the functioning of the kidneys, contribute to high blood pressure and harm both male and female reproductive organs.

SEC. 2. Section 25214.15 of the Health and Safety Code is amended to read:

25214.15. (a) A package or packaging component qualifies for an exemption pursuant to Section 25214.14 only if the manufacturer or supplier prepares, retains and biennially updates documentation containing all of the following information for that package or packaging component:

(1) A statement that the documentation applies to an exemption from the requirements of Section 25214.13.

(2) The name, position, and contact information for the person who is the manufacturer's or supplier's contact person on all matters concerning the exemption.

(3) An identification of the exemption and a reference to the applicable subdivision in Section 25214.14 setting forth the conditions for the exemption.

(4) A description of the type of package or packaging component to which the exemption applies.

(5) Identification of the type and concentration of the regulated metal or metals present in the package or packaging component, and a description of the testing methods used to determine the concentration.

(6) An explanation of the reason for the exemption.

(7) Supporting documentation that fully and clearly demonstrates that the package or packaging component is eligible for the exemption.

(8) The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is applicable for the exemption.

(b) If an exemption is being claimed under subdivision (a) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) Date of manufacture.

(2) Estimated time needed to exhaust current inventory.

(3) Alternative package or packaging component that meets the requirements of Section 25214.13.

(c) If an exemption is being claimed under subdivision (b) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation that contains all of the following information for each regulated metal intentionally introduced in the package or packaging component to which the exemption applies:

(1) Identification of the specific federal or state law requiring the addition of the regulated metal to the package or packaging component.

(2) Detailed information that fully and clearly demonstrates that the addition of the regulated metal to the package or packaging component is necessary to comply with the law identified pursuant to paragraph (1).

(3) A description of past, current, and planned future efforts to seek or develop alternatives to eliminate the use of the regulated metal in the package or packaging component.

(4) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to why the alternative is not satisfactory for purposes of achieving compliance with the law identified pursuant to paragraph (1).

(d) If an exemption is being claimed under subdivision (c) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The type and percentage of recycled material or materials added to the package or packaging component.

(2) The type and concentration of each regulated metal contained in each recycled material added to the package or packaging component.

(3) Efforts to minimize or eliminate the regulated metals in the package or packaging component.

(4) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(e) If an exemption is being claimed under subdivision (d) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for each regulated metal intentionally introduced into the package or packaging component to which the exemption applies:

(1) Detailed information and evidence that fully and clearly demonstrates how the regulated metal contributes to, and is essential to, the protection, safe handling, or functioning of the package's contents.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(3) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical constraints that preclude substitution of the alternative for the use of the regulated metal.

(4) Documentation that the regulated metal is not being used for the purposes of marketing.

(f) If an exemption is being claimed under subdivision (e) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Identification of the federal or state health or safety law regulating the product being conveyed by the package, the package, or the packaging component.

(3) Identification of the federal or state transportation law regulating the transportation of the packaged product.

(4) Information demonstrating that the package is disposed of in accordance with the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(5) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(g) If an exemption is being claimed under subdivision (f) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and

biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Information and evidence that demonstrates that the environmental benefit of the controlled distribution and reuse of the package or packaging component is significantly greater, as compared to the same package or packaging component manufactured in compliance with the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(3) A means of identifying, in a permanent and visible manner, any reusable package or packaging component containing a regulated metal for which the exemption is sought.

(4) A method of regulatory and financial accountability, so that a specified percentage of the reusable packages or packaging components that are manufactured and distributed to other persons are not discarded by those persons after use, but are returned to the manufacturer or identified designees.

(5) A system of inventory and record maintenance to account for reusable packages or packaging components placed in, and removed from, service.

(6) A means of transforming returned packages or packaging components that are no longer reusable into recycled materials for manufacturing, or a means of collecting and managing returned packages or packaging components as waste in accordance with applicable federal and state law.

(7) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(h) If an exemption is being claimed under subdivision (g) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update the following documentation for the package or packaging component to which the exemption applies:

(1) Applicable test data.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(i) A manufacturer or supplier shall submit the documentation required pursuant to subdivisions (a) to (h), inclusive, to the department, as follows:

(1) Upon receipt of a written request from the department, the manufacturer or supplier shall, on or before 30 calendar days after the date of receipt, do one of the following:

(A) Submit the required documentation to the department.

(B) Submit a letter to the department indicating the date by which the documentation shall be submitted, which may be no more than 90 calendar days after the date of receipt of the department's request.

(2) If the department finds that the documentation supplied pursuant to paragraph (1) is incomplete or incorrect, the department shall notify the manufacturer or supplier that the documentation is incomplete or incorrect, and the manufacturer or supplier shall submit complete and correct documentation to the department within 60 calendar days after the date of receipt of the notification.

(j) If a manufacturer or supplier fails to comply with subdivision (i) by any of the specified dates in that subdivision, the manufacturer or supplier shall, with respect to the package or packaging component to which the documentation request applies, comply with one of the following:

(1) Immediately cease to offer the package or packaging component for sale or for promotional purposes in this state.

(2) Replace the package or packaging component with a package or packaging component that conforms with the regulated metals limitations specified in Section 25214.13, in accordance with a schedule approved in writing by the department.

(3) Submit complete and correct documentation for the package or packaging component, in accordance with a schedule approved in writing by the department.

(k) A glass bottle package with paint or applied ceramic decoration on the bottle does not qualify for an exemption pursuant to Section 25214.14, if the paint or applied ceramic decoration contains lead or lead compounds in excess of 0.06 percent by weight.

SEC. 3. Section 25214.16 of the Health and Safety Code is amended to read:

25214.16. (a) On and after January 1, 2006, each manufacturer or supplier shall furnish a certificate of compliance to the purchaser of a package or packaging component, even when the purchaser is also a supplier, stating that the package or packaging component is in compliance with the requirements of this article. However, if, pursuant to Section 25214.14, the package is exempt from the requirements of Section 25214.13, the certificate of compliance shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer or supplier. A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component.

(b) A purchaser of a package or packaging component subject to subdivision (a) shall retain the certificate of compliance for as long as the package or packaging component is in use by the purchaser.

(c) The manufacturer or supplier shall furnish to the department a copy of the certificate of compliance for each package or packaging component for which an exemption is claimed under Section 25214.14 at the time when a certificate of compliance for that package or packaging component is first furnished to a purchaser. If no exemption is claimed for a package or packaging component, the manufacturer or supplier shall provide to the department upon request a copy of the certificate of compliance for that package or packaging component.

(d) If a manufacturer or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide the purchaser, and, if the package or packaging component is exempt, the department, with an amended or new certificate of compliance for the reformulated or new package or packaging component.

SEC. 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 660

An act to amend Section 2.1 of Chapter 1333 of the Statutes of 1968, and to amend Sections 2, 3, 4, 7, and 12 of Chapter 543 of the Statutes of 2004, relating to tidelands and submerged lands.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. As used in this act:

(a) "BCDC" means the San Francisco Bay Conservation and Development Commission established under Section 66620 of the Government Code.

(b) "Burton Act" means Chapter 1333 of the Statutes of 1968, as amended.

(c) "Burton Act lands" means those tidelands granted to the city by the Burton Act.

(d) "Burton Act Map" means that certain map entitled "MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO," recorded in Book W of Maps, Page 66, of the City and County of San Francisco Recorder's Office.

(e) "Burton Act transfer agreement" means that certain agreement dated January 24, 1969, between the state and the city, relating to the transfer of the Port of San Francisco from the state to the city, and any amendments to that agreement in accordance with its terms.

(f) "Burton Act trust" means the statutory trust imposed by the Burton Act, by which the state conveyed to the city, in trust and subject to certain terms, conditions, and reservations, the state's interest in certain tidelands, including filled lands, and lands dedicated or acquired by the city as assets of the trust.

(g) "Capital plan" means the plan developed by the port dated February 2007, as may be amended from time to time, identifying projects to improve the infrastructure and buildings on trust lands on the San Francisco waterfront, including preservation of and structural repairs and improvements to historic piers, and the construction of public access within and around historic piers.

(h) "City" means the City and County of San Francisco, a charter city and county.

(i) "Commission" means the State Lands Commission.

(j) "Designated seawall lot" or "designated seawall lots" means any or all of the parcels of real property located in the city commonly known as seawall lots 328, 330, 337, and 347S, including a portion of Mission Rock Street, as shown on that certain map entitled "designated seawall lots," which is reproduced in Section 15 and is on file with the commission and the port.

(k) "Harbor fund" means the separate fund in the treasury of the city established and maintained in accordance with Section B6.406 of the charter of the city and Section 4 of the Burton Act.

(*l*) "Historic pier" means any of the piers, marginal wharves, pier sheds, bulkhead buildings, and other buildings and structures in the San Francisco waterfront between and including Pier 48 and Pier 45 that have been included in the Port of San Francisco Embarcadero Historic District and that either are individually listed or eligible for listing on the National Register of Historic Places; or have been designated as, or meet the standards for, resources contributing to the historic significance

of the Port of San Francisco Embarcadero Historic District under federal law.

(m) "Historic structure" means any building, structure, or other facility that is located on port property and either is individually listed or eligible for listing on the National Register of Historic Places; or has been designated as, or meets the standards for, a resource contributing to the historic significance of a national register listed or eligible for listing as a historic district under federal law.

(n) "Lease" means a ground lease or space lease of real property, license agreement for use of real property, temporary easement, right-of-way agreement, development agreement, or any other agreement granting to any person any right to use, occupy, or improve real property under the jurisdiction of the port.

(o) "McAteer-Petris Act" means Title 7.2 (commencing with Section 66000) of the Government Code.

(p) "Paper street" or "paper streets" means any or all of those areas of real property, located in the city, consisting of certain portions of lands designated as streets on the Burton Act Map, and more particularly described as follows:

(1) That portion of Daggett Street lying between the easterly prolongation of the northerly line of Sixteenth Street and the southwesterly line of Seventh Street.

(2) That portion of Texas Street lying between the easterly prolongation of the southerly line of Sixteenth Street and the Pueblo Line of 1883, as shown on Sheet 4 of the Burton Act Map.

(3) That portion of Custer Avenue lying southerly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(4) That portion of Evans Avenue lying easterly and northerly of the Line of Ordinary High Tide of 1868-1869 as shown on Sheet 6 of the Burton Act Map, and westerly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(5) That portion of Davidson Avenue lying easterly of the Line of Ordinary High Tide of 1868-1869 as shown on Sheet 6 of the Burton Act Map, and westerly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(6) That portion of Ingalls Street lying southerly of the westerly prolongation of the southerly line of Custer Avenue, northeasterly of the Ordinary High Tide Line of 1869, and southeasterly of a line parallel with, and distant 100 feet landward, from the mean High Water Line of San Francisco Bay.

(7) Subject to approval by the commission, any portion of former Arthur Avenue lying southwesterly of the southwesterly line of Cargo

Way, as dedicated on November 10, 1978, by Resolution Number 834-78 of the Board of Supervisors of the city, and as shown on Map T-27-85 on file in the office of the County Surveyor of the city, lying easterly of the easterly line of Third Street, abutting Assessor Parcel Numbers 5203-023, 5203-025, 5203-038, 5203-046, 5203-047, 5203-048, 5203-049, 5203-050, 5203-051, 5203-052, 5203-053, 5203-054, 5203-055, 5203-056, and 5203-057, inclusive, and Assessor Parcel Number 4570-019, excepting therefrom that portion thereof lying between the northeasterly prolongations of the northwesterly and southeasterly lines of Mendell Avenue; the foregoing shall include, without limitation, any portion of Arthur Avenue shown as lying outside of Parcel "A" as depicted on the Burton Act Map, provided that the commission finds and declares that there is uncertainty as to the nature or extent of the state's sovereign interest in these lands and that the public interest would be served by the resolution of that uncertainty by a settlement.

(q) "Person" means any private person, corporation, limited liability company, partnership, joint venture, business entity, business trust, association or other private organization or private entity, or any governmental entity or agency.

(r) "Port of San Francisco" or "port" means the city acting by and through the San Francisco Port Commission.

(s) "Preservation" means the rehabilitation, restoration, or preservation of historic piers or other historic structures in accordance with the Secretary of the Interior's Standards for Rehabilitation. Preservation includes seismic retrofitting, substructure repair, and other structural and life-safety improvements, provided that the improvements are necessary for and in furtherance of the preservation of historic piers or other historic structures.

(t) "Public trust" or "trust" means the common law public trust for commerce, navigation, and fisheries.

(u) "San Francisco waterfront" means those lands placed by the city under the management, supervision, and control of the port.

(v) "Seaport plan" means the San Francisco Bay Area Seaport Plan, adopted by BCDC and the Metropolitan Transportation Commission, as amended in 2003, and as may be amended from time to time.

(w) "Special area plan" means the San Francisco Waterfront Special Area Plan, dated July 20, 2000, adopted by BCDC, as amended in 2002, and as may be amended from time to time.

(x) "State" means the State of California.

(y) "Subarea" or "subareas" means one or more of the waterfront subareas identified in the Waterfront land use plan, as may be amended from time to time, except as otherwise provided in this act.

(z) "Tidelands" means the lands lying below the elevation of ordinary high water, whether filled or unfilled, and includes submerged lands.

(aa) "Waterfront land use plan" means the Port of San Francisco Waterfront Land Use Plan, including, but not limited to, the waterfront design and access element, adopted by the port under Resolution No. 97-50, as may be amended from time to time.

SEC. 2. The Legislature finds and declares all of the following:

(a) Upon its admission to the United States of America on September 9, 1850, the state, by virtue of its sovereignty, received in trust for the purposes of commerce, navigation, and fisheries, all right, title, and interest in ungranted tidelands and beds of navigable waterways within its borders. The landward boundary of such waterways is the ordinary high water mark.

(b) In 1969, pursuant to the Burton Act and the Burton Act transfer agreement, the state conveyed certain state tidelands to the city in trust for public trust and Burton Act trust purposes. Under the Burton Act, the port is authorized to use, conduct, operate, maintain, manage, regulate, improve, and control the San Francisco waterfront consistent with the public trust and the Burton Act trust. The Burton Act trust requires that the moneys derived from the use of the transferred properties be used solely for the furtherance of the purposes set forth in the Burton Act. The transferred lands include the designated seawall lots, the paper streets, and the historic piers.

(c) The San Francisco waterfront, extending generally from Fisherman's Wharf to Candlestick Point, is a valuable public trust asset of the state and provides special maritime, navigational, recreational, cultural, and historical benefits to the people of the region and the state. A unique attribute of the San Francisco waterfront is its historic piers along the northeastern edge of the city. The historic piers from Fisherman's Wharf to China Basin within the Embarcadero Historic District have been listed on the National Register of Historic Places and represent one of the few remaining examples of breakbulk finger piers in the nation.

(d) The present-day San Francisco waterfront lies a significant distance from the historic shoreline of the city. Beginning in the 1850s, the tidelands at the historic shoreline were filled and reclaimed to create a functional harbor pursuant to a series of state statutes. Portions of the filled and reclaimed lands were cut off from the water as a result of these harbor improvements and were conveyed into private ownership pursuant to legislative authorization.

(e) Pursuant to Chapter 219 of the Statutes of 1878, the Legislature authorized the waterward expansion of the northern waterfront through the construction of a new seawall and the filling of the tidelands separated

from the water by the seawall and the Embarcadero (formerly East Street). The new seawall, upon which the present-day Embarcadero roadway is built, established a permanent shoreline for the northeastern portion of the city. The construction of the new seawall allowed for the development of the finger piers that remain today. The San Francisco Belt Line Railroad was constructed on top of the new seawall to transport cargo into, out of, and between the finger pier cargo terminals. The filled and reclaimed lands between the former waterfront line and the new seawall, generally known as the "seawall lots," were retained in state ownership and were required by various statutes to be used for purposes related to commerce of the port. During the first half of the twentieth century, when the northern San Francisco waterfront was a major center of shipping activity, the seawall lots were used primarily as railyards or as backlands to support cargo operations on the finger piers.

(f) Over time, shipping activities in San Francisco diminished and shifted to the southern waterfront as break-bulk operations began to be replaced by containerized cargo. Because of its limited backland area, the northeastern waterfront was not suited for containerized shipping and was no longer a center of maritime and railroad operations. The seawall lots north of Second Street, separated from San Francisco Bay by the Embarcadero roadway, were further cut off from the water by light rail tracks that were recently constructed in the median of the roadway.

(g) Seawall lot 337 is located on former tidelands known as China Basin and was filled in the early 1900s pursuant to a lease authorized by the Legislature between the Board of State Harbor Commissioners and a railway company. The lease required the railway company to construct a seawall, reclaim tidelands, and construct a rail freight yard serving the waterfront. Railroad use of seawall lot 337 was eventually abandoned as cargo operations shifted to the southern waterfront.

(h) As a result of these developments, certain of the seawall lots or portions thereof, including the designated seawall lots addressed in this act, have ceased to be useful for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust and, with respect to seawall lot 337, for certain uses described in subdivision (i) of this section and in Section 6 of this act.

(i) Presently, the designated seawall lots are leased on an interim basis for commuter parking or are vacant land, with the exception of seawall lot 337, which is currently leased to the China Basin Ballpark Company for event-related parking. A portion of seawall lot 337 is also designated as a port priority use area under the seaport plan. Some public trust uses, including, but not limited to, public parks and walkways, may be feasible

and appropriate for a part of seawall lot 337. This act requires that, prior to the lease of seawall lot 337 for nontrust uses, the port has undertaken and approved, and the commission has approved, a study analyzing the need to retain trust-consistent uses on the site, and BCDC has amended the seaport plan to remove the port priority use designation from lands to be leased for nontrust uses.

(j) The designated seawall lots constitute approximately 4 percent of the lands granted to the city under the Burton Act, not including lands currently subject to tidal action.

(k) The designated seawall lots were filled and reclaimed as part of a highly beneficial plan of harbor development, have ceased to be tidelands, and constitute a relatively small portion of the tidelands granted to the city.

(*l*) Given the foregoing lack of public trust use needs for the designated seawall lots, the designated seawall lots are not necessary for public trust or Burton Act trust purposes, with the exceptions described in subdivision (i) of this section and in Section 6 of this act.

(m) Under Section 3 of Article X of the California Constitution, the state may sell tidelands within two miles of any incorporated city, city and county, or town in the state, and fronting on the water of any harbor, estuary, bay, or inlet that were reserved to the state solely for street purposes, to any town, city, county, city and county, municipal corporations, private persons, partnerships, or corporations, subject to such conditions as the Legislature determines are necessary to be imposed in connection with the sales in order to protect the public interest, if the Legislature finds and declares that the tidelands are not used for navigation purposes and are not necessary for those purposes.

(n) Pursuant to several statutes, including, but not limited to, Chapter 41 of the Statutes of 1851, as amended, and Chapter 543 of the Statutes of 1867–68, as amended by Chapter 388 of the Statutes of 1869–70, the state sold certain tidelands in the city into private ownership. However, some of the tidelands in the city, including all of the paper streets, were withheld from sale and reserved to the state solely for street purposes. As with the designated seawall lots, the paper streets were conveyed to the city, in trust, pursuant to the Burton Act.

(o) Presently, none of the paper streets are used, suitable, or necessary for navigation or any other public trust purpose, other than revenue generation. The paper streets are fragments that have been cut off from direct access to the waters of San Francisco Bay by past filling of intervening property and do not provide and are not needed for public access to the waterfront. The lands adjoining the paper streets have been freed of the trust and have been or are proposed to be developed for nontrust uses. Certain of the paper streets, including those comprising

portions of Texas, Custer, Ingalls, and Davidson Streets, as shown on the Burton Act Map, were either never constructed as streets or have ceased to be used for street purposes and are presently developed with structures, including warehouse facilities and the recently closed Hunters Point powerplant.

(p) Beginning in the early 1990s, in response to economic and land use needs of the port and as directed by the San Francisco electorate, the port undertook a public planning process related to the improvement and development of the San Francisco waterfront. This resulted in the adoption of the waterfront land use plan in 1997. The plan includes a waterfront design and public access element, which sets forth detailed policies relating to public access, views, historic preservation, and architectural design standards.

(q) The port and BCDC have resolved certain statutory and regulatory issues concerning land uses of the historic piers. Through a joint port and BCDC public planning process, with participation from the organization "Save The Bay" and other persons and organizations interested in the San Francisco waterfront, the port and BCDC adopted amendments to the waterfront land use plan and special area plan in 2002.

(r) Pursuant to the San Francisco Administrative Code, the port has developed a capital plan identifying projects necessary and convenient to the improvement, operation, and conduct of the city's waterfront. Implementation of the port's capital plan is a matter of statewide importance and is essential to furthering the purposes of the public trust. Projects in the capital plan include, but are not limited to, all of the following:

(1) Seismic and life-safety improvements to existing buildings and other structures.

(2) Rehabilitation, restoration, and preservation of certain historic piers and other historic structures.

(3) Structural repairs and improvements to piers, seawalls, and wharves.

(4) Remediation of hazardous materials.

(5) Stormwater management facilities.

(6) Other utility infrastructures.

(7) Public access improvements, including improvements within and around the pier sheds and the construction of waterfront plazas and open space required by the special area plan.

(s) The estimated cost to implement the port's capital plan is approximately 1.4 billion dollars ($1,400,000,000) in 2007 dollars. This amount substantially exceeds the projected revenues of the port available

for these purposes, in part due to the port's inability to make optimal use of the designated seawall lots and the paper streets.

(t) The implementation of the capital plan, including the preservation of the historic piers and other historic structures and the construction of waterfront plazas and open space, is a matter of statewide importance and furthers the purposes of the public trust and the Burton Act trust.

(u) Future revenues from the development and leasing of the designated seawall lots are an essential source of funds to preserve historic piers and historic structures and construct and maintain waterfront plazas and open space as identified in the capital plan. The expenditure of revenues for these purposes will serve the public trust and the Burton Act trust and will improve access to the waterfront for visitors and residents.

(v) It is the intent of the Legislature that the designated seawall lots, with the protections related to seawall lot 337 provided in Section 6, should be freed of the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, but should otherwise continue to be held by the port subject to the terms and conditions of the public trust, the Burton Act trust, and the Burton Act transfer agreement, provided that revenue derived from the leasing of the designated seawall lots be deposited in the harbor fund to be used to fund the preservation of the historic piers and other historic structures and the construction and maintenance of waterfront plazas and open space.

(w) It is further the intent of the Legislature, subject to the terms and conditions set forth in this act, to terminate the public trust over the paper streets, to authorize the city to sell or otherwise dispose of those lands free from the trust, and to require that the revenues derived from the use, administration, or transfer of those lands be used in furtherance of trust purposes. The Legislature recognizes and acknowledges that the port's revenue needs, as reflected in part in its capital plan, will remain considerable even after obtaining additional revenues from the sale of the paper streets and the lease of the designated seawall lots.

SEC. 3. Subject to the terms and conditions in Section 4 pertaining to leases, and in Section 6 pertaining to seawall lot 337, the designated seawall lots are declared to be free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement for the period between the effective date of this act and January 1, 2094. The designated seawall lots shall remain subject to all other terms, provisions, and requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, and any additional requirements set forth in this act, as applicable.

SEC. 4. Subject to the applicable terms and conditions in Section 6 pertaining to seawall lot 337, the port may enter into a lease of all or any

portion of the designated seawall lots free from the use requirements established by the public trust, the Burton Act trust, and the Burton Act transfer agreement (nontrust lease), provided all of the following conditions are met:

(a) Notwithstanding the Burton Act, Section 718 of the Civil Code, Section 37384 of the Government Code, or any other provision of law to the contrary, the term of any individual nontrust lease, including any extension of the term allowed by right of renewal, does not exceed 75 years, and the nontrust lease will terminate no later than January 1, 2094. Nothing in this section shall be construed as limiting the term of any lease, or portion thereof, that is for uses consistent with the public trust and the Burton Act.

(b) (1) Except as provided in this subdivision, all revenues received by the port from the nontrust lease will be deposited in a separate account in the harbor fund to be expended for the preservation of historic piers and historic structures, or for the construction and maintenance of waterfront plazas and open space required by the special area plan. Revenues shall not be expended under this subdivision for historic piers or historic structures on land subject to public trust use restrictions unless the executive officer of the commission has approved the proposed uses of the pier or structure.

(2) The port may annually transfer from the separate account and deposit in the general account of the harbor fund, to be used for any purpose consistent with the public trust and the Burton Act, an amount equal to the sum of the baseline revenue streams for each designated seawall lot subject to a nontrust lease (hereafter leased seawall lot), less any revenues received by the port, for the year preceding the transfer of funds, from any portion or portions of the leased seawall lots that were not subject to a nontrust lease. For purposes of this subdivision, the baseline revenue stream for a designated seawall lot is the average annual revenue received by the port from that seawall lot over the five years prior to January 1, 2008, adjusted for inflation.

(3) For purposes of this subdivision, the term "revenue" shall exclude any costs incurred by the port to administer the lease and to operate and maintain the leased property and any improvements thereon.

(4) For each nontrust lease of a designated seawall lot, the port shall maintain a separate accounting of all revenues transferred pursuant to paragraph (2), all costs excluded pursuant to paragraph (3), and all revenues deposited into the separate account.

(5) If the funds in the separate account exceed the amount needed for the preservation of historic piers and historic structures and for construction of waterfront plazas and open space, the excess funds shall

be deposited in the harbor fund to be used for purposes consistent with the public trust and the Burton Act.

(c) The nontrust lease is for fair market value and on terms consistent with prudent land management practices as determined by the port and subject to approval by the commission as provided in paragraph (1).

(1) Prior to executing the nontrust lease, the port shall submit the proposed lease to the commission for its consideration, and the commission shall grant its approval or disapproval in writing within 90 days of receipt of the lease and supporting documentation, including documentation related to value. In approving a nontrust lease, the commission shall find that the lease meets all of the following:

(A) Is for fair market value.

(B) Is consistent with the terms of the public trust and the Burton Act trust, other than their restrictions on uses.

(C) Is otherwise in the best interest of the state.

(2) Whenever a nontrust lease is submitted to the commission for its consideration, the costs of any study or investigation undertaken by or at the request of the commission, including reasonable reimbursement for time incurred by commission staff in processing, investigating, and analyzing such submittal, shall be borne by the port; however, the port may seek payment or reimbursement for these costs from the proposed lessee.

SEC. 5. Nothing in this act shall be construed as limiting the port's existing authority to use or lease the designated seawall lots under the Burton Act, subject to any applicable limitations of state law.

SEC. 6. Seawall lot 337 shall remain subject to the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement until all of the following conditions are met:

(a) BCDC has approved an amendment to the seaport plan priority use designation now applicable to a portion of seawall lot 337. Any areas within seawall lot 337 that remain subject to a seaport plan priority use designation following an amendment to the seaport plan shall remain subject to the existing use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement.

(b) The port has undertaken and approved a study to determine land uses and the location of those uses within seawall lot 337 and the adjacent Piers 48 and 50. The study shall include public outreach and participation and shall analyze the need to retain land uses within seawall lot 337 that comply with the public trust, the Burton Act trust, and the Burton Act transfer agreement. Trust uses to be considered in the study shall include, without limitation, public parks and walkways, restaurants, hotels, maritime training, sales and rentals, waterfront visitor serving retail services, and other trust uses. The study shall also address the

transportation needs of the Giants Ballpark and trust uses on port property in the vicinity. The study shall, at a minimum, reserve sufficient areas along the northern and eastern sides of seawall lot 337 to accommodate needed public trust uses.

(c) The commission has approved the conclusions of the port study. The port shall submit the study to the commission prior to its submittal of any lease of the property, and the commission shall indicate its approval or disapproval of the study's conclusions in writing within 90 days of receipt of the study.

SEC. 7. Sections 3, 4, and 6 of this act shall be inoperative on January 1, 2094, after which date the use of the designated seawall lots shall be consistent with the public trust, the Burton Act trust, and the Burton Act transfer agreement. No later than January 1, 2094, all structures, buildings, and appurtenances on the designated seawall lots not consistent with the purposes of the public trust, the Burton Act trust, and Burton Act transfer agreement shall be removed or modified, including any necessary restoration or remediation of the seawall lots, to facilitate public trust uses.

SEC. 8. (a) The Legislature hereby finds in accordance with Section 3 of Article X of the California Constitution that the interest of the state in the paper streets was reserved to the state solely for street purposes, and that the paper streets are no longer used or necessary for navigation purposes.

(b) The city may, pursuant to Section 3 of Article X of the California Constitution, lease, sell, or otherwise transfer all or any portion of the paper streets, or any interest therein, to any person free of the public trust, the Burton Act trust, and any additional restrictions on use or alienability created by the Burton Act transfer agreement. A lease, sale, or other transfer made pursuant to this section shall not be effective unless and until the commission, at a regular open meeting with the proposed transaction as a properly scheduled agenda item, does or has done both of the following:

(1) Finds, or has found, that the consideration for lease, sale, or other transfer of the paper streets or interest therein shall be the fair market value of the land or interest sold.

(2) Adopts, or has adopted, a resolution approving the lease, sale, or other transfer that finds and declares that the paper street or streets to be transferred have been filled and reclaimed, are cut off from access to the waters of San Francisco Bay, and are no longer needed or required for the promotion of the public trust, and that no substantial interference with the public trust uses and purposes will ensue by virtue of the transfer. The resolution shall also declare that the transfer is consistent with the findings and declarations in Section 2 of this act and is in the best

interests of the state. Upon adoption of the resolution, or at a time that is specified in the resolution, and the recordation of lease, transfer, or sale documents, the street shall thereupon be free from the public trust, Burton Act trust, and any additional restrictions on use or alienability created by the Burton Act transfer agreement.

(c) All revenues derived from the lease, sale, or other transfer of the paper streets pursuant to this section shall be deposited in a separate account in the harbor fund and shall be expended solely for purposes of implementing the port's capital plan, consistent with the Burton Act and the public trust.

(d) To effectuate the lease, sale, or other transfer of the paper streets authorized by this section, the commission may convey to the city by patent all of the right, title, and interest in the paper streets held by the state by virtue of its sovereignty, including any public trust interest or Burton Act reservation not previously conveyed, free of the public trust, the Burton Act trust, and any additional restrictions on use or alienability created by the Burton Act transfer agreement, and subject to any reservations the commission determines appropriate.

(e) The Legislature finds and declares that the conditions set forth in this section will protect the public interest in accordance with Section 3 of Article X of the California Constitution.

SEC. 9. In the case where the state conveys tidelands or any interest therein pursuant to this act, the state shall reserve all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state or to its successors and assignees, except that, notwithstanding the grant or Section 6401 of the Public Resources Code, any reservation shall not include the right of the state or its successors or assignees in connection with any mineral exploration, removal, or disposal activity, to do either of the following:

(a) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by the city or by the city's successors or assignees.

(b) Conduct mining activities of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of the city or the city's successors or assignees.

SEC. 10. Any lease of the designated seawall lots entered into pursuant to this act shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding to determine its validity in a court of competent jurisdiction filed within 60 days after the commission's approval of the lease. Any agreement or any deed, patent,

or other instrument, involving the conveyance of an interest in the paper streets, executed or entered into pursuant to this act, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding to determine its validity in a court of competent jurisdiction commenced within 60 days after the recording of the agreement or instrument.

SEC. 11. (a) An action may be brought under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the legality and validity of any lease of the designated seawall lots. Prior to the filing of any such action, the Attorney General and the executive officer of the commission shall be provided written notice of the action and a copy of the complaint.

(b) An action may be brought under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure to establish title to any lands conveyed pursuant to this act, or by the parties to an agreement entered into pursuant to Section 8 of this act to confirm the validity of the agreement. Notwithstanding Section 764.080 of the Code of Civil Procedure, the statement of decision in the action shall include a recitation of the underlying facts and a determination as to whether the conveyance or agreement meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the agreement.

(c) For purposes of Section 764.080 of the Code of Civil Procedure and unless otherwise agreed in writing, an agreement entered into pursuant to Section 8 of this act shall be deemed to be entered into on the date it is executed by the executive officer of the commission, who shall be the last of the parties to sign prior to the signature of the Governor. The effective date of the agreement shall be deemed to be the date on which it is executed by the Governor pursuant to Section 6107 of the Public Resources Code.

SEC. 12. The city may modify any description and plat prepared and recorded under Section 2 of the Burton Act and Section 11 of the Burton Act transfer agreement to reflect the disposition of any property pursuant to this act, and may record the modified description and plat in the Official Records of the City and County of San Francisco.

SEC. 13. The Legislature finds and declares that any lease, conveyance, sale, exchange, boundary settlement, confirmation of title, or agreed ordinary high water mark made, established, or accomplished pursuant to this act is of statewide importance, and, therefore, an ordinance, charter provision, or other provision of local law inconsistent with this act shall not be applicable thereto.

SEC. 14. The Legislature finds and declares that unique circumstances exist at the San Francisco waterfront as described in Section 2 of this

act, and that therefore this act sets no precedent for any other location or project in the state.

SEC. 15. The following map is a part of this act: [Map of Designated Seawall Lots to be provided]

SEC. 16. Section 2.1 of Chapter 1333 of the Statutes of 1968, as amended by Section 14 of Chapter 898 of the Statutes of 1997, is amended to read:

Sec. 2.1. This act shall not apply to any lands or interests granted to the Treasure Island Development Authority pursuant to Chapter 898 of the Statutes of 1997, as amended.

SEC. 17. Section 2 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 2. The following definitions apply for purposes of this act:

(a) "Authority" or "TIDA" means the Treasure Island Development Authority, a nonprofit public benefit corporation established by the legislative body of the City and County of San Francisco and the conversion act, or, if TIDA is dissolved, the City and County of San Francisco, acting by and through its Port Commission.

(b) "City" means the City and County of San Francisco.

(c) "Commission" means the State Lands Commission.

(d) "Conversion act" means the Treasure Island Conversion Act of 1997 (Chapter 898 of the Statutes of 1997).

(e) "Job Corps parcel" means that property lying within the city comprising that portion of the TIDA property commonly referred to as the Job Corps Center, Treasure Island, which was transferred to the United States Department of Labor by that certain document entitled "Transfer and Acceptance of Military Real Property," dated March 3, 1998.

(f) "Public trust" or "trust" means the public trust for commerce, navigation, and fisheries.

(g) "Statutory trust" means those requirements for and limitations on the use, management, and disposition of trust lands imposed by Sections 6 through 11, inclusive, of the conversion act.

(h) "TIDA property " means that property comprised of portions of the lands commonly known as Treasure Island and Yerba Buena Island lying within the City and County of San Francisco, State of California and more particularly described as follows:

That portion of the lands described in that certain Presidential Reservation of Goat Island (now Yerba Buena Island), dated November 6, 1850, lying northwesterly of Parcel 57935-1 as described in that certain Quitclaim Deed, recorded October 26, 2000, as Document Number 2000G855531, in the office of the Recorder of the said City and County of San Francisco (hereinafter referred to as Doc. 2000G855531), together

with all of the underlying fee to Parcel 57935-5 as described in said Quitclaim Deed (Doc. 2000G855531), and also together with all of the underlying fee to Parcel 57935-6 as described in said Quitclaim Deed (Doc. 2000G855531), and also together with that portion of the tide and submerged lands in San Francisco Bay, relinquished to the United States of America by that certain act of the Legislature of the State of California by Statutes of the State of California of 1897, Chapter 81 (hereinafter referred to as Stat. 1897, Ch. 81), and also together with all of the Tidelands and Submerged Lands in San Francisco Bay known as Treasure Island, together with all improvements thereon and appurtenances thereto, as described in that certain Final Judgment of Condemnation, filed April 3, 1944, in the District Court of the United States in and for the Northern District of California, Southern Division, Case Number 22164-G (hereinafter referred to as Case 22164-G), excepting therefrom, that portion of the said Tide and Submerged Lands in San Francisco Bay, relinquished to the United States of America (Stat. 1897, Ch. 81), within the ''Army Reservation, Occupied by U.S. Light House Service under Permit from Secretary of War dated May 27, 1872'' as shown and described upon that certain map entitled ''Plat of Army and Navy reservations on Yerba Buena (Goat) Island, San Francisco Bay, California'', and also excepting therefrom, that portion of the Tide and Submerged Lands in San Francisco Bay, relinquished to the United States of America (Stat. 1897, Ch. 81) which were transferred to the United States Coast Guard by that certain document entitled ''Transfer and Acceptance of Military Real Property'', dated November 26, 2002.

(i) "Tidelands" means lands below the mean high tide line and includes submerged lands.

(j) "Trust exchange" or "exchange" means the exchange of trust lands on Treasure Island for lands on Yerba Buena Island not presently subject to the trust, as authorized by this act.

(k) "Trust lands" means all lands, including, but not limited to, tidelands, within the TIDA property that are presently subject to the public trust or will be subject to the trust upon conveyance out of federal ownership. Following a trust exchange, trust lands shall include all lands impressed with the trust pursuant to the exchange, and shall not include any lands removed from the trust pursuant to the exchange.

(*l*) "Trustee" means the authority and any successor agency authorized under the conversion act and this act to administer the trust over any or all of the trust lands.

SEC. 18. Section 3 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 3. The Legislature finds and declares all of the following:

(a) The purpose of this act is to facilitate the productive reuse of the TIDA property in a manner that will further the purposes of the public trust and the statutory trust. To effectuate this purpose, this act approves and authorizes the commission to carry out an exchange of lands under which certain nontrust lands on Yerba Buena Island with substantial value for the public trust would become subject to the public trust and statutory trust, and certain trust lands on Treasure Island that are no longer useful for trust purposes would be freed from public trust and statutory trust restrictions.

(b) Treasure Island includes lands that were historically tidelands subject to the public trust. In 1933, the Legislature granted the tidelands that would become Treasure Island to the city for construction of an airport (Chapter 912 of the Statutes of 1933), and amended the grant in 1935 to authorize use of the lands for the Golden Gate International Exposition (Chapter 162 of the Statutes of 1935). The city built Treasure Island between 1936 and 1939 by depositing sand and gravel on shoals north of Yerba Buena Island and surrounding that fill with a rock retaining wall.

(c) Yerba Buena Island was acquired by the United States Navy in 1898. In 1941, the city leased Treasure Island to the United States, and Treasure Island and Yerba Buena Island became a military base known as Naval Station Treasure Island. In 1942, the Navy initiated federal court proceedings to condemn Treasure Island and portions of the surrounding tidelands. In 1944, the Navy took title to Treasure Island and certain adjacent tidelands pursuant to a consent judgment in the condemnation action.

(d) Pursuant to a decision of the federal Base Realignment and Closure Commission in 1993, Naval Station Treasure Island was officially closed on September 30, 1997. That same year, the Legislature enacted the conversion act, authorizing the San Francisco Board of Supervisors to designate the authority as the redevelopment authority for the TIDA property. Under the conversion act, the authority is the only entity that may lawfully accept from the federal government title to trust lands on the TIDA property. The Navy is presently in negotiations with the city and the authority for the transfer of the Navy-owned portion of the TIDA property to the authority.

(e) Redevelopment will require substantial investment in seismic improvements on Treasure Island, including seismic reinforcement of the perimeter of the island, to reduce the risk that buildings and other facilities on the island will experience structural failure caused by liquefaction and lateral spreading during a severe earthquake. Redevelopment will also require replacement or upgrading of all of the infrastructure and utility systems on the islands, and completion of

hazardous materials remediation. In addition, several historic buildings, including those commonly known as Buildings 1, 2, and 3, the Nimitz Mansion (Quarters 1), and Quarters 2 to 7, inclusive, and 10, will require substantial renovation to preserve their integrity and historic character. Redevelopment must generate sufficient revenue to render the needed seismic and infrastructure improvements and historic renovations financially feasible.

(f) The conversion act grants in trust to the authority the state's sovereign interest in former and existing tidelands within the TIDA property, including the Job Corps parcel, and establishes the authority as the trust administrator for those lands. These lands are subject to the public trust upon their transfer from federal ownership.

(g) The federal government has asserted that the fact and manner of its acquisition and ownership of the TIDA property have created uncertainty as to the nature and extent of the state's sovereign interest in the TIDA property. It is in the best interests of the people of this state to resolve this alleged uncertainty in a manner that furthers trust purposes.

(h) The existing configuration of trust and nontrust lands within the TIDA property is such that the purposes of the public trust cannot be fully realized. Certain uplands on Yerba Buena Island of high value to the public trust due to their existing or potential recreational, scenic, and habitat uses are currently not subject to the public trust. Specifically, upper portions of the island afford dramatic views of the bay and its environs, including Mount Tamalpais and the Marin Headlands, Alcatraz, Angel, and Treasure Islands, downtown San Francisco, the cities of the south bay and east bay, and all five of the bay's bridges. The island provides habitat for a variety of special status bird species, such as the American peregrine falcon, black-crowned night heron, black oystercatcher, Brandt's cormorant, and California brown pelican, and parts of the lower reaches of the island provide haulout sites for the harbor seal. In addition, there are lower areas of Yerba Buena Island developed with structures, including the Nimitz Mansion, that are useful for service to visitors.

(i) A substantial portion of the trust lands on Treasure Island are lands that have been cut off from access to navigable waters and are not useful for public trust purposes. Other lands, due to their location and attributes, remain useful to the trust for future open space and other trust uses, including the following: a wetland creation site; a pedestrian corridor around the shoreline of the island linked with a major open space and recreational park in the northern and eastern portions of the island; a proposed ferry terminal and plaza, a marina, and other public waterfront amenities; and other public ways that will provide waterfront access and enhance water views across the island. The remaining lands that are cut

off from water access do not have these capabilities and are no longer needed or useful for trust purposes. Development of those lands for nontrust uses that are consistent with the redevelopment goals of the conversion act and state redevelopment law will not interfere with trust purposes and will provide revenues needed to improve the trust lands in a manner that will maximize their value to the trust.

(j) Absent a trust exchange, the uncertainties alleged by the federal government regarding the sovereign trust title of lands within Treasure Island would remain, and most of the lands on Yerba Buena Island that are of high value to the public trust would remain free of the public trust, and could thereby be cut off from public access and developed for nontrust uses. In addition, the interior lands on Treasure Island not useful for trust purposes could not be used for residential or other nontrust uses essential for the economic redevelopment of the island and for the financial feasibility of needed seismic upgrades, historic preservation, and the development of the Treasure Island waterfront and adjacent open space for public purposes in furtherance of the trust. An exchange will render redevelopment of Treasure Island economically feasible and will allow the trust lands within the TIDA property to be successfully transferred out of federal ownership and to be used to the greatest benefit of the people of the state.

(k) A trust exchange resulting in the configuration of trust lands substantially similar to that depicted on the diagram in Section 12 of this act maximizes the overall benefits to the trust, and does not interfere with trust uses or purposes. Following the exchange, all lands within the TIDA property adjacent to the waterfront, as well as certain lands on Yerba Buena Island that have high trust values, will be subject to the public trust and the statutory trust. The lands that will be removed from the trust and the statutory trust pursuant to the exchange have been filled and cut off from navigable waters and are no longer needed or required for the promotion of the public trust. These lands constitute a relatively small portion of the granted tidelands within the city. This act requires that the commission ensure that the lands added to the trust pursuant to the exchange have a value equal to or greater than the value of the lands taken out of the trust.

(*l*) The Job Corps parcel is a 36-acre parcel of land on Treasure Island that is presently owned and administered by the United States Department of Labor. The Job Corps parcel is surrounded by and generally shoreward of the Navy-owned lands proposed to be transferred to TIDA. There are no immediate plans to transfer the Job Corps parcel out of federal ownership. However, depending on future plans of the federal government for the Job Corps parcel, there may be opportunities for transferring all or a portion of the lands out of federal ownership all at

once or in phases. This act provides that Job Corps parcel lands may be incorporated into the exchange authorized by this act, either as part of the main exchange or in one or more subsequent phases, in accordance with the conditions set forth in this act.

(m) This act advances the purposes of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code) and the public trust, and is in the best interests of the people of this state.

SEC. 19. Section 4 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 4. The Legislature hereby approves an exchange of trust lands, as approved by the commission under Section 7 of this act, between Treasure Island and Yerba Buena Island, whereby certain Treasure Island trust lands that meet the criteria set forth in this act and therefore are not now useful for public trust purposes will be freed from the public trust and the statutory trust and may be conveyed into private ownership, and certain other lands on Yerba Buena Island that are not now subject to the public trust and that are useful for public trust purposes will be made subject to the public trust and the statutory trust, provided all of the following conditions are met:

(a) The exchange results in a configuration of trust lands substantially similar to that shown on the diagram in Section 12 of this act.

(b) The lands to be subject to the public trust are configured so as to be accessible from the streets as finally configured within the TIDA property.

(c) The exchange otherwise complies with the requirements of this act.

(d) The exchange is consistent with and furthers the purposes of the public trust.

SEC. 20. Section 7 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 7. (a) The commission is authorized to approve an exchange of trust lands between Treasure Island and Yerba Buena Island that meets the requirements of this act. Pursuant to this authority, the commission shall establish appropriate procedures for effectuating the exchange. The procedures shall include provisions for ensuring that lands are not exchanged into the trust until either of the following have occurred:

(1) All remedial action necessary to protect human health and the environment with respect to hazardous substances on the land has been completed as determined by the United States Environmental Protection Agency, the California Department of Toxics Substances Control, and the Regional Water Quality Control Board, pursuant to the Federal Facilities Agreement for the Naval Station Treasure Island dated

September 29, 1992, as amended, and the United States has provided a warranty in accordance with Section 9620(h)(3)(A) of Title 42 of the United States Code.

(2) The United States has obtained a warranty deferral, approved by the Governor in accordance with Section 9620(h)(3)(C) of Title 42 of the United States Code, involving land for which the commission has determined to execute a certificate of acceptance of title. Prior to approving a warranty deferral, the Governor, the California Department of Toxics Substances Control, and the Regional Water Quality Control Board shall confer and consult with the commission to reasonably ensure that the terms of the warranty deferral and underlying documents and agreements provide sufficient standards and financial assurances to ensure that the remediation of any affected trust lands will be completed in a manner consistent with the intended public trust use of these lands and in a reasonable period of time.

(b) The commission shall not approve an exchange of trust lands pursuant to this act unless it finds all of the following:

(1) The configuration of trust lands upon completion of the exchange will do all of the following:

(A) Not differ significantly from the configuration shown on the diagram in Section 12 of this act.

(B) Include all lands within the TIDA property that are presently below the line of mean high tide and subject to tidal action.

(C) Consist of lands suitable to be impressed with the public trust.

(2) The final layout of streets within the TIDA property will provide access to the public trust lands and be consistent with the beneficial use of the public trust lands, including, but not limited to, roadway access to serve the public along the western shoreline of Treasure Island.

(3) The value of the lands to be exchanged into the trust is equal to or greater than the value of the lands to be exchanged out of the trust, as the exchange is finally configured and phased. The commission may take into consideration any uncertainties concerning whether the lands to be exchanged are currently subject to the public trust.

(4) The lands to be taken out of the trust have been filled and reclaimed, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the tidelands granted by the state within the city, and the exchange will not result in substantial interference with trust uses and purposes.

(5) Sufficient building height limitations are in place to ensure that views from public areas at Yerba Buena Island are not obstructed.

(6) The trustee has approved the exchange and will hold fee title to all lands to be subject to the trust upon completion of the exchange.

(c) Any portion of the Job Corps parcel may be added to or removed from the trust, all at once or in phases, as part of the exchange authorized by this act, provided all of the following conditions are met:

(1) No Job Corps parcel lands are removed from the trust in advance of the exchange of lands authorized in subdivision (b) of this section.

(2) The commission finds all of the following:

(A) Any Job Corps parcel lands to be exchanged into the trust will enhance the configuration of trust lands on Treasure Island.

(B) Any Job Corps parcel lands to be exchanged out of the trust have been filled and reclaimed, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the granted tidelands within the city.

(C) The inclusion of the Job Corps parcel lands in the exchange will not result in substantial interference with trust uses and purposes.

(D) Any Job Corps parcel lands to be subject to the trust are accessible from the streets as finally configured within the TIDA property, consistent with the beneficial use of those lands.

(E) The cumulative value of all of the TIDA property exchanged into the trust is equal to or greater than the cumulative value of all of the TIDA property exchanged out of the trust, after the Job Corps parcel lands are included in the exchange. The following shall apply to the determination of cumulative value by the commission:

(i) For purposes of calculating the value of any lands added to or removed from the trust in an earlier phase of the exchange, the commission shall utilize the value of those lands as determined by the commission at the time of the commission's approval of the earlier phase, adjusted to account for any apportionment of development costs pursuant to clause (ii) and adjusted for inflation in a manner approved by the commission.

(ii) For purposes of calculating value of the Job Corps parcel lands to be added to or removed from the trust, the commission shall apportion to those lands a prorated share of any direct or indirect development, project requirement, and other costs accepted by the commission in its valuation of any lands involved in an earlier phase of the exchange where such costs are for activities or improvements not borne by the United States that benefit the Job Corps parcel lands, including, but not limited to, the direct and indirect costs of shoreline stabilization, environmental remediation, infrastructure, transportation facilities, and open-space improvements, adjusted for inflation in a manner approved by the commission.

(iii) The commission may take into consideration any uncertainties concerning whether the Job Corps parcel lands are currently subject to the trust.

(F) The trustee will hold fee title to all lands to be subject to the trust upon completion of the exchange.

(3) The commission and the trustee have approved the addition of the Job Corps parcel lands to the exchange.

(d) The commission shall impose additional conditions on its approval of the exchange if the commission determines that these conditions are necessary for the protection of the public trust. These conditions may include a contribution to the Land Bank Fund, established pursuant to Division 7 (commencing with Section 8600) of the Public Resources Code, or exchanging lands into the trust in addition to those on Yerba Buena Island, if the value of the land brought into the public trust does not equal or exceed the value of the land removed from the public trust.

(e) For purposes of effectuating the exchange authorized by this act, the commission is authorized to do all of the following:

(1) Receive and accept on behalf of the state any lands or interest in lands conveyed to the state by the trustee, including lands that are now and that will remain subject to the public trust and the statutory trust.

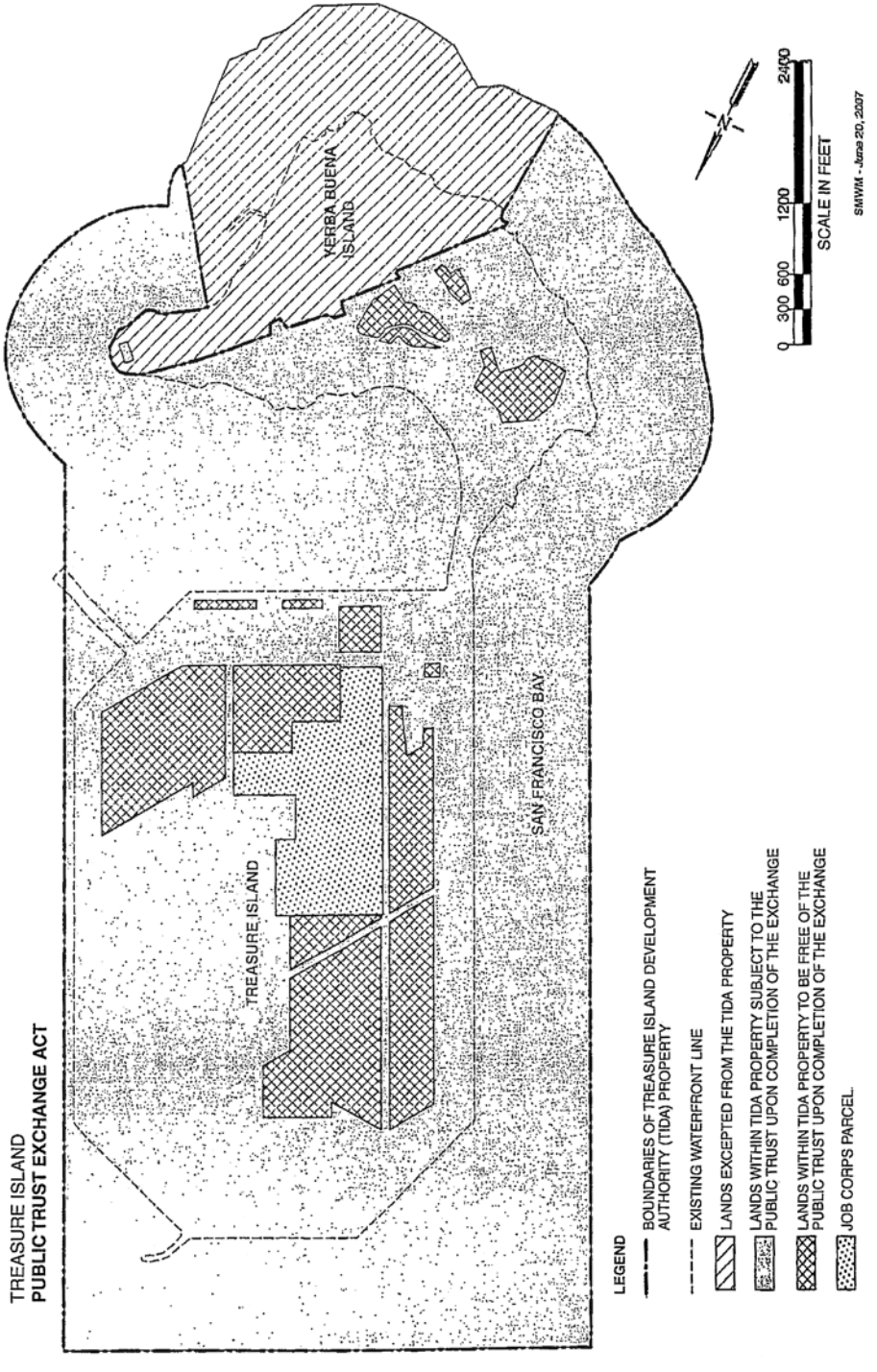
(2) Convey to the trustee by patent all of the right, title, and interest of the state in lands that are to be free of the public trust and the statutory trust upon completion of the exchange.

(3) Convey to the trustee by patent all of the right, title, and interest of the state in lands that are to be subject to the public trust and the statutory trust and the terms of this act upon completion of the trust exchange, subject to the terms, conditions, and reservations as the commission may determine are necessary to meet the requirements of this act.

(f) Following the completion of any phase of the trust exchange, the resulting configuration of trust lands within the TIDA property shall constitute the "trust property" for purposes of the conversion act, notwithstanding subdivision (b) of Section 4 of that act.

SEC. 21. Section 12 of Chapter 543 of the Statutes of 2004 is amended to read:

Sec. 12. The following diagram is a part of this act:


TREASURE ISLAND
PUBLIC TRUST EXCHANGE ACT
TREASURE ISLAND
YERBA BUENA ISLAND
SAN FRANCISCO BAY
LEGEND
BOUNDARIES OF TREASURE ISLAND DEVELOPMENT AUTHORITY (TIDA) PROPERTY
EXISTING WATERFRONT LINE
LANDS EXCEPTED FROM THE TIDA PROPERTY
LANDS WITHIN TIDA PROPERTY SUBJECT TO THE PUBLIC TRUST UPON COMPLETION OF THE EXCHANGE
LANDS WITHIN TIDA PROPERTY TO BE FREE OF THE PUBLIC TRUST UPON COMPLETION OF THE EXCHANGE
JOB CORPS PARCEL
0 300 600 1200 2400
SCALE IN FEET
SMWM - June 20, 2007

SEC. 22. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands described in this act, 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. 23. If any provision of this act, or its application to any person, property, or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this act or the application of that provision to any other person, property, or circumstance, and the remaining portions of this act shall continue in full force and effect, unless enforcement of this act as so modified by and in response to that invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this act.

CHAPTER 661

An act to amend Sections 100430 and 102950 of, and to add Article 4.5 (commencing with Section 103040) to Chapter 7 of Part 1 of Division 102 of, the Health and Safety Code, relating to vital records.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 100430 of the Health and Safety Code, as amended by Section 39 of Chapter 816 of the Statutes of 2006, is amended to read:

100430. (a) (1) The fees or charges for a record search or for the issuance of any license, permit, registration, or any other document pursuant to Section 26832 or 26840 of the Government Code, or Section 102525, 102625, 102670, 102725, 102750, 103040.1, 103050, 103065, 103225, 103325, 103400, 103425, 103450, 103525, 103590, 103625, 103650, 103675, 103690, 103695, 103700, 103705, 103710, 103715, 103720, 103725, or 103735 of this code, may be adjusted annually by the percentage change determined pursuant to Section 100425.

(2) The base amount to be adjusted shall be the statutory base amount of the fee or charge plus the sum of the prior adjustments to the statutory base amount. Whenever the statutory base amount is amended, the base amount shall be the new statutory base amount plus the sum of adjustments to the new statutory base amount calculated subsequent to

the statutory base amendment. The actual dollar fee or charge shall be rounded to the next highest whole dollar.

(b) Beginning January 1, 1983, the department shall annually publish a list of the actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 102950 of the Health and Safety Code is amended to read:

102950. (a) Each fetal death in which the fetus has advanced to or beyond the 20th week of uterogestation shall be registered with the local registrar of births and deaths of the district in which the fetal death was officially pronounced within eight calendar days following the event and prior to any disposition of the fetus.

(b) Subdivision (a) shall not apply to the termination of a pregnancy performed in compliance with Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106.

SEC. 3. Article 4.5 (commencing with Section 103040) is added to Chapter 7 of Part 1 of Division 102 of the Health and Safety Code, to read:

Article 4.5. Missing Angels Act

103040. This act shall be known, and may be cited, as the Missing Angels Act.

103040.1. (a) The local registrar of births and deaths of the county in which a fetal death, in which the fetus has advanced beyond the 20th week of uterogestation, is registered, shall issue, upon the request of the mother or father of the fetus, a Certificate of Still Birth, on a form approved by the State Registrar of Vital Statistics for each naturally occurring intrauterine fetal death after a gestational age of not less than 20 completed weeks.

(b) A Certificate of Still Birth issued pursuant to subdivision (a) shall, except as otherwise set forth in this section, comply with all of the format requirements governing a certificate for a live birth contained in Article 2 (commencing with Section 102425). The Certificate of Still Birth shall be in addition to and shall not replace the fetal death certificate issued pursuant to Article 1 (commencing with Section 102950).

(c) The request for a Certificate of Still Birth shall be on a form prescribed by the State Registrar of Vital Statistics.

(d) The Certificate of Still Birth shall be on a form prescribed by the State Registrar of Vital Statistics and shall only contain the following information taken from the fetal death certificate:

(1) The date of the stillbirth.

(2) The county in which the stillbirth occurred.

(3) The name of and sex of the stillborn fetus, as provided on the original or amended fetal death certificate.

(4) The time and place of stillbirth, including the street address and city, and, if applicable, the name of the hospital.

(5) The names, date of birth, and state of birth of the mother and father.

(6) The corresponding file number of the final fetal death certificate.

(7) A title at the top of the Certificate of Still Birth that reads: Certificate of Still Birth.

(8) A statement at the bottom of the Certificate of Still Birth that states: This Certificate of Still Birth is not proof of a live birth.

(e) The State Registrar of Vital Statistics shall not use the information included on a Certificate of Still Birth for any governmental purpose other than to respond to the request for the certificate from the persons identified in subdivision (a).

(f) The State Registrar of Vital Statistics may charge an appropriate fee for processing and issuing a Certificate of Still Birth. The fee shall cover, but shall not exceed, the entity's full cost of providing the certificate. During the 2007–08 fiscal year, the fee shall not exceed twenty dollars ($20), thereafter, the fee may be adjusted annually pursuant to Section 100430. The local registrar of births and deaths may charge an appropriate fee for the processing and issuing of a Certificate of Live Birth, not to exceed the entity's full cost of providing the certificate.

(g) The State Registrar of Vital Statistics shall issue a Certificate of Still Birth upon request regardless of the date on which the certificate of fetal death was issued.

(h) This section shall not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth.

(i) For the purposes of this section, "stillbirth" as recorded in the Certificate of Still Birth means the delivery of a fetus where there was a naturally occurring intrauterine fetal death after a gestational age of not less than 20 completed weeks.

(j) This section shall not supercede any other provision of law. The terms and conditions contained in this section shall only apply to this section, and shall not affect the definition, use, meaning, or intent of those terms as they may appear in any other statute, California case law, or the California Constitution. Other than prescribing the right to request

a Certificate of Still Birth, nothing in this section shall be construed to create any new right, privilege, or entitlement, or to abrogate any existing right, privilege, or entitlement.

(k) Through its courts, statutes, and under its Constitution, California law protects a woman's right to reproductive privacy, and it is the intent of the Legislature to reaffirm these protections in accordance with the California Supreme Court's decision in People v. Belous (1969) 71 Cal.2d 954, 966-968.

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 662

An act to amend Sections 62.5 and 90.3 of the Labor Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to workers' compensation.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 62.5 of the Labor Code is amended to read:

62.5. (a) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Money in the fund may be expended by the department, upon appropriation by the Legislature, for all of the following purposes, and may not be used or borrowed for any other purpose:

(1) For the administration of the workers' compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to Section 3702.5.

(2) For the Return-to-Work Program set forth in Section 139.48.

(3) For the enforcement of the insurance coverage program established and maintained by the Labor Commissioner pursuant to Section 90.3.

(b) The fund shall consist of surcharges made pursuant to subdivision (e).

(c) (1) The Uninsured Employers Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which

the director is trustee, and its sources of funds are as provided in subdivision (e). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the payment of nonadministrative expenses of the workers' compensation program for workers injured while employed by uninsured employers in accordance with Article 2 (commencing with Section 3710) of Chapter 4 of Part 1 of Division 4, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers injured while employed by uninsured employers. Nonadministrative expenses include audits and reports of services prepared pursuant to subdivision (b) of Section 3716.1. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, all references to the Uninsured Employers Fund shall mean the Uninsured Employers Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Uninsured Employers Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Uninsured Employers Benefits Trust Fund upon enactment of the annual Budget Act.

(4) Any moneys from penalties collected pursuant to Section 3722 as a result of the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Workers' Compensation Administration Revolving Fund created under Section 62.5, to cover expenses incurred by the director under the insurance coverage program. The amount of any penalties in excess of payment of administrative expenses incurred by the director for the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Uninsured Employers Benefits Trust Fund for nonadministrative expenses, as prescribed in paragraph (1), and notwithstanding paragraph (1), shall only be available upon appropriation by the Legislature.

(d) (1) The Subsequent Injuries Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in subdivision (e). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the nonadministrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments, in accordance with Article 5 (commencing with Section 4751) of Chapter 2 of Part 2 of Division 4,

and Section 4 of Article XIV of the California Constitution, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments. Nonadministrative expenses include audits and reports of services pursuant to subdivision (c) of Section 4755. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, all references to the Subsequent Injuries Fund shall mean the Subsequent Injuries Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Subsequent Injuries Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Subsequent Injuries Benefits Trust Fund upon enactment of the annual Budget Act.

(e) (1) Separate surcharges shall be levied by the director upon all employers, as defined in Section 3300, for purposes of deposit in the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, and the Subsequent Injuries Benefits Trust Fund. The total amount of the surcharges shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the surcharges. The regulations shall require the surcharges to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the surcharges to be paid by insured employers to be expressed as a percentage of premium. In no event shall the surcharges paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission. In no event shall the total amount of the surcharges paid by insured and self-insured employers exceed the amounts reasonably necessary to carry out the purposes of this section.

(2) The regulations adopted pursuant to paragraph (1) shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 2. Section 90.3 of the Labor Code is amended to read:

90.3. (a) It is the policy of this state to vigorously enforce the laws requiring employers to secure the payment of compensation as required by Section 3700 and to protect employers who comply with the law from

those who attempt to gain a competitive advantage at the expense of their workers by failing to secure the payment of compensation.

(b) In order to ensure that the laws requiring employers to secure the payment of compensation are adequately enforced, the Labor Commissioner shall establish and maintain a program that systematically identifies unlawfully uninsured employers. The Labor Commissioner, in consultation with the Administrative Director of the Division of Workers' Compensation and the director, may prioritize targets for the program in consideration of available resources. The employers shall be identified from data from the Uninsured Employers' Fund, the Employment Development Department, the rating organizations licensed by the Insurance Commissioner pursuant to Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance Code, and any other sources deemed likely to lead to the identification of unlawfully uninsured employers. All state departments and agencies and any rating organization licensed by the Insurance Commissioner pursuant to Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance Code shall cooperate with the Labor Commissioner and on reasonable request provide information and data in their possession reasonably necessary to carry out the program.

(c) As part of the program, the Labor Commissioner shall establish procedures for ensuring that employers with payroll but with no record of workers' compensation coverage are contacted and, if no valid reason for the lack of record of coverage is shown, inspected on a priority basis.

(d) The Labor Commissioner shall annually, not later than March 1, prepare a report concerning the effectiveness of the program, publish it on the Labor Commissioner's Web site, as well as notify the Legislature, the Governor, the Insurance Commissioner, and the Administrative Director of the Division of Workers' Compensation of the report's availability. The report shall include, but not be limited to, all of the following:

(1) The number of employers identified from records of the Employment Development Department who were screened for matching records of insurance coverage or self-insurance.

(2) The number of employers identified from records of the Employment Development Department that were matched to records of insurance coverage or self-insurance.

(3) The number of employers identified from records of the Employment Development Department that were notified that there was no record of their insurance coverage.

(4) The number of employers responding to the notices, and the nature of the responses, including the number of employers who failed to provide satisfactory proof of workers' compensation coverage and

including information about the reasons that employers who provided satisfactory proof of coverage were not appropriately recognized in the comparison performed under subdivision (b). The report may include recommendations to improve the accuracy and efficiency of the program in screening for unlawfully uninsured employers.

(5) The number of employers identified as unlawfully uninsured from records of the Uninsured Employers' Benefits Trust Fund or from records of the Division of Workers' Compensation, and the number of those employers that are also identifiable from the records of the Employment Development Department. These statistics shall be reported in a manner to permit analysis and estimation of the percentage of unlawfully uninsured employers that do not report wages to the Employment Development Department.

(6) The number of employers inspected.

(7) The number and amount of penalties assessed pursuant to Section 3722 as a result of the program.

(8) The number and amount of penalties collected pursuant to Section 3722 as a result of the program.

(e) The allocation of funds from the Workers' Compensation Administration Revolving Fund pursuant to subdivision (a) of Section 62.5 shall not increase the total amount of surcharges pursuant to subdivision (e) of Section 62.5. Startup costs for this program shall be allocated from the fiscal year 2007–08 surcharges collected. The total amount allocated for this program under subdivision (a) of Section 62.5 in subsequent years shall not exceed the amount of penalties collected pursuant to Section 3722 as a result of the program.

SEC. 3. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(*l*) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the Victims of Crime Program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs

administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9

(commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

(w) To provide any peace officer with the Division of Investigation in the Department of Consumer Affairs information pursuant to subdivision (i) when the requesting peace officer has been designated by the Chief of the Division of Investigations and requests this information in the course of and in part of an investigation into the commission of a crime or other unlawful act when there is reasonable suspicion to believe that the crime or act may be connected to the information requested and would lead to relevant information regarding the crime or unlawful act.

(x) To enable the Labor Commissioner of the Division of Labor Standards Enforcement in the Department of Industrial Relations to identify, pursuant to Section 90.3 of the Labor Code, unlawfully uninsured employers. The information shall be provided to the extent permitted by federal law and regulations.

SEC. 3.5. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing

department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(*l*) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the Victims of Crime Program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to

businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

(w) To provide any peace officer with the Division of Investigation in the Department of Consumer Affairs information pursuant to subdivision (i) when the requesting peace officer has been designated by the Chief of the Division of Investigations and requests this information in the course of and in part of an investigation into the commission of a crime or other unlawful act when there is reasonable suspicion to believe that the crime or act may be connected to the information requested and would lead to relevant information regarding the crime or unlawful act.

(x) To enable the Labor Commissioner of the Division of Labor Standards Enforcement in the Department of Industrial Relations to identify, pursuant to Section 90.3 of the Labor Code, unlawfully uninsured employers. The information shall be provided to the extent permitted by federal law and regulations.

(y) To enable the Chancellor of the California Community Colleges, in accordance with the requirements of Section 84754.5 of the Education Code, to obtain quarterly wage data, commencing January 1, 1993, on students who have attended one or more community colleges, to assess

the impact of education on the employment and earnings of students, to conduct the annual evaluation of district-level and individual college performance in achieving priority educational outcomes, and to submit the required reports to the Legislature and Governor. The information shall be provided to the extent permitted by federal statutes and regulations.

SEC. 3.7. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical

description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive

officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(*l*) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the Victims of Crime Program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis

to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

(w) To provide any peace officer with the Division of Investigation in the Department of Consumer Affairs information pursuant to subdivision (i) when the requesting peace officer has been designated by the Chief of the Division of Investigations and requests this information in the course of and in part of an investigation into the commission of a crime or other unlawful act when there is reasonable suspicion to believe that the crime or act may be connected to the information requested and would lead to relevant information regarding the crime or unlawful act.

(x) To enable the Labor Commissioner of the Division of Labor Standards Enforcement in the Department of Industrial Relations to identify, pursuant to Section 90.3 of the Labor Code, unlawfully uninsured employers. The information shall be provided to the extent permitted by federal law and regulations.

(y) To provide information obtained in the administration and enforcement of the California Health Insurance Purchasing Pool Program (Division 1.2 (commencing with Section 4800)) to the Managed Risk Medical Insurance Board for the purpose of administering the California Health Care Reform and Cost Control Act.

SEC. 3.9. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(*l*) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the Victims of Crime Program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the

extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

(w) To provide any peace officer with the Division of Investigation in the Department of Consumer Affairs information pursuant to subdivision (i) when the requesting peace officer has been designated by the Chief of the Division of Investigations and requests this information in the course of and in part of an investigation into the commission of a crime or other unlawful act when there is reasonable suspicion to believe that the crime or act may be connected to the information requested and would lead to relevant information regarding the crime or unlawful act.

(x) To enable the Labor Commissioner of the Division of Labor Standards Enforcement in the Department of Industrial Relations to identify, pursuant to Section 90.3 of the Labor Code, unlawfully uninsured employers. The information shall be provided to the extent permitted by federal law and regulations.

(y) To enable the Chancellor of the California Community Colleges, in accordance with the requirements of Section 84754.5 of the Education Code, to obtain quarterly wage data, commencing January 1, 1993, on students who have attended one or more community colleges, to assess the impact of education on the employment and earnings of students, to conduct the annual evaluation of district-level and individual college performance in achieving priority educational outcomes, and to submit the required reports to the Legislature and Governor. The information shall be provided to the extent permitted by federal statutes and regulations.

(z) To provide information obtained in the administration and enforcement of the California Health Insurance Purchasing Pool Program (Division 1.2 (commencing with Section 4800)) to the Managed Risk Medical Insurance Board for the purpose of administering the California Health Care Reform and Cost Control Act.

SEC. 4. (a) Section 3.5 of this bill incorporates amendments to Section 1095 of the Unemployment Insurance Code proposed by this

bill and AB 798. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1095 of the Unemployment Insurance Code, (3) AB 8 is not enacted, or if enacted, does not amend Section 1095 of the Unemployment Insurance Code, and (4) this bill is enacted after AB 798, in which case Section 1095 of the Unemployment Insurance Code, as amended by AB 798, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

(b) Section 3.7 of this bill incorporates amendments to Section 1095 of the Unemployment Insurance Code proposed by this bill and AB 8. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1095 of the Unemployment Insurance Code, (3) AB 789 is not enacted, or if enacted, does not amend Section 1095 of the Unemployment Insurance Code, and (4) this bill is enacted after AB 8, in which case Section 1095 of the Unemployment Insurance Code, as amended by AB 8, shall remain operative only until the operative date of this bill, at which time Section 3.7 of this bill shall become operative, and Section 3 of this bill shall not become operative.

(c) Section 3.9 of this bill incorporates amendments to Section 1095 of the Unemployment Insurance Code proposed by this bill, AB 8, and AB 798. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2008, (2) all three bills amend Section 1095 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 8 and AB 798, in which case Section 1095 of the Unemployment Insurance Code, as amended by AB 798 and AB 8, shall remain operative only until the operative date of this bill, at which time Section 3.9 of this bill shall become operative, and Section 3 of this bill shall not become operative.

CHAPTER 663

An act to add Sections 30327.5 and 30327.6 to the Public Resources Code, relating to coastal resources.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 30327.5 is added to the Public Resources Code, to read:

30327.5. (a) An interested person shall not give, convey, or make available gifts aggregating more than ten dollars ($10) in a calendar month to a commissioner or a member of the commission's staff.

(b) A commissioner or member of the commission's staff shall not accept gifts aggregating more than ten dollars ($10) in a calendar month from an interested person.

(c) For the purposes of this section, "interested person" shall have the same meaning as the term is defined in Section 30323.

(d) For the purposes of this section, "gift" means, except as provided in subdivision (e), any payment, as defined in Section 82044 of the Government Code, that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(e) For the purposes of this section, "gift" does not include any of the following:

(1) A gift which is not used and which, within 30 days after receipt, is either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.

(2) A gift from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person. However, a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered in this paragraph.

(3) A cost associated with the provision of evidentiary material provided to the commission and its staff.

(4) An educational or training activity that has received prior approval from the commission.

(5) A field trip or site inspection that is made available on equal terms and conditions to all commissioners and appropriate staff.

(6) A reception or purely social event that is not offered in connection with or is not intended to influence a decision or action of the commission

and that is open to all commissioners, members of the staff, and members of the public and press.

SEC. 2. Section 30327.6 is added to the Public Resources Code, to read:

30327.6. (a) (1) Except as provided in paragraph (2), a person who for compensation attempts to influence or affect the outcome of a commission decision or action and who violates Section 30327.5 may, in addition to any other applicable penalty, be barred from any activity seeking to influence or affect the outcome of a commission decision or action for a period of up to one year from the date of the finding of the violation. Each violation shall be grounds for the person being barred from any activity seeking to influence or affect a commission decision or action for an additional year from the date of conviction.

(2) Nothing in this section shall be construed to prohibit an individual from representing himself or herself in seeking to influence or affect the outcome of a commission decision or action if that individual is acting solely on his or her own personal behalf and not on the behalf of any other person or entity.

(b) A person who violates Section 30327.5 shall, in addition to any other applicable penalty, be subject to a civil fine not to exceed five hundred dollars ($500) for each violation.

CHAPTER 664

An act to amend Sections 40420, 40425, 40981, and 41221 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 40420 of the Health and Safety Code is amended to read:

40420. (a) The south coast district shall be governed by a district board consisting of 13 members appointed as follows:

(1) One member appointed by the Governor, with the advice and consent of the Senate.

(2) One member appointed by the Senate Committee on Rules.

(3) One member appointed by the Speaker of the Assembly.

(4) Four members appointed by the boards of supervisors of the counties in the south coast district. Each board of supervisors shall appoint one of these members, who shall be one of the following:

(A) A member of the board of supervisors of the county making the appointment.

(B) A mayor or member of a city council from a city in the portion of the county making the appointment that is included in the south coast district.

(5) Three members appointed by cities in the south coast district. The city selection committee of Orange, Riverside, and San Bernardino Counties shall each appoint one of these members, who shall be either a mayor or a member of the city council of a city in the portion of the county included in the south coast district.

(6) A member appointed by the cities of the western region of Los Angeles County, consisting of the Cities of Agoura Hills, Artesia, Avalon, Bell, Bellflower, Bell Gardens, Beverly Hills, Calabasas, Carson, Cerritos, Commerce, Compton, Cudahy, Culver City, Downey, El Segundo, Gardena, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Inglewood, La Habra Heights, La Mirada, Lakewood, Lawndale, Lomita, Long Beach, Lynwood, Malibu, Manhattan Beach, Maywood, Montebello, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Santa Fe Springs, Santa Monica, Signal Hill, South Gate, Torrance, Vernon, West Hollywood, Westlake Village, and Whittier. These cities shall organize as a city selection committee for the purposes of subdivision (f), and shall be known as the city selection committee of the western region of Los Angeles County. The member appointed shall be either a mayor or a member of the city council of a city in the western region.

(7) A member appointed by the cities of the eastern region of Los Angeles County, consisting of the cities in Los Angeles County that are not listed in paragraph (6) or (8), and excluding the Cities of Lancaster, Los Angeles, and Palmdale. These cities shall organize as a city selection committee for the purposes of subdivision (f), and shall be known as the city selection committee of the eastern region of Los Angeles County. The member appointed shall be either a mayor or a member of the city council of a city in the eastern region.

(8) A member appointed by the Mayor of the City of Los Angeles from among the members of the Los Angeles City Council.

(b) All members shall be appointed on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems of the South Coast Air Basin.

(c) The member appointed by the Governor shall be either a physician who has training and experience in the health effects of air pollution, an environmental engineer, a chemist, a meteorologist, or a specialist in air pollution control.

(d) Each member shall be appointed on the basis of his or her ability to attend substantially all meetings of the south coast district board, to discharge all duties and responsibilities of a member of the south coast district board on a regular basis, and to participate actively in the affairs of the south coast district. No member may designate an alternate for any purpose or otherwise be represented by another in his or her capacity as a member of the south coast district board.

(e) Each appointment by a board of supervisors shall be considered and acted on at a duly noticed, regularly scheduled hearing of the board of supervisors, which shall provide an opportunity for testimony on the qualifications of the candidates for appointment.

(f) The appointments by cities in the south coast district shall be considered and acted on at a duly noticed meeting of the city selection committee, which shall meet in a government building and provide an opportunity for testimony on the qualifications of the candidates for appointment. Each appointment shall be made by not less than a majority of all the cities in the portion of the county included in the south coast district having not less than a majority of the population of all the cities in the portion of the county included in the south coast district. Population shall be determined on the basis of the most recent verifiable census data developed by the Department of Finance. Persons residing in unincorporated areas or areas of a county outside the south coast district shall not be considered for the purposes of this subdivision.

(g) The members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall have one or more of the qualifications specified in subdivision (c) or shall be a public member. None of those appointed members may be a locally elected official.

(h) All members shall be residents of the district.

(i) (1) The member who was serving on the district board as of June 1, 2007, who had been appointed to represent the eastern region of Los Angeles County shall be deemed on January 1, 2008, to be the member appointed to represent the western region of Los Angeles County pursuant to paragraph (6) of subdivision (a) and shall serve from January 1, 2008, until the end of the term of office for the member who had been appointed to represent the western region of Los Angeles County. At the end of that term, the city selection committee of the western region of Los Angeles County shall make an appointment pursuant to paragraph (6) of subdivision (a).

(2) The member who was serving on the district board as of June 1, 2007, who had been appointed to represent the western region of Los Angeles County shall be deemed on January 1, 2008, to be the member appointed pursuant to paragraph (8) of subdivision (a) until the end of that member's term. At the end of that term, the Mayor of the City of Los Angeles shall make an appointment pursuant to paragraph (8) of subdivision (a).

(3) On or after January 1, 2008, the city selection committee of the eastern region of Los Angeles County shall convene promptly to make an appointment pursuant to paragraph (7) of subdivision (a).

SEC. 2. Section 40425 of the Health and Safety Code is amended to read:

40425. The south coast district board shall elect a chairperson every two years from its membership.

SEC. 3. Section 40981 of the Health and Safety Code is amended to read:

40981. The Sacramento district board shall elect a chairperson every two years from its membership.

SEC. 4. Section 41221 of the Health and Safety Code is amended to read:

41221. The Mojave Desert district board shall elect a chairperson every year from its membership.

SEC. 5. 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 665

An act to amend Sections 18716 and 18744 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 18716 of the Revenue and Taxation Code is amended to read:

18716. (a) This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2013, deletes or extends that date.

(b) (1) By September 1, 2006, and by September 1 of each subsequent calendar year that the State Children's Trust Fund for the Prevention of Child Abuse appears on a tax return, the Franchise Tax Board shall do all of the following:

(A) Determine the minimum contribution amount required to be received during the next calendar year for the fund to appear on the tax return for the taxable year that includes that next calendar year.

(B) Provide written notification to the State Department of Social Services of the amount determined in subparagraph (A).

(C) Determine whether the amount of contributions estimated to be received during the calendar year will equal or exceed the minimum contribution amount determined by the Franchise Tax Board for the calendar year pursuant to subparagraph (A). The Franchise Tax Board shall estimate the amount of contributions to be received by using the actual amounts received and an estimate of the contributions that will be received by the end of that calendar year.

(2) If the Franchise Tax Board determines that the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount for the calendar year, this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year.

(3) For purposes of this section, the minimum contribution amount for a calendar year means two hundred fifty thousand dollars ($250,000) for the 2002 calendar year or the minimum contribution amount adjusted pursuant to subdivision (c).

(c) For each calendar year, beginning with calendar year 2003, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum contribution amount specified in subdivision (b) as follows:

(1) The minimum contribution amount for the calendar year shall be an amount equal to the product of the minimum contribution amount for the prior calendar year multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be

transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 2. Section 18744 of the Revenue and Taxation Code is amended to read:

18744. (a) This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2013, deletes or extends that date.

(b) (1) By September 1, 2006, and by September 1 of each subsequent calendar year that the Rare and Endangered Species Preservation Program appears on a tax return, the Franchise Tax Board shall do all of the following:

(A) Determine the minimum contribution amount required to be received during the next calendar year for the fund to appear on the tax return for the taxable year that includes that next calendar year.

(B) Provide written notification to the Department of Fish and Game of the amount determined in subparagraph (A).

(C) Determine whether the amount of contributions estimated to be received during the calendar year will equal or exceed the minimum contribution amount determined by the Franchise Tax Board for the calendar year pursuant to subparagraph (A). The Franchise Tax Board shall estimate the amount of contributions to be received by using the actual amounts received and an estimate of the contributions that will be received by the end of that calendar year.

(2) If the Franchise Tax Board determines that the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount for the calendar year, this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year.

(3) For purposes of this section, the minimum contribution amount for a calendar year means two hundred fifty thousand dollars ($250,000) for the 2002 calendar year or the minimum contribution amount adjusted pursuant to subdivision (c).

(c) For each calendar year, beginning with calendar year 2003, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum contribution amount specified in subdivision (b) as follows:

(1) The minimum contribution amount for the calendar year shall be an amount equal to the product of the minimum contribution amount for the prior calendar year multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California

Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

CHAPTER 666

An act to amend Section 19554 of the Revenue and Taxation Code, relating to tax administration.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 19554 of the Revenue and Taxation Code is amended to read:

19554. (a) Subject to the limitations of this section and federal law, the Franchise Tax Board may provide the Controller with the address or other identification or location information from income tax returns or other records which is necessary for the Controller to locate owners of unclaimed property pursuant to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(b) Subject to the limitations of this section and Section 6103(d) of the Internal Revenue Code, the Franchise Tax Board may provide the Controller, on an annual basis, with the following information from business entity income tax returns or other business entity records maintained by the Franchise Tax Board:

(1) The taxpayer's name.

(2) The taxpayer's identification number.

(3) The taxpayer's address.

(4) The taxpayer's principal business activity code.

(c) (1) The information provided to the Controller under this section is subject to Section 19542.

(2) Neither the Controller nor any officer, employee, or agent, or former officer, employee, or agent of the Controller may disclose or use any information obtained from the Franchise Tax Board pursuant to this section except for the purpose of locating owners of unclaimed property as provided in subdivision (a), or for the purpose of determining compliance with the Unclaimed Property Law (Title 10 (commencing

with Section 1300) of Part 3 of the Code of Civil Procedure), as provided in subdivision (b).

CHAPTER 667

An act to add Chapter 16 (commencing with Section 13800) to Division 5 of the Business and Professions Code, relating to rental vehicles.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Chapter 16 (commencing with Section 13800) is added to Division 5 of the Business and Professions Code, to read:

CHAPTER 16. RENTAL VEHICLES

13800. (a) Notwithstanding any other provision of this division, a rental vehicle's fuel gauge installed by the vehicle's manufacturer may be used in a rental transaction by a rental company to calculate an optional charge for fueling when any of the following occurs:

(1) The customer could have avoided incurring the charge by returning the rental vehicle with the same amount of fuel as was in the fuel tank at the commencement of the rental.

(2) The customer chose to purchase the amount of fuel inside the fuel tank at the commencement of the rental.

(b) Nothing in this section shall be interpreted to preclude a rental company from offering additional fueling options to customers besides those described in subdivision (a).

CHAPTER 668

An act to add Section 2829 to the Public Utilities Code, relating to electricity.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 2829 is added to the Public Utilities Code, to read:

2829. (a) For purposes of this section, the following terms have the following meanings:

(1) "EBMUD" means the East Bay Municipal Utility District organized and operating pursuant to Division 6 (commencing with Section 10001).

(2) "Environmental attributes" associated with the generation of electricity include, the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, however entitled, resulting from the avoidance of the emissions of any gas, chemical, or other substance attributable to an electricity generation facility.

(b) To ensure that no electrical corporation operates its monopoly transmission and distribution system in a manner that impedes the ability of the EBMUD to reduce its electricity costs through the delivery of electricity generated by EBMUD, an electrical corporation shall meet the requirements of this section.

(c) Every electrical corporation that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the EBMUD's system shall, upon request by EBMUD, and without discrimination or delay, use the same facilities to deliver electricity generated by EBMUD. EBMUD may elect to designate specific hydroelectric generation facilities owned by EBMUD for the generation of electricity to be delivered to EBMUD, if the following conditions are met:

(1) The amount of all electricity delivered to the electric grid by the designated EBMUD hydroelectric generation is the property of EBMUD.

(2) Ownership and use of the environmental attributes associated with the electricity delivered to the electric grid by EBMUD designated hydroelectric generation is retained by EBMUD.

(d) (1) No rule, order, or tariff of the commission implementing direct transactions is applicable to electricity generated by EBMUD, that is delivered to EBMUD for its own use that is transported over the transmission and distribution system of an electrical corporation, pursuant to an election made by EBMUD pursuant to subdivision (c).

(2) Sections 365 and 366 are not applicable to electricity generated by EBMUD, that is delivered to EBMUD for its own use that is transported over the transmission and distribution system of an electrical corporation, pursuant to an election made by EBMUD pursuant to subdivision (c).

(e) To compensate an electrical corporation for the use of its facilities, EBMUD shall pay applicable rates approved by the commission for distribution, or distribution and transmission, or any transmission rates as required under federal law.

(f) On or before January 1, 2009, each electrical corporation that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the EBMUD system, shall file an advice letter with the commission that complies with this section. The commission, within 150 days of the date of filing of the advice letter, shall approve the advice letter or specify conforming changes to be made by the electrical corporation, to be filed in an amended advice letter within 60 days.

(g) The commission shall ensure that the delivery of electricity from EBMUD designated hydroelectric generation to the EBMUD service territory pursuant to this section does not result in a shifting of costs to the bundled service customers of an electrical corporation, either immediately or over time.

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 669

An act to amend Section 43013 of, and to add Section 39602.5 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

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

(a) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) requires the United States Environmental Protection Agency to establish national ambient air quality standards for criteria air pollutants at levels that are required to protect the public health with an adequate margin of safety.

The federal Clean Air Act provides that state and local governments have primary responsibility for the control of air pollution.

(b) A number of areas within the state have not attained the national ambient air quality standards for ozone and particulate matter less than 2.5 microns in diameter (PM2.5).

(c) Serious public health impacts, including thousands of premature deaths per year, occur in the state as a result of ozone and PM2.5 levels exceeding the federal standards.

(d) State law requires air pollution control districts and air quality management districts to adopt and enforce rules and regulations to achieve and maintain the federal ambient air quality standards in all areas affected by emission sources under their jurisdiction. In order to attain the federal standards, it is also necessary for the State Air Resources Board to adopt rules to attain these standards.

(e) The South Coast Air Quality Management District and the San Joaquin Valley Unified Air Pollution Control District are the two most polluted areas in the nation for ozone and PM2.5. Other areas in the state also suffer significantly from these pollutants. Pollution sources that the State Air Resources Board is authorized to regulate are a substantial and increasingly important share of emissions contributing to nonattainment throughout California.

(f) In order for all areas of the state to achieve the federal ambient air quality standards, it is necessary for sources that the State Air Resources Board is authorized to regulate to reduce their emissions by a very substantial amount. For example, in the South Coast Air Basin, attaining the PM2.5 standard is expected to require reductions of oxides of nitrogen by over 30 percent, and attaining the ozone standard will require oxides of nitrogen reduction of over 75 percent.

(g) In order to ensure that all areas in the state attain the federal ambient air quality standards as expeditiously as practicable, it is necessary to require the state board to adopt every feasible rule and regulation, and to adopt rules and regulations that are sufficient, in conjunction with other applicable measures, to achieve and maintain the national ambient air quality standards by the applicable deadlines.

SEC. 2. Section 39602.5 is added to the Health and Safety Code, to read:

39602.5. (a) The state board shall adopt rules and regulations pursuant to Section 43013 that, in conjunction with other measures adopted by the state board, the districts, and the United States Environmental Protection Agency, will achieve ambient air quality standards required by the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) in all areas of the state by the applicable attainment date, and to maintain these standards thereafter. The state board shall adopt these

measures if they are necessary, technologically feasible, and cost effective, consistent with Section 43013.

(b) If necessary to carry out its duties under this section, the state board shall adopt and enforce rules and regulations that anticipate the development of new technologies or the improvement of existing technologies. The rules and regulations shall require standards that the state board finds and determines can likely be achieved by the compliance date set forth in the rule.

SEC. 3. Section 43013 of the Health and Safety Code is amended to read:

43013. (a) The state board shall adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the state board has found to be necessary, cost effective, and technologically feasible, to carry out the purposes of this division, unless preempted by federal law.

(b) The state board shall, consistent with subdivision (a), adopt standards and regulations for light-duty and heavy-duty motor vehicles; medium-duty motor vehicles, as determined and specified by the state board; and off-road or nonvehicle engine categories, including, but not limited to, off-highway motorcycles, off-highway vehicles, construction equipment, farm equipment, utility engines, locomotives, and, to the extent permitted by federal law, marine vessels.

(c) Prior to adopting standards and regulations for farm equipment, the state board shall hold a public hearing and find and determine that the standards and regulations are necessary, cost effective, and technologically feasible. The state board shall also consider the technological effects of emission control standards on the cost, fuel consumption, and performance characteristics of mobile farm equipment.

(d) Notwithstanding subdivision (b), the state board shall not adopt any standard or regulation affecting locomotives until the final study required under Section 5 of Chapter 1326 of the Statutes of 1987 has been completed and submitted to the Governor and Legislature.

(e) Prior to adopting or amending any standard or regulation relating to motor vehicle fuel specifications pursuant to this section, the state board shall, after consultation with public or private entities that would be significantly impacted as described in paragraph (2) of subdivision (f), do both of the following:

(1) Determine the cost-effectiveness of the adoption or amendment of the standard or regulation. The cost-effectiveness shall be compared on an incremental basis with other mobile source control methods and options.

(2) Based on a preponderance of scientific and engineering data in the record, determine the technological feasibility of the adoption or amendment of the standard or regulation. That determination shall include, but is not limited to, the availability, effectiveness, reliability, and safety expected of the proposed technology in an application that is representative of the proposed use.

(f) Prior to adopting or amending any motor vehicle fuel specification pursuant to this section, the state board shall do both of the following:

(1) To the extent feasible, quantitatively document the significant impacts of the proposed standard or specification on affected segments of the state's economy. The economic analysis shall include, but is not limited to, the significant impacts of any change on motor vehicle fuel efficiency, the existing motor vehicle fuel distribution system, the competitive position of the affected segment relative to border states, and the cost to consumers.

(2) Consult with public or private entities that would be significantly impacted to identify those investigative or preventive actions that may be necessary to ensure consumer acceptance, product availability, acceptable performance, and equipment reliability. The significantly impacted parties shall include, but are not limited to, fuel manufacturers, fuel distributors, independent marketers, vehicle manufacturers, and fuel users.

(g) To the extent that there is any conflict between the information required to be prepared by the state board pursuant to subdivision (f) and information required to be prepared by the state board pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the requirements established under subdivision (f) shall prevail.

(h) It is the intent of the Legislature that the state board act as expeditiously as is feasible to reduce nitrogen oxide emissions from diesel vehicles, marine vessels, and other categories of vehicular and mobile sources which significantly contribute to air pollution problems.

CHAPTER 670

An act to amend Sections 15102, 15106, 15107, 15108, 15266, 15300, 15301, 15303, 15320, 15321, 15323, 15334.5, 15340, 15357, and 15425 of, to add Sections 15101.75 and 15326.5 to, to repeal Sections 15302, 15330, 15331, 15332, 15333, 15334, 15335, 15336, 15341, 15342, 15343, 15344, 15346, 15347, 15348, 15349, 15349.1, 15349.2, 15351, 15353, 15354, 15355, 15356, 15358, 15359, 15359.1, and 15359.2 of, to repeal Article 6 (commencing with Section 15360), Article 7

(commencing with Section 15370), Article 8 (commencing with Section 15380), Article 9 (commencing with Section 15390), Article 10 (commencing with Section 15400), Article 11 (commencing with Section 15410), and Article 12 (commencing with Section 15420) of, Chapter 2 of Part 10 of Division 1 of Title 1 of, and to repeal and add Section 15350 of, the Education Code, to amend Sections 53312.7, 53313, 53313.4, 53313.5, 53313.6, 53313.9, 53314.6, 53316.2, 53317, 53318, 53319, 53320, 53321, 53321.5, 53322.4, 53323, 53324, 53325, 53325.1, 53325.7, 53326, 53327, 53328, 53328.3, 53329, 53330.3, 53330.5, 53330.7, 53332, 53336, 53339, 53339.2, 53339.3, 53339.5, 53339.6, 53339.7, 53339.8, 53340, 53340.2, 53341.5, 53343, 53343.1, 53344, 53345, 53345.3, 53354, 53355, 53356, 53356.1, 53356.3, 53359.5, 53360, 53362.5, 53363.7, 53364.2, 53364.5, and 53753 of, to add Section 53356.1.5 to, and to repeal Sections 53313.85, 53342 and 53344.2 of, the Government Code, to amend Section 3712 of the Revenue and Taxation Code, and to amend Sections 3110, 3113, 3114.5, 3115.5, and 3117.5 of, and to add Section 8837 to, the Streets and Highways Code, relating to local government.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

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

SECTION 1. Section 15101.75 is added to the Education Code, to read:

15101.75. (a) This chapter shall apply to bond elections for and the issuance of bonds for school facilities improvement districts created pursuant to Chapter 2 (commencing with Section 15300) to the extent that this chapter does not conflict with Chapter 2. In the event of a conflict, the provisions of Chapter 2 shall supersede the provisions of this chapter, but only to the extent of the conflict.

(b) A bond adopted by the voters pursuant to this part prior to January 1, 2008, shall be governed by this part as it read on December 31, 2007.

SEC. 2. Section 15102 of the Education Code is amended to read:

15102. The total amount of bonds issued pursuant to this chapter and Chapter 1.5 (commencing with Section 15264) shall not exceed 1.25 percent of the taxable property of the school district or community college district, or the school facilities improvement district, if applicable, as shown by the last equalized assessment of the county or counties in which the district is located. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating

nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987–88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987–88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

SEC. 3. Section 15106 of the Education Code is amended to read:

15106. A unified school district or community college district may issue bonds that, in aggregation with bonds issued pursuant to Section 15270, shall not exceed 2.5 percent of the taxable property of the school district or community college district, or the school facilities improvement district, if applicable, as shown by the last equalized assessment of the county or counties in which the district is located.

In computing the outstanding bonded indebtedness of a unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(a) For the purposes of the State School Building Aid Law of 1952 (Chapter 6 (commencing with Section 16000)) with respect to applications for apportionments and apportionments filed or made prior to September 15, 1961, and to the repayment thereof, Chapter 4 (commencing with Section 15700), inclusive, only, a unified school district shall be considered to have a bonding capacity in the amount permitted by law for an elementary school district and a bonding capacity in the amount permitted by law for a high school district.

(b) For purposes of this section, the taxable property of a district for a fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987–88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987–88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts or community college districts subsequent to the 1987–88 fiscal year, the assessed value of all unitary

and operating nonunitary property of the unified district or community college district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15102.

SEC. 4. Section 15107 of the Education Code is amended to read:

15107. In computing the limitation of indebtedness of a school district, community college district, or school facilities improvement district of any kind or class up to this time or in the future formed or organized, hereinafter in this section referred to as the "bonding district," the outstanding indebtedness of any previously existing district all or any part of which forms a component part of the bonding district and the outstanding indebtedness of any district for which any territory that has become a part of the bonding district is liable shall be excluded and shall not be deemed, for the purposes of computing the limitation of indebtedness under Section 15102 or 15106, to constitute outstanding indebtedness of the bonding district, except to the extent that the outstanding indebtedness has been expressly assumed by the bonding district by vote of not less than two-thirds of the electors of the bonding district voting at an election at which the proposition of assuming the indebtedness is voted upon. Nothing contained in this section shall operate to release any property from liability for taxes to pay the principal and interest of indebtedness incurred by any component district or for which any territory that has become a part of the bonding district is liable and in which the taxable property is located at the time of the incurring of the indebtedness. It is the intent of the Legislature to provide in this section a special method of computing the limitation of indebtedness of school districts or community college districts irrespective of liability of the area embraced within the school districts for the payment of any bonded indebtedness. This section does not authorize the issuance of bonds in excess of the limits expressed in Section 15334.5.

SEC. 5. Section 15108 of the Education Code is amended to read:

15108. For the purpose of determining the limitation of indebtedness of a school district, community college district, or school facilities improvement district of any kind or class under Section 15102 or 15106, that portion of the bonded indebtedness of the district for which another district or territory in another district is liable shall be excluded and shall not be deemed to constitute outstanding bonded indebtedness of the district.

SEC. 6. Section 15266 of the Education Code is amended to read:

15266. (a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), the governing board of a school district, community college district, or a school facilities improvement

district may decide, pursuant to a two-thirds vote and subject to Section 15100 to pursue the authorization and issuance of bonds pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution. An election may only be ordered on the question of whether bonds of a school district, community college district, or a school facilities improvement district shall be issued and sold pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or general election, a regularly scheduled local election at which all of the electors of the school district, community college district, or school facilities improvement district, as appropriate, are entitled to vote, or a statewide special election.

(b) Upon adopting a resolution to incur bonded indebtedness pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and after the question has been submitted to the voters, if approved at the election, the bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and this chapter, and the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under Chapter 1 (commencing with Section 15100) or under Chapter 2 (commencing with Section 15300), as appropriate. Where not inconsistent, the provisions of Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), as appropriate, shall apply to this chapter.

SEC. 7. Section 15300 of the Education Code is amended to read:

15300. This chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district, for the conduct of a bond election within a school facilities improvement district, and for the issuance of general obligation bonds by a school district or community college district for a school facilities improvement district.

SEC. 8. Section 15301 of the Education Code is amended to read:

15301. (a) A school district or community college district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district, may proceed under this chapter.

(b) The boundaries of a school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district or community college district

that is not located within the boundaries of the community facilities district as described in subdivision (a).

(c) A school district or community college district may proceed under this chapter without meeting the requirements of subdivisions (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district, respectively, to form a school facilities improvement district pursuant to this chapter to finance school facilities and purposes authorized pursuant to Section 15100. As a part of that determination, the governing board of the school district or community college district shall make a finding that the overall cost of financing the bonds issued pursuant to this part would be less than the overall cost of other school facilities financing options available to the school district or community college district, including, but not limited to, issuing bonds pursuant to the Mello-Roos Communities Facilities Act of 1982 (Ch. 2.5 (commencing with Sec. 53311), Pt. 1, Div. 2, Title 5, Gov. C.). The governing board of the school district or community college district proceeding under this subdivision shall define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district or community college district.

(d) The governing body of a school district or community college district that proceeds under this chapter shall comply with the filing requirements established by Section 54902 of the Government Code. A plat or map that is filed pursuant to this subdivision shall specifically identify property, located within the school district or community college district, that is not located within the improvement district established by the school district or community college district pursuant to this chapter.

SEC. 9. Section 15302 of the Education Code is repealed.

SEC. 10. Section 15303 of the Education Code is amended to read:

15303. (a) This chapter shall not be operative in a county or counties until the board of supervisors of the county in which the county superintendent of schools having jurisdiction over the school district or community college district in which the school facilities improvement district is located, and the board of supervisors of any county in which the school facilities improvement district is located, by resolution adopted by a majority vote of each affected board of supervisors, makes this chapter applicable in the county or counties.

(b) A board of supervisors adopting a resolution pursuant to subdivision (a) shall file that resolution with the California Debt and Investment Advisory Commission established pursuant to Section 8855 of the Government Code.

SEC. 11. Section 15320 of the Education Code is amended to read:

15320. Whenever the governing board of a school district or community college district meeting the requirements set forth in Section 15301 determines that a school facilities improvement district is necessary, the governing board shall adopt a resolution of intention that states all of the following:

(a) The intention of the governing board to form the proposed school facilities improvement district.

(b) The general purposes for which the proposed school facilities improvement district is to be formed.

(c) The estimated cost of the school facilities improvement project.

(d) That any taxes levied for the purpose of financing the general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district.

(e) That a map showing the exterior boundaries of the proposed school facilities improvement district is on file with the governing board of the school district or community college district and is available for inspection by the public. The boundaries of the school facilities improvement district shall meet the requirements set forth in subdivision (b) of Section 15301.

(f) The time and place for a hearing by the governing board on the formation of the proposed school facilities improvement district.

(g) That any interested persons, including all persons owning lands in the school district or community college district, or in the proposed school facilities improvement district, may appear and be heard.

SEC. 12. Section 15321 of the Education Code is amended to read:

15321. Notice of the hearing shall be given by publishing a copy of the resolution of intention in a newspaper of general circulation published in each affected county, pursuant to Section 6066 of the Government Code, the first publication shall be at least 14 days prior to the time fixed for the hearing. No notice other than that required by this section need be given.

SEC. 13. Section 15323 of the Education Code is amended to read:

15323. At the hearing, the governing board of the school district or community college district may adopt a resolution proposing modifications, consistent with Section 15302, of the purpose stated in the resolution of intention. A resolution proposing modifications shall describe the proposed modifications, state the change, if any, in the estimated cost of carrying out the purpose, and shall fix a time and place for the hearing by the governing board.

SEC. 14. Section 15326.5 is added to the Education Code, to read:

15326.5. The governing board may amend a previously adopted resolution ordering the formation of a school facilities improvement

district to change or add to the purposes for which the school facilities improvement district is formed and the projects to be financed and to increase or decrease the amount of bonds that may be issued for those purposes. Bonds may be issued only for the purposes stated in, and in an amount not exceeding the amount stated in, a proposition submitted to and approved by the voters of the school facilities improvement district.

SEC. 15. Section 15330 of the Education Code is repealed.

SEC. 16. Section 15331 of the Education Code is repealed.

SEC. 17. Section 15332 of the Education Code is repealed.

SEC. 18. Section 15333 of the Education Code is repealed.

SEC. 19. Section 15334 of the Education Code is repealed.

SEC. 20. Section 15334.5 of the Education Code is amended to read:

15334.5. Notwithstanding any other provision of law, no bonded indebtedness may be incurred pursuant to this part in an amount that would cause the bonded indebtedness of the territory of the school facilities improvement district or of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106. No bonded indebtedness may be incurred pursuant to this part in an amount that would cause the bonded indebtedness of the territory of the school facilities improvement district to exceed the limitation of indebtedness specified in Sections 15102 and 15106.

SEC. 21. Section 15335 of the Education Code is repealed.

SEC. 22. Section 15336 of the Education Code is repealed.

SEC. 23. Section 15340 of the Education Code is amended to read:

15340. (a) After adopting the resolution ordering the formation of the school facilities improvement district, the governing board may provide for and call a special bond election within the school facilities improvement district pursuant to Chapter 1 (commencing with Section 15100) and, if applicable, pursuant to Chapter 1.5 (commencing with Section 15264), except as otherwise provided in this chapter, for the approval of a proposition of whether an indebtedness of the school facilities improvement district shall be incurred through the issuance of bonds for the school facilities improvement district. The election shall be deemed to be a school district or community college district election, as appropriate, for purposes of Chapter 1 (commencing with Section 15100).

(b) The indebtedness and the bonds shall be payable from taxes to be levied and collected upon lands located within the school facilities improvement district. The bonds shall be deemed to be bonds of the school district or community college district that created the school

facilities improvement district, issued for the benefit of the land within the school facilities improvement district.

SEC. 24. Section 15341 of the Education Code is repealed.

SEC. 25. Section 15342 of the Education Code is repealed.

SEC. 26. Section 15343 of the Education Code is repealed.

SEC. 27. Section 15344 of the Education Code is repealed.

SEC. 28. Section 15346 of the Education Code is repealed.

SEC. 29. Section 15347 of the Education Code is repealed.

SEC. 30. Section 15348 of the Education Code is repealed.

SEC. 31. Section 15349 of the Education Code is repealed.

SEC. 32. Section 15349.1 of the Education Code is repealed.

SEC. 33. Section 15349.2 of the Education Code is repealed.

SEC. 34. Section 15350 of the Education Code is repealed.

SEC. 35. Section 15350 is added to the Education Code, to read:

15350. (a) Except as otherwise provided in this chapter, bonds of a school facilities improvement district shall be authorized, offered for sale, issued and paid, and taxes levied and collected for payments related to those bonds, and the proceeds of the bonds and the collected taxes deposited and held, as provided in Chapter 1 (commencing with Section 15100), and in compliance with Chapter 1.5 (commencing with Section 15264), if applicable.

(b) Whenever in Chapter 1 (commencing with Section 15100) or Chapter 1.5 (commencing with Section 15264) a reference is made to the bonds of the district, that reference shall mean, in the case of bonds of a school facilities improvement district, bonds authorized by the electors of the school facilities improvement district, and issued on behalf of the school facilities improvement district.

(c) Whenever in Chapter 1 (commencing with Section 15100) or Chapter 1.5 (commencing with Section 15264) a reference is made to assessment or taxation of property in the district for payment of the bonds, that reference shall mean, in the case of bonds of a school facilities improvement district, the assessment and taxation of property located only within the school facilities improvement district for payment of amounts due related to bonds of the school facilities improvement district.

SEC. 36. Section 15351 of the Education Code is repealed.

SEC. 37. Section 15353 of the Education Code is repealed.

SEC. 38. Section 15354 of the Education Code is repealed.

SEC. 39. Section 15355 of the Education Code is repealed.

SEC. 40. Section 15356 of the Education Code is repealed.

SEC. 41. Section 15357 of the Education Code is amended to read:

15357. (a) The board of supervisors shall establish within the county treasury a school facilities improvement fund for each school facilities improvement district for the purpose of depositing the proceeds of the

bonds of the school facilities improvement district. The board of supervisors also shall establish within the county treasury a school facilities improvement bond interest and sinking fund for each school facilities improvement district.

(b) Whenever in Chapter 1 (commencing with Section 15100) a reference is made to the interest and sinking fund of the district or the building fund of the district, that reference shall mean, in the case of bonds of a school facilities improvement district, the interest and sinking fund of the school facilities improvement district or the building fund of the school facilities improvement district, as appropriate.

SEC. 42. Section 15358 of the Education Code is repealed.

SEC. 43. Section 15359 of the Education Code is repealed.

SEC. 44. Section 15359.1 of the Education Code is repealed.

SEC. 45. Section 15359.2 of the Education Code is repealed.

SEC. 46. Article 6 (commencing with Section 15360) of Chapter 2 of Part 10 of Division 1 of Title 1 of the Education Code is repealed.

SEC. 47. Article 7 (commencing with Section 15370) of Chapter 2 of Part 10 of Division 1 of Title 1 of the Education Code is repealed.

SEC. 48. Article 8 (commencing with Section 15380) of Chapter 2 of Part 10 of Division 1 of Title 1 of the Education Code is repealed.

SEC. 49. Article 9 (commencing with Section 15390) of Chapter 2 of Part 10 of Division 1 of Title 1 of the Education Code is repealed.

SEC. 50. Article 10 (commencing with Section 15400) of Chapter 2 of Part 10 of Division 1 of Title 1 of the Education Code is repealed.

SEC. 51. Article 11 (commencing with Section 15410) of Chapter 2 of Part 10 of Division 1 of Title 1 of the Education Code is repealed.

SEC. 52. Article 12 (commencing with Section 15420) of Chapter 2 of Part 10 of Division 1 of Title 1 of the Education Code is repealed.

SEC. 53. Section 15425 of the Education Code is amended to read:

15425. Notwithstanding any other provision of this chapter, it is the intent of the Legislature that the rate of taxes levied annually upon the property in a school facilities improvement district formed pursuant to subdivision (a) of Section 15301 not be greater than the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district. A determination by the governing board of a school district or community college district, made at the time bonds are sold pursuant to this part, that the rate of taxes to be levied annually upon the property in the school

facilities improvement district, based upon tax rate estimates prepared pursuant to Section 9401 of the Elections Code, does not exceed the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, shall be conclusive evidence of compliance with the intent of this section.

SEC. 54. Section 53312.7 of the Government Code is amended to read:

53312.7. (a) On and after January 1, 1994, a local agency may initiate proceedings to establish a district pursuant to this chapter only if it has first considered and adopted local goals and policies concerning the use of this chapter. The policies shall include at least the following:

(1) A statement of the priority that various kinds of public facilities and services shall have for financing through the use of this chapter, including public facilities to be owned and operated by other public agencies, including school districts, and services to be provided by other public agencies.

(2) A statement concerning the credit quality to be required of bond issues, including criteria to be used in evaluating the credit quality.

(3) A statement concerning steps to be taken to ensure that prospective property purchasers are fully informed about their taxpaying obligations imposed under this chapter.

(4) A statement concerning criteria for evaluating the equity of tax allocation formulas, and concerning desirable and maximum amounts of special tax to be levied against any parcel pursuant to this chapter.

(5) A statement of definitions, standards, and assumptions to be used in appraisals required by Section 53345.8.

(b) The goals and policies adopted by any school district pursuant to subdivision (a) shall include, but not be limited to, a priority access policy that gives priority attendance access to students residing in a community facilities district whose residents have paid special taxes that have, in whole or in part, financed the construction of school district facilities. The degree of priority shall reflect the proportion of each school's financing provided through the community facilities district. In developing a priority access policy for residents of a community facilities district, a school district may incorporate a school district attendance policy including criteria for student assignment such as goals to achieve ethnic, racial, or socioeconomic diversity; federal, state, or court mandates; transportation needs, safe pedestrian routes; grade levels for which facilities were designed; and ensuring students continuity of schooling within any single school year.

SEC. 55. Section 53313 of the Government Code is amended to read:

53313. A community facilities district may be established under this chapter to finance any one or more of the following types of services within an area:

(a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression services, and ambulance and paramedic services.

(c) Recreation program services, library services, maintenance services for elementary and secondary schoolsites and structures, and the operation and maintenance of museums and cultural facilities. A special tax may be levied for any of the services specified in this subdivision only upon approval of the registered voters as specified in subdivision (b) of Section 53326. An election to enact a special tax for recreation program services, library services, and the operation and maintenance of museums and cultural facilities may be conducted pursuant to subdivision (c) of Section 53326.

(d) Maintenance and lighting of parks, parkways, streets, roads, and open space.

(e) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems, plowing and removal of snow, and sandstorm protection systems.

(f) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, the terms "remedial action" and "removal" shall have the meanings set forth in Sections 25322 and 25323, respectively, of the Health and Safety Code, and the term "hazardous substance" shall have the meaning set forth in Section 25281 of the Health and Safety Code. Community facilities districts shall provide the State Department of Health Services and local health and building departments with notification of any cleanup activity pursuant to this subdivision at least 30 days prior to commencement of the activity.

A community facilities district tax approved by vote of the landowners of the district may only finance the services authorized in this section to the extent that they are in addition to those provided in the territory of the district before the district was created. The additional services may not supplant services already available within that territory when the district was created.

Bonds may not be issued pursuant to this chapter to fund any of the services specified in this section, although bonds may be issued to fund capital facilities to be used in providing these services.

SEC. 56. Section 53313.4 of the Government Code is amended to read:

53313.4. Any territory within a community facilities district established for the acquisition or improvement of school facilities for a school district shall be exempt from any fee, increase in any fee other than a cost-of-living increase as authorized by law, or other requirement first levied, increased, or imposed pursuant to Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code or under Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7, by or to benefit any other school district, except as otherwise negotiated between the school districts. That exemption shall apply until a date 10 years following the most recent issuance of bonds by the community facilities district or, if no bonds have ever been issued by the community facilities district, a date 10 years following the formation of the community facilities district.

SEC. 57. Section 53313.5 of the Government Code is amended to read:

53313.5. A community facilities district may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities need not be physically located within the district. A district may not lease out facilities that it has financed except pursuant to a lease agreement or annexation agreement entered into prior to January 1, 1988. A district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the district is adopted pursuant to Section 53325.1, except that a district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency that will own or operate the facility. For example, a community facilities district may finance facilities, including, but not limited to, the following:

(a) Local park, recreation, parkway, and open-space facilities.

(b) Elementary and secondary schoolsites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board.

(c) Libraries.

(d) Child care facilities, including costs of insuring the facilities against loss, liability insurance in connection with the operation of the facility, and other insurance costs relating to the operation of the facilities, but excluding all other operational costs. However, the proceeds of bonds

issued pursuant to this chapter shall not be used to pay these insurance costs.

(e) The district may also finance the construction or undergrounding of water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines to provide access to those services to customers who do not have access to those services or to mitigate existing visual blight. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the conveyance of those facilities to the public utility. "Public utility" shall include all utilities, whether public and regulated by the Public Utilities Commission, or municipal. If the facilities are conveyed to the public utility, the agreement shall provide that the cost or a portion of the cost of the facilities that are the responsibility of the utility shall be refunded by the public utility to the district or improvement area thereof, to the extent that refunds are applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities Commission, as to utilities regulated by the commission, or (2) other laws regulating public utilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.

(f) The district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for flood and storm protection services, including, but not limited to, storm drainage and treatment systems and sandstorm protection systems.

(g) The district may also pay in full all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a community facilities district or may pay debt service on that indebtedness. When the amount financed by the district is to pay a tax, fee, charge, or assessment imposed by a public agency other than the one conducting the proceedings, and if the amount provided to the other public agency will not be entirely used to pay off or prepay an assessment lien or special tax obligation pursuant to the property owner's legal right to do so, the written consent of the other public agency is required. In addition, tax revenues of a district may be used to make lease or debt service payments on any lease, lease-purchase contract, or certificate of participation used to finance authorized district facilities.

(h) Any other governmental facilities that the legislative body creating the community facilities district is authorized by law to contribute revenue to, or construct, own, or operate. However, the district shall not operate or maintain or, except as otherwise provided in subdivisions (e) and (k), have any ownership interest in any facilities for the transmission or distribution of natural gas, telephone service, or electrical energy.

(i) (1) A district may also pay for the following:

(A) Work deemed necessary to bring buildings or real property, including privately owned buildings or real property, into compliance with seismic safety standards or regulations. Only work certified as necessary to comply with seismic safety standards or regulations by local building officials may be financed. No project involving the dismantling of an existing building and its replacement by a new building, nor the construction of a new or substantially new building may be financed pursuant to this subparagraph. Work on qualified historical buildings or structures shall be done in accordance with the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code).

(B) In addition, within any county or area designated by the President of the United States or by the Governor as a disaster area or for which the Governor has proclaimed the existence of a state of emergency because of earthquake damage, a district may also pay for any work deemed necessary to repair any damage to real property directly or indirectly caused by the occurrence of an earthquake cited in the President's or the Governor's designation or proclamation, or by aftershocks associated with that earthquake, including work to reconstruct, repair, shore up, or replace any building damaged or destroyed by the earthquake, and specifically including, but not limited to, work on any building damaged or destroyed in the Loma Prieta earthquake that occurred on October 17, 1989, or by its aftershocks. Work may be financed pursuant to this subparagraph only on property or buildings identified in a resolution of intention to establish a community facilities district adopted within seven years of the date on which the county or area is designated as a disaster area by the President or by the Governor or on which the Governor proclaims for the area the existence of a state of emergency.

(2) Work on privately owned property, including reconstruction or replacement of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may only be financed by a tax levy if all of the votes cast on the question of levying the tax, vote in favor of levying the tax, or with the prior written consent to the tax of the owners of all property that may be subject to the tax, in that case the prior written consent shall be deemed to constitute a vote in favor of the tax and any associated

bond issue. Any district created to finance seismic safety work on privately owned buildings, including repair, reconstruction, or replacement of privately owned buildings pursuant to this subdivision, shall consist only of lots or parcels that the legislative body finds have buildings that were damaged or destroyed by the earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks of that earthquake.

(j) A district may also pay for the following:

(1) Work deemed necessary to repair and abate damage caused to privately owned buildings and structures by soil deterioration. "Soil deterioration" means a chemical reaction by soils that causes structural damage or defects in construction materials including concrete, steel, and ductile or cast iron. Only work certified as necessary by local building officials may be financed. No project involving the dismantling of an existing building or structure and its replacement by a new building or structure, nor the construction of a new or substantially new building or structure may be financed pursuant to this subparagraph.

(2) Work on privately owned buildings and structures pursuant to this subdivision, including reconstruction, repair, and abatement of damage caused by soil deterioration, may only be financed by a tax levy if all of the votes cast on the question of levying the tax vote in favor of levying the tax. Any district created to finance the work on privately owned buildings or structures, including reconstruction, repair, and abatement of damage caused by soil deterioration, shall consist only of lots or parcels on which the legislative body finds that the buildings or structures to be worked on pursuant to this subdivision suffer from soil deterioration.

(k) A district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the purposes of removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, the terms "remedial action" and "removal" shall have the meaning set forth in Sections 25322 and 25323, respectively, of the Health and Safety Code, and the term "hazardous substance" shall have the meaning set forth in Section 25281 of the Health and Safety Code.

SEC. 58. Section 53313.6 of the Government Code is amended to read:

53313.6. The legislative body may provide for adjustments in ad valorem property taxes pursuant to Section 53313.7 within a community facilities district only after making both of the following findings at the conclusion of the public hearing held pursuant to Article 2 (commencing with Section 53318):

(a) That an ad valorem property tax is, or will be, levied on property within a proposed community facilities district for the exclusive purpose of making lease payments on an existing lease or paying principal or interest on outstanding bonds or other existing indebtedness, including state school building loans, incurred to finance construction of capital facilities.

(b) That capital facilities to be financed by the community facilities district will provide the same services to the territory of the community facilities district as were provided by the capital facilities mentioned in subdivision (a).

SEC. 59. Section 53313.85 of the Government Code is repealed.

SEC. 60. Section 53313.9 of the Government Code is amended to read:

53313.9. (a) All or any part of the cost of any school facilities financed by a community facilities district may be shared by the State Allocation Board pursuant to Section 17718.5 of the Education Code.

(b) If the State Allocation Board shares in any part of the cost of the school facilities, the ownership of those facilities and the real property upon which the facilities are located shall be held as provided in the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of the Education Code).

(c) The resolutions of intention, formation, consideration, and to incur bonded indebtedness, adopted pursuant to subdivision (b) of Section 53338 or Sections 53321, 53325.1, 53334, 53339.2, 53345, and 53351 may provide for cost sharing by the State Allocation Board and for appropriate adjustment of the principal amount of any bond issue or issues and of the rate and method of apportionment of any special tax.

SEC. 61. Section 53314.6 of the Government Code is amended to read:

53314.6. (a) In connection with the financing of services and facilities pursuant to subdivision (f) of Section 53313 and subdivision (k) of Section 53313.5, the legislative body may establish a revolving fund to be kept in the treasury of the district. Except as provided in subdivision (b), moneys in the revolving fund shall be expended solely for the payment of costs with respect to those services and facilities. The revolving fund may be funded from time to time with moneys derived from any of the following:

(1) Proceeds of the sale of bonds issued pursuant to Article 5 (commencing with Section 53345), notwithstanding any limitation contained in Section 53345.3.

(2) Any taxes or charges authorized under this chapter.

(3) Any other lawful source.

(b) Subject to the provisions of any resolution, trust agreement or indenture providing for the issuance of district bonds for the purposes set forth in subdivision (k) of Section 53313.5, the legislative body may withdraw money from the revolving fund whenever and to the extent that it finds that the amount of money therein exceeds the amount necessary to accomplish the purposes for which the revolving fund was established. Any moneys withdrawn from the revolving fund shall be used to redeem bonds of the district issued for the purposes set forth in subdivision (k) of Section 53313.5 or shall be paid to taxpayers in the district in amounts that the legislative body determines.

SEC. 62. Section 53316.2 of the Government Code is amended to read:

53316.2. (a) A community facilities district may finance facilities to be owned or operated by a public agency other than the agency that created the district, or services to be provided by a public agency other than the agency that created the district, or any combination, only pursuant to a joint community facilities agreement or a joint exercise of powers agreement adopted pursuant to this section. A joint community facilities agreement or a joint exercise of powers agreement with a state or federal agency shall not be required if the local agency that created the district is the agency that would, in the absence of the district, enter into an agreement with the state or federal agency for the provision of the facilities or services, or if the local agency that created the district enters into a joint agreement with the public agency that would, in the absence of the district, enter into an agreement with the state or federal agency for the provision of the facilities or services.

(b) At any time prior to the adoption of the resolution of formation creating a community facilities district or a resolution of change to alter a district, or a resolution or resolutions authorizing issuance of bonds pursuant to Section 53356, the legislative bodies of two or more local agencies may enter into a joint community facilities agreement pursuant to this section and Sections 53316.4 and 53316.6 or into a joint exercise of powers agreement pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1) to exercise any power authorized by this chapter with respect to the community facilities district being created or changed if the legislative body of each entity adopts a resolution declaring that the joint agreement would be beneficial to the residents of that entity.

(c) Notwithstanding the Joint Exercise of Powers Act, a contracting party may use the proceeds of any special tax or charge levied pursuant to this chapter or, in the case of facilities, of any bonds or other indebtedness issued pursuant to this chapter to provide facilities or services which that contracting party is otherwise authorized by law to

provide, even though another contracting party does not have the power to provide those facilities or services.

(d) Notwithstanding subdivision (b), nothing in this section shall prevent entry into or amendment of a joint community facilities agreement or a joint exercise of powers agreement at any time, if the new agreement or amendment is necessary, as determined by the legislative body, for either of the following reasons:

(1) To allow an orderly transition of governmental facilities and finances in the case of any change in governmental organization approved pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5) or other law governing the reorganization of any agency that is a party to the agreement.

(2) To allow participation in the agreement by a state or federal agency, including, but not limited to, the California Department of Transportation. Participation in an agreement by a state or federal agency is purely optional.

(e) Notwithstanding any other provision of this chapter, no local agency that is party to a joint exercise of powers agreement or joint community facilities agreement shall have primary responsibility for formation of a district, or for an extension of authorized facilities and services or a change in special taxes pursuant to Article 3 (commencing with Section 53330), unless that local agency is one or more of the following:

(1) A city, a county, or a city and county.

(2) An agency created pursuant to a joint powers agreement that is separate from the parties to the agreement, is responsible for the administration of the agreement, and is subject to the notification requirement of Section 6503.5.

(3) An agency that is reasonably expected to have responsibility for providing facilities or services to be financed by a larger share of the proceeds of special taxes and bonds of the district or districts created or changed pursuant to the joint exercise of powers agreement or the joint community facilities agreement than any other local agency.

SEC. 63. Section 53317 of the Government Code is amended to read:

53317. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) "Clerk" means the clerk of the legislative body of a local agency.

(b) "Community facilities district" means a legally constituted governmental entity established pursuant to this chapter for the sole purpose of financing facilities and services.

(c) "Cost" means the expense of constructing or purchasing the public facility and of related land, right-of-way, easements, including incidental

expenses, and the cost of providing authorized services, including incidental expenses.

(d) "Debt" means any binding obligation to pay or repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts.

(e) "Incidental expense" includes all of the following:

(1) The cost of planning and designing public facilities to be financed pursuant to this chapter, including the cost of environmental evaluations of those facilities.

(2) The costs associated with the creation of the district, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the district.

(3) Any other expenses incidental to the construction, completion, and inspection of the authorized work.

(f) "Landowner" or "owner of land" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of the land by the legislative body. The legislative body has no obligation to obtain other information as to the ownership of the land, and its determination of ownership shall be final and conclusive for the purposes of this chapter. A public agency is not a landowner or owner of land for purposes of this chapter, unless one of the following exists:

(1) The land owned by a public agency would be subject to a special tax pursuant to Section 53340.1.

(2) The public agency has acquired the property by purchase or negotiation in connection with foreclosure of a special tax lien and it is intended that the property will be transferred to private ownership.

(3) The public agency states in the proceedings that its land is intended to be transferred to private ownership and provides in the proceedings that its land will be subject to the special tax on the same basis as private property within the district and affirmatively waives any defense based on the fact of public ownership, to any action to foreclose on the property in the event of nonpayment of the special tax.

(4) The land owned by a public agency is within the territory of a military base that is closed or is being closed.

(g) "Legislative body" means the legislative body or governing board of any local agency.

(h) "Local agency" means any city or county, whether general law or chartered, special district, school district, joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7

of Title 1, redevelopment agency, or any other municipal corporation, district, or political subdivision of the state.

(i) "Rate" means a single rate of tax or a schedule of rates.

(j) "Services" means the provision of categories of services identified in Section 53313. "Services" includes the performance by employees of functions, operations, maintenance, and repair activities. "Services" does not include activities or facilities identified in Section 53313.5.

SEC. 64. Section 53318 of the Government Code is amended to read:

53318. Proceedings for the establishment of a community facilities district may be instituted by the legislative body on its own initiative and shall be instituted by the legislative body when any of the following occurs:

(a) A written request for the establishment of a district, signed by two members of the legislative body, describing the boundaries of the territory that is proposed for inclusion in the area and specifying the type or types of facilities and services to be financed by the district, is filed with the legislative body.

(b) A petition requesting the institution of the proceedings signed by the requisite number of registered voters, as specified in subdivision (d) of Section 53319, describing the boundaries of the territory that is proposed for inclusion in the area and specifying the type or types of facilities and services to be financed by the district, is filed with the clerk of the legislative body. The petition may consist of any number of separate instruments, each of which shall comply with all of the requirements of the petition, except as to the number of signatures.

(c) A petition requesting the institution of the proceedings signed by landowners owning the requisite portion of the area of the proposed district, as specified in subdivision (d) of Section 53319, describing the boundaries of the territory that is proposed for inclusion in the area and specifying the type or types of facilities and services to be financed by the district, is filed with the clerk of the legislative body.

(d) The written request filed pursuant to subdivision (a) and the petition filed pursuant to subdivision (b) are not required to be acted upon until the payment of a fee in an amount that the legislative body determines, within 45 days of receiving the request or petition, is sufficient to compensate the legislative body for all costs incurred in conducting proceedings to create a district pursuant to this chapter. A petition filed pursuant to subdivision (c) may not be acted upon until payment of a fee in an amount that the legislative body determines, within 45 days of receiving the petition, is sufficient to compensate the legislative body for all costs incurred in conducting proceedings to create a district pursuant to this chapter.

SEC. 65. Section 53319 of the Government Code is amended to read:

53319. A petition requesting the institution of proceedings for the establishment of a community facilities district shall do all of the following:

(a) Request the legislative body to institute proceedings to establish a community facilities district pursuant to this chapter.

(b) Describe the boundaries of the territory that is proposed for inclusion in the district.

(c) State the type or types of facilities and services proposed to be financed by the district, which may include proposals for any additional information specified by Sections 53321, 53325.7, and 53345.

(d) Be signed by not less than 10 percent of the registered voters residing within the territory proposed to be included within the district or by owners of not less than 10 percent of the area of land proposed to be included within the district and not proposed to be exempt from the special tax. If the legislative body finds that the petition is signed by the requisite number of registered voters residing within the territory proposed to be included within the district or by the requisite number of owners of land proposed to be included within the district, that finding shall be final and conclusive.

SEC. 66. Section 53320 of the Government Code is amended to read:

53320. Within 90 days after either a written request by two members of the legislative body or a petition requesting the institution of proceedings for the establishment of a community facilities district is filed with the legislative body and the payment of any fee required under subdivision (d) of Section 53318, the legislative body shall adopt a resolution of intention to establish a community facilities district in the form specified in Section 53321.

SEC. 66.5. Section 53321 of the Government Code is amended to read:

53321. Proceedings for the establishment of a community facilities district shall be instituted by the adoption of a resolution of intention to establish the district which shall do all of the following:

(a) State that a community facilities district is proposed to be established under the terms of this chapter and describe the boundaries of the territory proposed for inclusion in the district, which may be accomplished by reference to a map on file in the office of the clerk, showing the proposed community facilities district. The boundaries of the territory proposed for inclusion in the district shall include the entirety of any parcel subject to taxation by the proposed district.

(b) State the name proposed for the district in substantially the following form: "Community Facilities District No. ____."

(c) Describe the public facilities and services proposed to be financed by the district pursuant to this chapter. The description may be general

and may include alternatives and options, but it shall be sufficiently informative to allow a taxpayer within the district to understand what the funds of the district may be used to finance. If the purchase of completed public facilities or the incurring of incidental expenses is proposed, the resolution shall identify those facilities or expenses. If facilities are proposed to be financed through any financing plan, including, but not limited to, any lease, lease-purchase, or installment-purchase arrangement, the resolution shall briefly describe the proposed arrangement.

(d) State that, except where funds are otherwise available, a special tax sufficient to pay for all facilities and services, secured by recordation of a continuing lien against all nonexempt real property in the district, will be annually levied within the area. The resolution shall specify the rate, method of apportionment, and manner of collection of the special tax in sufficient detail to allow each landowner or resident within the proposed district to estimate the maximum amount that he or she will have to pay. The legislative body may specify conditions under which the obligation to pay the specified special tax may be prepaid and permanently satisfied. The legislative body may specify conditions under which the rate of the special tax may be permanently reduced in compliance with the provisions of Section 53313.9.

In the case of any special tax to pay for public facilities and to be levied against any parcel used for private residential purposes, (1) the maximum special tax shall be specified as a dollar amount which shall be calculated and thereby established not later than the date on which the parcel is first subject to the tax because of its use for private residential purposes, which amount shall not be increased over time except that it may be increased by an amount not to exceed 2 percent per year, (2) the resolution shall specify a tax year after which no further special tax subject to this sentence shall be levied or collected, except that a special tax that was lawfully levied in or before the final tax year and that remains delinquent may be collected in subsequent years, and (3) the resolution shall specify that under no circumstances will the special tax levied in any fiscal year against any parcel subject to this sentence be increased as a consequence of delinquency or default by the owner or owners of any other parcel or parcels within the district by more than 10 percent above the amount that would have been levied in that fiscal year had there never been any such delinquencies or defaults. For purposes of this paragraph, a parcel shall be considered "used for private residential purposes" not later than the date on which an occupancy permit for private residential use is issued. Nothing in this paragraph is intended to prohibit the legislative body from establishing different tax rates for different categories of residential property, or from

changing the dollar amount of the special tax for the parcel if the size of the residence is increased or if the size or use of the parcel is changed.

(e) Fix a time and place for a public hearing on the establishment of the district which shall be not less than 30 or more than 60 days after the adoption of the resolution.

(f) Describe any adjustment in property taxation to pay prior indebtedness pursuant to Sections 53313.6 and 53313.7.

(g) Describe the proposed voting procedure.

The changes made to this section by Senate Bill 1464 of the 1991–92 Regular Session of the Legislature shall not apply to special taxes levied by districts for which a resolution of formation was adopted before January 1, 1993.

SEC. 67. Section 53321.5 of the Government Code is amended to read:

53321.5. At the time of the adoption of the resolution of intention to establish a community facilities district, the legislative body shall direct each of its officers who is or will be responsible for providing one or more of the proposed types of public facilities or services to be financed by the district, if it is established, to study the proposed district and, at or before the time of the hearing, file a report with the legislative body containing a brief description of the public facilities and services by type that will in his or her opinion be required to adequately meet the needs of the district and his or her estimate of the cost of providing those public facilities and services. If the purchase of completed public facilities or the payment of incidental expenses is proposed, the legislative body shall direct its appropriate officer to estimate the fair and reasonable cost of those facilities or incidental expenses. If removal or remedial action for the cleanup of any hazardous substance is proposed, the legislative body shall (a) direct its responsible officer to prepare or cause to be prepared, a remedial action plan based upon factors comparable to those described in subdivision (d) of Section 25356.1 of the Health and Safety Code or (b) determine, on the basis of the particular facts and circumstances, that shall be comparable to those described in subdivision (h) of Section 25356.1 of the Health and Safety Code, that the remedial action plan is not required or (c) condition financing of the removal or remedial action upon approval of a remedial action plan pursuant to Section 25356.1 of the Health and Safety Code. All of those reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.

SEC. 68. Section 53322.4 of the Government Code is amended to read:

53322.4. The clerk of the legislative body may also give notice of the hearing by first-class mail to each registered voter and to each

landowner within the proposed district. This notice shall contain the same information as is required to be contained in the notice published pursuant to Section 53322.

SEC. 69. Section 53323 of the Government Code is amended to read:

53323. At the hearing, protests against the establishment of the district, the extent of the district, or the furnishing of specified types of public facilities or services within the district may be made orally or in writing by any interested person. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities and defects to which objection is made. Any written protest not personally presented by the author of that protest at the hearing shall be filed with the clerk of the legislative body at or before the time fixed for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

SEC. 70. Section 53324 of the Government Code is amended to read:

53324. If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be included in the district, or the owners of one-half or more of the area of the land in the territory proposed to be included in the district and not exempt from the special tax, file written protests against the establishment of the district, and protests are not withdrawn so as to reduce the value of the protests to less than a majority, no further proceedings to create the specified community facilities district or to authorize the specified special tax shall be taken for a period of one year from the date of the decision of the legislative body.

If the majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of facilities or services within the district, or against levying a specified special tax, those types of facilities or services or the specified special tax shall be eliminated from the resolution of formation.

SEC. 71. Section 53325 of the Government Code is amended to read:

53325. The hearing may be continued from time to time, but shall be completed within 30 days, except that if the legislative body finds that the complexity of the proposed district or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. The legislative body may modify the resolution of intention by eliminating proposed facilities or services, or by changing the rate or method of apportionment of the proposed special tax so as to reduce the maximum special tax for all or a portion of the owners of property within the proposed district, or by

removing territory from the proposed district. Any modifications shall be made by action of the legislative body at the public hearing. If the legislative body proposes to modify the resolution of intention in a way that will increase the probable special tax to be paid by the owner of any lot or parcel, it shall direct that a report be prepared that includes a brief analysis of the impact of the proposed modifications on the probable special tax to be paid by the owners of lots or parcels in the district, and shall receive and consider the report before approving the modifications or any resolution of formation that includes those modifications. The legislative body shall not modify the resolution of intention to increase the maximum special tax or to add territory to the proposed district. At the conclusion of the hearing, the legislative body may abandon the proposed establishment of the community facilities district or may, after passing upon all protests, determine to proceed with establishing the district.

SEC. 72. Section 53325.1 of the Government Code is amended to read:

53325.1. (a) If the legislative body determines to establish the district, it shall adopt a resolution of formation establishing the district. The resolution of formation shall contain all of the information required to be included in the resolution of intention to establish the district specified in Section 53321. If a special tax is proposed to be levied in the district to pay for any facilities or services and the special tax has not been eliminated by majority protest pursuant to Section 53324, the resolution shall:

(1) State that the proposed special tax to be levied within the district has not been precluded by majority protest pursuant to Section 53324.

(2) Identify any facilities or services proposed to be funded with the special tax.

(3) Set forth the name, address, and telephone number of the office, department, or bureau that will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and that will be responsible for estimating future special tax levies pursuant to Section 53340.2.

(4) State that upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the district and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the legislative body ceases.

(5) Set forth the county of recordation and the book and page in the Book of Maps of Assessments and Community Facilities Districts in the

county recorder's office where the boundary map of the proposed community facilities district has been recorded pursuant to Sections 3111 and 3113 of the Streets and Highways Code.

(b) In the resolution of formation adopted pursuant to subdivision (a), the legislative body shall determine whether all proceedings were valid and in conformity with the requirements of this chapter. If the legislative body determines that all proceedings were valid and in conformity with the requirements of this chapter, it shall make a finding to that effect and that finding shall be final and conclusive.

SEC. 73. Section 53325.7 of the Government Code is amended to read:

53325.7. The legislative body may submit a proposition to establish or change the appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of a community facilities district to the qualified electors of a proposed or established district. The proposition establishing or changing the appropriations limit shall become effective if approved by the qualified electors voting on the proposition and shall be adjusted for changes in the per capita personal income in the state and changes in populations, as defined by subdivisions (b) and (c) of Section 7901, except that the change in population may be estimated by the legislative body in the absence of an estimate by the Department of Finance, and in accordance with Section 1 of Article XIII B of the California Constitution. For purposes of adjusting for changes in population, the population of the district shall be deemed to be at least one person during each calendar year.

SEC. 74. Section 53326 of the Government Code is amended to read:

53326. (a) The legislative body shall then submit the levy of any special taxes to the qualified electors of the proposed community facilities district or to the qualified electors of the territory to be annexed by the community facilities district in the next general election or in a special election to be held, notwithstanding any other requirement, including any requirement that elections be held on specified dates, contained in the Elections Code, at least 90 days, but not more than 180 days, following the adoption of the resolution of formation. The legislative body shall provide the resolution of formation, the resolution deeming it necessary to incur bonded indebtedness, if one is adopted, a certified map of sufficient scale and clarity to show the boundaries of the district, and a sufficient description to allow the election official to determine the boundaries of the district to the official conducting the election within three business days after the adoption of the resolution of formation. Assessor's parcel numbers for the land within the district shall be included if it is a landowner election or the district does not conform to an existing district's boundaries and if requested by the official

conducting the election. If the election is to be held less than 125 days following the adoption of the resolution of formation, the concurrence of the election official conducting the election shall be required. However, any time limit specified by this section or requirement pertaining to the conduct of the election, including any time limit or requirement applicable to any election conducted pursuant to Article 5 (commencing with Section 53345), may be waived with the unanimous consent of the qualified electors of the proposed district and the concurrence of the election official conducting the election.

(b) Except as otherwise provided in subdivision (c), if at least 12 persons, who need not necessarily be the same 12 persons, have been registered to vote within the territory of the proposed community facilities district for each of the 90 days preceding the close of the protest hearing, the vote shall be by the registered voters of the proposed district, with each voter having one vote. Otherwise, the vote shall be by the landowners of the proposed district and each person who is the owner of land at the close of the protest hearing, or the authorized representative thereof, shall have one vote for each acre or portion of an acre of land that he or she owns within the proposed community facilities district not exempt from the special tax. Ballots shall be executed by an owner of a parcel, or by a representative of an owner lawfully appointed to represent the owner for purposes of the election. Each person casting a ballot assigned to a parcel of property who is not the owner of that property must present written evidence to the local agency of that person's authority to act for the owner for the election before casting the ballot. If more than one of the record owners of an identified parcel submits or wishes to submit a ballot, the votes attributable to the parcel shall be allocated to ballots for each owner in proportion to their respective record ownership interest, rounded to the nearest one-tenth of a vote, or, if the ownership interests are not shown on the record, as established to the satisfaction of the local agency, the votes attributable to the parcel shall be allocated according to the ownership interests shown by documentation submitted by those record owners. If no document is submitted, the votes shall be allocated equally among the parcel's owners requesting ballots. If the appointment of the representative to cast the ballot was made as part of the transaction by which the current owners acquired the property, or if the appointment appoints a former owner, or anyone affiliated in any way with a former owner of the property, the written appointment must be signed by all of the owners, and include a statement signed by all of the owners substantially in the form contained in Section 53341.5. The appointment is not valid if the ballot measure seeks to authorize facilities, services, or special taxes in excess of those shown on the statement. The appointment of a representative to act for

property for a single specified landowner election under this chapter shall not constitute a violation of any law prohibiting the impersonation of voters or the inducement to vote in a particular fashion. The number of votes to be voted by a particular landowner shall be specified on the ballot provided to that landowner. If the vote is by landowners pursuant to this subdivision, the legislative body shall determine that any facilities or services financed by the district are necessary to meet increased demands placed upon local agencies as the result of development or rehabilitation occurring in the district.

(c) If the proposed special tax will not be apportioned in any tax year on any portion of property in residential use in that tax year, as determined by the legislative body, the legislative body may provide that the vote shall be by the landowners of the proposed district whose property would be subject to the tax if it were levied at the time of the election. Each of these landowners shall have one vote for each acre, or portion thereof, that the landowner owns within the proposed district that would be subject to the proposed tax if it were levied at the time of the election.

(d) Ballots for the special election authorized by subdivision (a) may be distributed to qualified electors by mail with return postage prepaid or by personal service by the election official. The official conducting the election may certify the proper mailing of ballots by an affidavit, that shall constitute conclusive proof of mailing in the absence of fraud. The voted ballots shall be returned to the election officer conducting the election not later than the hour specified in the resolution calling the election. However, if all the qualified voters have voted, the election may be closed with the concurrence of the official conducting the election.

SEC. 75. Section 53327 of the Government Code is amended to read:

53327. (a) Except as otherwise provided in this chapter, the provisions of law regulating elections of the local agency that calls an election pursuant to this chapter, insofar as they may be applicable, shall govern all elections conducted pursuant to this chapter. Except as provided in subdivision (b), there shall be prepared and included in the ballot material provided to each voter an impartial analysis pursuant to Section 9160, 9280, or 9500 of the Elections Code, and arguments and rebuttals, if any, pursuant to Sections 9162 to 9167, inclusive, and 9190 of the Elections Code or pursuant to Sections 9281 to 9287, inclusive, and 9295 of the Elections Code, or pursuant to Sections 9501 to 9507, inclusive, of the Elections Code, or pursuant to other provisions of law applicable to other special districts as appropriate.

(b) If the vote is to be by the landowners of the proposed district, analysis and arguments may be waived with the unanimous consent of

all the landowners and shall be so stated in the order for the election. When the vote is to be by the landowners of the proposed district, the legislative body of the local agency may authorize an official of the local agency to conduct the election, including preparation of analysis and compilation of arguments.

SEC. 76. Section 53328 of the Government Code is amended to read:

53328. After the canvass of returns of any election pursuant to Section 53326, the legislative body may, pursuant to Section 53340, levy any special tax as specified in the resolution of formation adopted pursuant to subdivision (a) of Section 53325.1 within the territory of the district if two-thirds of the votes cast upon the question of levying the tax are in favor of levying that tax.

SEC. 77. Section 53328.3 of the Government Code is amended to read:

53328.3. Upon a determination by the legislative body that the requisite two-thirds of votes cast in an election held pursuant to Section 53326 are in favor of levying the special tax, the clerk of the legislative body shall, within 15 days of a landowner election or within 90 days of a registered voter election, record the notice of special tax lien provided for in Section 3114.5 of the Streets and Highways Code, whereupon the lien of the special tax shall attach as provided in Section 3115.5 of the Streets and Highways Code. The notice of special tax lien shall be recorded in the office of the county recorder in each county that any portion of the district is located.

SEC. 78. Section 53329 of the Government Code is amended to read:

53329. After the canvass of returns of any election conducted pursuant to Section 53326, the legislative body shall take no further action with respect to authorizing the specified special tax within the community facilities district for one year from the date of the election if the question of authorizing that specified special tax fails to receive approval by two-thirds of the votes cast upon the question.

SEC. 79. Section 53330.3 of the Government Code is amended to read:

53330.3. Under no circumstances shall any buyer or prospective buyer of any completed structure for which a certificate of occupancy for private residential use has been issued which is located within any district formed pursuant to this chapter be asked, required, or otherwise induced to waive any right to petition or to take any other action authorized pursuant to this article. No contract, agreement, or covenant shall be binding with respect to such a waiver.

SEC. 80. Section 53330.5 of the Government Code is amended to read:

53330.5. Upon approval of a special tax pursuant to Article 2 (commencing with Section 53318), the special tax may be levied only at the rate and may be apportioned only in the manner specified in the resolution of formation, except as provided in this article, and except that the legislative body may levy the special tax at a rate lower than that specified in the resolution. In addition, the special tax may be levied only so long as it is needed to pay the principal and interest on debt incurred in order to construct facilities under authority of this chapter, or so long as it is needed to pay the costs and incidental expenses of services or of the construction of facilities authorized by this chapter.

When the legislative body determines that the special tax shall cease to be levied, the legislative body shall direct the clerk to record a Notice of Cessation of Special Tax that shall state that the obligation to pay the special tax has ceased and that the lien imposed by the Notice of Special Tax Lien recorded as recorder's serial or document number ___ in the records of the County Recorder of ____ County, State of California, is extinguished. The Notice of Cessation of Special Tax shall additionally identify the book and page of the Book of Maps of Assessment and Community Facilities Districts wherein the map of the boundaries of the district is recorded.

SEC. 81. Section 53330.7 of the Government Code is amended to read:

53330.7. Except as otherwise provided in this article, the legislative body may, at any time, after conducting a public hearing, eliminate one or more of the types of facilities and services specified in the resolution of formation of the district but may not finance any types of facilities and services that were not specified in the resolution of formation.

SEC. 82. Section 53332 of the Government Code is amended to read:

53332. (a) If a petition signed by 25 percent or more of the registered voters residing in the district, or by the owners of 25 percent or more of the land within the district not exempt from the special tax, is filed with the legislative body requesting that proceedings be commenced to change the types of public facilities or services financed by the district or that the rate or method of apportionment of an existing special tax be changed, or that territory to be removed from the district, or that a new special tax be levied, the legislative body shall within 40 days of the payment of the fee determined under subdivision (b) adopt a resolution of consideration in the form specified in Section 53334 to make those changes within the community facilities district except that an existing special tax being used to pay off any debt incurred under this chapter shall not be reduced or terminated if doing so would interfere with the timely retirement of that debt.

(b) Upon receipt of any petition filed by landowners under this section, the legislative body shall, within 45 days, determine the amount of a fee sufficient to compensate the local agency for all costs incurred in conducting proceedings to change the district pursuant to this article. Upon receipt of any petition filed by registered voters under this section, the legislative body may determine the amount of a fee, within 45 days, sufficient to compensate the local agency for all costs incurred in conducting proceedings to change the district pursuant to this article.

SEC. 83. Section 53336 of the Government Code is amended to read:

53336. At the hearing, protests against the proposals described in the resolution may be made orally, or in writing by any interested persons. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities or defects to which objection is made. All written protests not personally presented by the author thereof at the hearing shall be filed with the clerk of the legislative body at or before the time fixed for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

SEC. 84. Section 53339 of the Government Code is amended to read:

53339. Territory may be annexed to an existing community facilities district as provided in this article. The annexed territory need not be contiguous to territory included in the existing community facilities district. The territory proposed to be annexed to the community facilities district may be territory located outside the territorial limits of the agency that formed the community facilities district provided that the territory to be annexed to the community facilities district will be annexed to the respective agency prior to, or concurrently with, the annexation of the subject territory to the community facilities district and, if the annexation of the subject territory to the respective agency is not completed, the subject territory shall not be annexed to the community facilities district. The legislative body of the agency that created the community facilities district shall not adopt a resolution of intention pursuant to Section 53339.2 if the territory proposed to be annexed includes territory that is outside the territorial limits of that agency unless an initial action, petition, or filing for the annexation of that territory to the respective agency has been adopted or filed, as appropriate.

SEC. 85. Section 53339.2 of the Government Code is amended to read:

53339.2. If the legislative body of the local agency that created a community facilities district determines that public convenience and necessity require that territory be added to the existing community

facilities district, or if the voters residing within certain territory or landowners request the legislative body to include territory within the district, the legislative body may adopt a resolution of intention to annex the territory or to provide for future annexation of the territory.

SEC. 86. Section 53339.3 of the Government Code is amended to read:

53339.3. The resolution of intention to annex the territory or to provide for future annexation of territory shall do all of the following:

(a) State the name of the existing community facilities district.

(b) Generally describe the territory included in the existing district and the territory proposed to be annexed. As an alternative, the resolution may identify territory proposed for annexation in the future, with the condition that parcels within that territory may be annexed only with the unanimous approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed.

(c) Specify the types of public facilities and services provided pursuant to this chapter in the existing district and the types of public facilities and services to be provided in the territory proposed to be annexed or to be annexed in the future; and include a plan for sharing facilities and providing services that will be provided in common within the existing district and the territory proposed to be annexed or to be annexed in the future.

(d) Specify any special taxes that would be levied within the territory proposed to be annexed or to be annexed in the future to pay for public facilities and services provided pursuant to this chapter within that territory. A special tax proposed to pay for services to be supplied within the territory proposed to be annexed or to be annexed in the future shall be equal to any special tax levied to pay for the same services in the existing district, except that a higher or lower tax may be levied within the territory proposed to be annexed or to be annexed in the future to the extent that the actual cost of providing the services in that territory is higher or lower than the cost of providing those services in the existing district. A special tax proposed to pay for public facilities financed with bonds that have already been issued and that are secured by the existing community facilities district shall be the same as the tax levied in the existing district for that purpose, except that a higher special tax may be levied for that purpose within the territory proposed to be annexed or to be annexed in the future to compensate for the interest and principal previously paid by the existing community facilities district, less any depreciation allocable to the public facility. This section shall not be construed to limit the levy of a special tax within the territory to be annexed or to be annexed in the future to provide new or additional services beyond those supplied within the existing territory of the district,

or to pay for new or additional public facilities, with or without bond financing.

(e) Specify any alteration in the special tax rate to be levied within the existing community facilities district as a result of the proposed annexation. The maximum tax rate in the existing community facilities district may not be increased as a result of proceedings pursuant to this article.

(f) Fix a time and place for a hearing upon the resolution that shall not be less than 30 nor more than 60 days after the adoption by the legislative body of the resolution of intention to annex territory or to provide for future annexation of territory pursuant to Section 53339.2.

SEC. 87. Section 53339.5 of the Government Code is amended to read:

53339.5. At the hearing, protests against the proposals described in the resolution of intention may be made orally or in writing by any interested person. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities or defects to which objection is made. All written protests shall be filed with the clerk of the legislative body prior to the time fixed not personally presented by the author thereof at the hearing for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

SEC. 88. Section 53339.6 of the Government Code is amended to read:

53339.6. If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the existing community facilities district, or if 50 percent or more of the registered voters or six registered voters, whichever is more, residing within the territory proposed for annexation or proposed to be annexed in the future, or if the owners of one-half or more of the area of land in the territory included in the existing district and not exempt from special tax, or if the owners of one-half or more of the area of land in the territory proposed to be annexed or proposed to be annexed in the future and not exempt from the special tax, file written protests against the proposed annexation of territory to the existing community facilities district or the proposed addition of territory to the existing community facilities district in the future, and protests are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to annex the same territory, or to authorize the same territory to be annexed in the future, shall be undertaken for a period of one year from the date of decision of the legislative body on the issues discussed at the hearing.

SEC. 89. Section 53339.7 of the Government Code is amended to read:

53339.7. (a) The hearing may be continued from time to time, but shall be completed within 30 days. At the conclusion of the hearing, the legislative body may abandon the proceedings, may, after passing upon all protests, submit the question of levying a special tax within the area proposed to be annexed to the existing community facilities district to the qualified electors of the area proposed to be annexed as specified in Article 2 (commencing with Section 53318), or may provide for the annexation of territory proposed for annexation in the future upon the unanimous approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed, without additional hearings.

(b) Notwithstanding any other provision of law, when the question of levying a special tax within the areas proposed to be annexed into an existing community facilities district appears on the same ballot as the question of annexation of the same territory to a local agency the effectiveness of each ballot measure may be made contingent on the passage of the other ballot measure.

SEC. 90. Section 53339.8 of the Government Code is amended to read:

53339.8. (a) After the canvass of returns of any election conducted in accordance with Section 53339.7, the legislative body shall determine that the area proposed to be annexed is added to and part of the existing community facilities district with full legal effect, and the legislative body may levy any special tax within the annexed territory, as specified in the resolution of intention to annex adopted pursuant to Section 53339.2, and as specified in the ordinance adopted pursuant to Section 53340, if two-thirds of the votes cast on the proposition are in favor of levying the special tax.

(b) Upon a determination by the legislative body that the area proposed to be annexed is added to the existing community facilities district, the clerk of the legislative body shall record notice of the annexation pursuant to Section 3117.5 of the Streets and Highways Code.

SEC. 91. Section 53340 of the Government Code is amended to read:

53340. (a) After a community facilities district has been created and authorized to levy specified special taxes pursuant to Article 2 (commencing with Section 53318), Article 3 (commencing with Section 53330), or Article 3.5 (commencing with Section 53339), the legislative body may, by ordinance, levy the special taxes at the rate and apportion them in the manner specified in the resolution adopted pursuant to Article 2 (commencing with Section 53318), Article 3 (commencing with Section 53330), or Article 3.5 (commencing with Section 53339).

(b) The legislative body may provide, by resolution, for the levy of the special tax in the current tax year or future tax years at the same rate or at a lower rate than the rate provided by the ordinance, if the resolution is adopted and a certified list of all parcels subject to the special tax levy including the amount of the tax to be levied on each parcel for the applicable tax year, is filed by the clerk or other official designated by the legislative body with the county auditor on or before the 10th day of August of that tax year. The clerk or other official designated by the legislative body may file the certified list after the 10th of August but not later than the 21st of August if the clerk or other official obtains prior written consent of the county auditor.

(c) Properties or entities of the state, federal, or local governments shall, except for properties that a local agency is a landowner of within the meaning of subdivision (f) of Section 53317, or except as otherwise provided in Section 53317.3, be exempt from the special tax. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the resolution of formation to establish a district adopted pursuant to Section 53325.1 or in a resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in Section 53334.

(d) The proceeds of any special tax may only be used to pay, in whole or part, the cost of providing public facilities, services, and incidental expenses pursuant to this chapter.

(e) The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, unless another procedure has been authorized in the resolution of formation establishing the district and adopted by the legislative body.

(f) (1) Notwithstanding subdivision (e), the legislative body of the district may waive all or any specified portion of the delinquency penalties and redemption penalties if it makes all of the following determinations:

(A) The waivers shall apply only to parcels delinquent at the time of the determination.

(B) The waivers shall be available only with respect to parcels for which all past due and currently due special taxes and all other costs due are paid in full within a limited period of time specified in the determination.

(C) The waivers shall be available only with respect to parcels sold or otherwise transferred to new owners unrelated to the owner responsible for the delinquency.

(D) The waivers are in the best interest of the debtholders.

(2) The charges with penalties to be waived shall be removed from the tax roll pursuant to Section 53356.2 and local administrative procedures, and any distributions made to the district prior to collection pursuant to Chapter 3 (commencing with Section 4701) of Part 8 of Division 1 of the Revenue and Taxation Code shall be repaid by the district prior to granting the waiver.

(g) The tax collector may collect the special tax at intervals as specified in the resolution of formation, including intervals different from the intervals determining when the ordinary ad valorem property taxes are collected. The tax collector may deduct the reasonable administrative costs incurred in collecting the special tax.

(h) All special taxes levied by a community facilities district shall be secured by the lien imposed pursuant to Section 3115.5 of the Streets and Highways Code. This lien shall be a continuing lien and shall secure each levy of special taxes. The lien of the special tax shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with Section 53344 or until the special tax ceases to be levied by the legislative body in the manner provided in Section 53330.5. If any portion of a parcel is encumbered by a lien pursuant to this chapter, the entirety of the parcel shall be encumbered by that lien.

SEC. 92. Section 53340.2 of the Government Code is amended to read:

53340.2. (a) The legislative body levying the special tax shall designate an office, department, or bureau of the local agency that shall be responsible for annually preparing the current roll of special tax levy obligations by assessor's parcel number on nonexempt property within the district and that will be responsible for estimating future special tax levies. The designated office, department, or bureau shall be the same office, department, or bureau that prepares the "NOTICE OF ASSESSMENT" required by Section 53754. If notice is required under both this section and Section 53754, the notices shall, to the extent feasible, be combined into a single notice document. The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated tax liability. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future tax liability is inaccurate, nor for any failure of any seller to request a Notice of Special Tax or to provide the notice to a buyer.

(b) For purposes of enabling sellers of real property subject to the levy of special taxes to satisfy the notice requirements of Section 1102.6b of the Civil Code, the designated office, department, or bureau shall

furnish a Notice of Special Tax to any individual requesting the notice or any owner of property subject to a special tax levied by the local agency within five working days of receiving a request for the notice. The local agency may charge a fee for this service not to exceed fifteen dollars ($15).

(c) The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately describe the tax structure and other characteristics of districts created before January 1, 1993, or to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit, or to clearly and accurately describe a tax rate that will change with a change in use of the parcel, or to clearly and accurately describe a tax that will be levied only once. The notice shall be completed by the designated office, department, or bureau except for the signatures and date of signing:

NOTICE OF SPECIAL TAX

COMMUNITY FACILITIES DISTRICT NO. _____
COUNTY OF _____, CALIFORNIA

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY KNOWN AS: _____

_____

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR PURCHASING THIS PROPERTY.

(1) This property is subject to a special tax, that is in addition to the regular property taxes and any other charges and benefit assessments on the parcel. This special tax is not necessarily imposed on all parcels within the city or county where the property is located. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities and/or services that are likely to particularly benefit the property. YOU SHOULD TAKE THIS TAX AND THE BENEFITS FROM THE PUBLIC FACILITIES AND SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

(2) The maximum special tax that may be levied against this parcel to pay for public facilities is ____ dollars ($ ____) during the ____–__ tax year. This amount will increase by __ percent per year after that (if

applicable). The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid, but in any case not after the ____–__ tax year.

An additional special tax will be used to pay for ongoing services, if applicable. The maximum amount of this tax is ____ dollars ($____) during the ____–__ tax year. This amount may increase by ____, if applicable, and may be levied until the ____–__ tax year (or forever, as applicable).

(3) The authorized facilities that are being paid for by the special taxes, and by the money received from the sale of bonds that are being repaid by the special taxes, are:

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

In addition, the special taxes may be used to pay for costs of the following services:

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION THAT AUTHORIZED CREATION OF THE COMMUNITY FACILITIES DISTRICT, AND THAT SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE _____ (name of jurisdiction) BY CALLING _____ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE ESTIMATED REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE RECEIVED A COPY OF THIS NOTICE. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT AFTER RECEIVING THIS NOTICE FROM THE OWNER OR AGENT SELLING THE PROPERTY. THE CONTRACT MAY BE TERMINATED WITHIN THREE DAYS IF THE NOTICE WAS RECEIVED IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER OR AGENT SELLING THE PROPERTY.

DATE: _____

_____

_____

SEC. 93. Section 53341.5 of the Government Code is amended to read:

53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied pursuant to this chapter, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, or permit a prospective purchaser or lessor to sign a contract of purchase or a deposit receipt or any substantially equivalent document in the event of a lease with respect to the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately describe the tax structure and other characteristics of districts created before January 1, 1993, or to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit:

NOTICE OF SPECIAL TAX
COMMUNITY FACILITIES DISTRICT NO. ___
COUNTY OF ____, CALIFORNIA

TO: THE PROSPECTIVE PURCHASER OF THE
REAL PROPERTY KNOWN AS:

_____

_____

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR ENTERING INTO A CONTRACT TO PURCHASE THIS PROPERTY. THE SELLER IS REQUIRED TO GIVE YOU THIS NOTICE AND TO OBTAIN A COPY SIGNED BY YOU TO INDICATE THAT YOU HAVE RECEIVED AND READ A COPY OF THIS NOTICE.

(1) This property is subject to a special tax, that is in addition to the regular property taxes and any other charges, fees, special taxes, and benefit assessments on the parcel. It is imposed on this property because it is a new development, and is not necessarily imposed generally upon property outside of this new development. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities or services that are likely to particularly benefit the property. YOU SHOULD TAKE THIS TAX AND THE BENEFITS FROM THE FACILITIES AND SERVICES FOR WHICH

IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

(2) The maximum special tax that may be levied against this parcel to pay for public facilities is $_____ during the ____–__ tax year. This amount will increase by __ percent per year after that (if applicable). The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid, but in any case not after the ____–__ tax year. An additional special tax will be used to pay for ongoing service costs, if applicable. The maximum amount of this tax is ____ dollars ($____) during the ____–__ tax year. This amount may increase by ____, if applicable, and that part may be levied until the ____–__ tax year (or forever, as applicable).

(3) The authorized facilities that are being paid for by the special taxes, and by the money received from the sale of bonds that are being repaid by the special taxes, are:

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

In addition, the special taxes may be used to pay for costs of the following services:

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION THAT AUTHORIZED CREATION OF THE COMMUNITY FACILITIES DISTRICT, AND THAT SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE ____ (name of jurisdiction) BY CALLING ____ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE READ THIS NOTICE AND RECEIVED A COPY OF THIS NOTICE PRIOR TO ENTERING INTO A CONTRACT TO PURCHASE OR SIGNING A DEPOSIT RECEIPT WITH RESPECT TO THE ABOVE-REFERENCED PROPERTY. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITHIN THREE DAYS AFTER RECEIVING THIS NOTICE IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER, SUBDIVIDER, OR AGENT SELLING THE PROPERTY.

DATE: _____ _____

_____ _____

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined by Section 1350 of the Civil Code, a community apartment project, a stock cooperative, and a limited-equity housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and Professions Code.

(c) The buyer shall have three days after delivery in person or five days after delivery by deposit in the mail of any notice required by this section, to terminate his or her agreement by delivery of written notice of that termination to the owner, subdivider, or agent.

(d) The failure to furnish the notice to the buyer or lessee, and failure of the buyer or lessee to sign the notice of a special tax, shall not invalidate any grant, conveyance, lease, or encumbrance.

(e) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot or unit that is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars ($500). In an action to enforce a liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

SEC. 94. Section 53342 of the Government Code is repealed.

SEC. 95. Section 53343 of the Government Code is amended to read:

53343. Any special taxes collected pursuant to this chapter may only be used for facilities and services authorized by this chapter.

SEC. 96. Section 53343.1 of the Government Code is amended to read:

53343.1. For any community facilities district formed after January 1, 1992, the community facilities district shall, prepare, if requested by a person who resides in or owns property in the district, within 120 days after the last day of each fiscal year, a separate document titled an "Annual Report." The district may charge a fee for the report not exceeding the actual costs of preparing the report. The report shall include the following information for the fiscal year:

(a) The amount of special taxes collected for the year.

(b) The amount of other moneys collected for the year and their source, including interest earned.

(c) The amount of moneys expended for the year.

(d) A summary of the amount of moneys expended for the following:

(1) Facilities, including property.

(2) Services.

(3) The costs of bonded indebtedness.

(4) The costs of collecting the special tax under Section 53340.

(5) Other administrative and overhead costs.

(e) For moneys expended for facilities, including property, an identification of the categories of each type of facility funded with amounts expended in each category, including the total percentage of the cost of each type of facility that was funded with bond proceeds or special taxes.

(f) For moneys expended for services, an identification of the categories of each type of service funded with amounts expended in each category, including the total percentage of the cost of each type of service that was funded with bond proceeds or special taxes.

(g) For moneys expended for other administrative costs, an identification of each of these costs.

(h) The Annual Report shall contain references to the relevant sections of the resolution of formation of the district so that interested persons may confirm that bond proceeds and special taxes are being used for authorized purposes. The annual report shall be made available to the public upon request.

SEC. 97. Section 53344 of the Government Code is amended to read:

53344. In the event that the legislative body has specified conditions pursuant to Section 53321 under which the obligation to pay the special tax identified therein may be prepaid and permanently satisfied, and if the special tax is so prepaid and permanently satisfied as to a particular parcel of land, the legislative body shall prepare and record in the office of the county recorder of the county in which the parcel of land is located, and the county recorder shall accept for recordation, a Notice of Cancellation of Special Tax Lien as to that parcel. The Notice of Cancellation of Special Tax Lien shall identify with particularity the special tax that has been prepaid and permanently satisfied, shall state the book and page number, or the document or instrument number, in the records of the county recorder where the Notice of Special Tax Lien being cancelled is recorded, shall contain the legal description and assessor's parcel number of the particular parcel of land subject to the lien, and shall contain the name of the owner of record of the parcel. The recorder shall mail the original Notice of Cancellation of Special Tax Lien to the owner of the property after recording the document. The legislative body may specify a charge for the preparation and recordation of this notice.

SEC. 98. Section 53344.2 of the Government Code is repealed.

SEC. 99. Section 53345 of the Government Code is amended to read:

53345. Whenever the legislative body deems it necessary for the community facilities district to incur a bonded indebtedness, it shall, by resolution, set forth all of the following:

(a) A declaration of the necessity for the indebtedness.

(b) The purpose for which the proposed debt is to be incurred.

(c) The amount of the proposed debt. The legislative body may provide for a reduction in the amount of proposed debt in compliance with the provisions of Section 53313.9.

(d) The time and place for a hearing by the legislative body on the proposed debt authorization.

SEC. 100. Section 53345.3 of the Government Code is amended to read:

53345.3. The amount of the proposed bonded indebtedness may include all costs and estimated costs incidental to, or connected with, the accomplishment of the purpose for which the proposed debt is to be incurred, including, but not limited to, the estimated costs of construction or acquisition of buildings, or both; acquisition of land, rights-of-way, water, sewer, or other capacity or connection fees; lease payments for school facilities, satisfaction of contractual obligations relating to expenses or the advancement of funds for expenses existing at the time the bonds are issued pursuant to this chapter; architectural, engineering, inspection, legal, fiscal, and financial consultant fees; bond and other reserve funds; discount fees; interest on any bonds of the district estimated to be due and payable within two years of issuance of the bonds; election costs; and all costs of issuance of the bonds, including, but not limited to, fees for bond counsel, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit, and other credit enhancement costs, and printing costs. Bonds may not be issued pursuant to this chapter to fund any of the services specified in Section 53313; however, bonds may be issued to fund capital facilities to be used in providing these services.

SEC. 101. Section 53354 of the Government Code is amended to read:

53354. If the area designated in the resolution adopted pursuant to Section 53351 does not include the entire community facilities district, a separate ballot shall be prepared for the vote upon the proposition to authorize bonds and to levy a special tax for payment of the bonds and only the voters entitled thereto shall be given the ballots.

SEC. 102. Section 53355 of the Government Code is amended to read:

53355. A two-thirds vote shall be required for the issuance of bonds under authority of this chapter.

SEC. 103. Section 53356 of the Government Code is amended to read:

53356. If more than two-thirds of the votes cast at the election are in favor of incurring the indebtedness, the legislative body may, by resolution, at the time or times it deems proper, provide for the following:

(a) The form of the bonds.

(b) The execution of the bonds.

(c) The issuance of any part of the bonds.

(d) The appointment of one or more banks or trust companies within or without the state having the necessary trust powers as trustee, fiscal agent, paying agent, or bond registrar.

(e) The execution of a trust agreement, indenture, or other instrument securing the bonds.

(f) The pledge or assignment of any revenues of the community facilities district to the repayment of the bonds.

(g) The investment of any bond proceeds and other revenues, including special tax revenues, by the trustee or fiscal agent in any securities or obligations described in the resolution, indenture, trust agreement, or other instrument providing for the issuance of the bonds. Investment subject to this subdivision shall comply with Section 53356.03. The resolution may provide for payment to the United States from any available revenues of a community facilities district of any excess investment earnings required to be rebated by federal law.

(h) The date or dates to be borne by the bonds and the time or times of maturity of the bonds and the place or places and time or times that the bonds shall be payable.

(i) The interest, fixed or variable, to be borne by the bonds.

(j) The denominations, form, and registration privileges of the bonds.

(k) Any other terms and conditions determined to be necessary by the legislative body.

SEC. 104. Section 53356.1 of the Government Code is amended to read:

53356.1. (a) As a cumulative remedy, if debt is outstanding, the legislative body may, not later than four years after the due date of the last installment of principal thereof, order that any delinquent special taxes levied in whole or in part for payment of the debt, together with any penalties, interest, and costs, be collected by an action brought in the superior court to foreclose the lien of special tax.

(b) The legislative body may, by resolution, adopted prior to the issuance of debt under this chapter, covenant for the benefit of debtholders to commence and diligently pursue any foreclosure action regarding delinquent installments of any amount levied as a special tax, in whole or in part, for the payment of interest or principal of any debt

that is incurred, and, at any time may assign the causes of action arising from the foreclosure to a trustee or joint powers authority to do so on behalf of the debtholders. The resolution may specify a deadline for commencement of the foreclosure action and any other terms and conditions the legislative body determines reasonable regarding the foreclosure action.

(c) Except as provided in Section 53356.6, all special taxes, interest, penalties, costs, fees, and other charges that are delinquent at the time of the ordering of a foreclosure action shall be collected in the action. In the event that a lot or parcel of property has not been sold pursuant to judgment in the foreclosure action at the time that subsequent special taxes become delinquent, the court may include the subsequent special taxes, interest, penalties, costs, fees, and other charges in the judgment or modified judgment.

(d) For purposes of financing delinquent special taxes pursuant to Section 26220 of the Government Code, the legislative body may act as if it were a board of supervisors.

(e) Notwithstanding any other provision of this chapter, no trustee or joint powers authority shall be obligated to accept the tender of bonds in satisfaction of any obligation arising from a delinquent special tax, although either may do so if authorized to do so by the legislative body.

(f) An action to determine the validity of any bonds issued, any joint powers agreement entered into, and any related agreements entered into, by a joint powers agency acting pursuant to this section may be brought by the joint powers agency pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Any appeal from a judgment in the action shall be commenced within 30 days after entry of judgment.

SEC. 105. Section 53356.1.5 is added to the Government Code, to read:

53356.1.5. (a) This section applies if delinquent special taxes, together with any penalties, interest, and costs, are collected through the sale of the property by the tax collector pursuant to Chapter 7 (commencing with Section 3691) of Part 6 of Division 1 of the Revenue and Taxation Code.

(b) If the property is sold for at least the total amount necessary to redeem plus costs, as defined in Section 3698.5 of the Revenue and Taxation Code, the sale of the property shall extinguish the delinquent special taxes, interest, penalties, and costs included in the sale price.

(c) If the property is sold for less than the total amount necessary to redeem plus costs, as defined in Section 3698.5 of the Revenue and Taxation Code, all of the following apply:

(1) The portion of the sales price paid by the tax collector to the local agency on account of the delinquent special taxes shall be credited by the local agency first to the delinquent interest and redemption penalties, and then to the delinquent principal.

(2) The remainder of the delinquent special taxes and redemption penalties, if any, shall remain due and owing.

(3) Redemption penalties shall continue to accrue on the remaining unpaid delinquent special taxes.

(4) The remaining unpaid amount, with penalties, may be added as postjudgment delinquencies to any existing unsatisfied foreclosure judgment against the property, or may be collected in a new foreclosure action filed pursuant to this chapter.

SEC. 106. Section 53356.3 of the Government Code is amended to read:

53356.3. At any time after the tax collector has been relieved of his or her duty to collect sums under Section 53356.2 and before judgment in a foreclosure action, the local agency or trustee shall dismiss the action upon payment of all of the following:

(a) The amount of any delinquent special taxes together with any penalties, interest, and costs accrued thereon to date of complete payment hereunder.

(b) Costs of suit, including, but not limited to, litigation guarantees provided by title companies with respect to all claims of ownership or interest in the subject property.

(c) Attorneys' fees authorized by the local agency.

(d) The tax collector's costs authorized by subdivision (d) of Section 53356.2.

SEC. 107. Section 53359.5 of the Government Code is amended to read:

53359.5. (a) The legislative body shall, no later than 30 days prior to the sale of any bonds pursuant to this article, give written notice of the proposed sale to the California Debt and Investment Advisory Commission by mail, postage prepaid, or by any other method approved by the California Debt and Investment Advisory Commission, as required by Chapter 11.5 (commencing with Section 8855) of Division 1 of Title 2.

(b) On and after January 1, 1993, each year after the sale of any bonds, including refunding bonds, pursuant to this article, and until the final maturity of the bonds, the legislative body shall, not later than October 30 of each year, supply the following information to the California Debt and Investment Advisory Commission by mail, postage prepaid, or by any other method approved by the California Debt and Investment Advisory Commission:

(1) Issuer name.
(2) Community facilities district number or name.
(3) Name, title, and series of the bond issue.
(4) Credit rating and name of the rating agency.
(5) Date of the bond issue and the original principal amount.
(6) Reserve fund minimum balance required.
(7) The principal amount of bonds outstanding.
(8) The balance in the bond reserve fund.
(9) The balance in the capitalized interest fund, if any.
(10) The number of parcels that are delinquent with respect to their special tax payments, the amount that each parcel is delinquent, the total amount of special taxes due on the delinquent parcels, the length of time that each has been delinquent, when foreclosure was commenced for each delinquent parcel, the total number of foreclosure parcels for each date specified, and the total amount of tax due on the foreclosure parcels for each date specified.
(11) The balance in any construction funds.
(12) The assessed value of all parcels subject to special tax to repay the bonds as shown on the most recent equalized roll, the date of assessed value reported, and the source of the information.
(13) The total amount of special taxes due, the total amount of unpaid special taxes, and whether or not the special taxes are paid under the county's Teeter Plan (Chapter 6.6 (commencing with Section 54773)).
(14) The reason and the date, if applicable, that the issue was retired.
(15) Contact information for the party providing the information.
(c) In addition, with respect to any bonds sold pursuant to this article, regardless when sold, and until the final maturity of the bonds, the legislative body shall notify the California Debt and Investment Advisory Commission by mail, postage prepaid, or by any other method approved by the California Debt and Investment Advisory Commission, within 10 days if any of the following events occur:
(1) The local agency or its trustee fails to pay principal and interest due on any scheduled payment date.
(2) Funds are withdrawn from a reserve fund to pay principal and interest on the bonds that reduce the reserve fund to less than the reserve requirement.
(d) Neither the legislative body nor the California Debt and Investment Advisory Commission shall be liable for any inadvertent error in reporting the information required by this section.
SEC. 108. Section 53360 of the Government Code is amended to read:
53360. The community facilities district may sell the bonds so issued at the times or in the manner the legislative body deems to be to the

public interest. However, except as otherwise provided in Section 53360.4, all bonds shall be sold on sealed proposals or through generally accepted electronic means to the highest bidder, after advertising for bids by publication of notice of sale pursuant to Section 53692. If no bids are received or if the legislative body determines that the bids received are not satisfactory as to price or responsibility of the bidders, the legislative body may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

SEC. 109. Section 53362.5 of the Government Code is amended to read:

53362.5. Refunding bonds shall not be issued if the total interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total interest cost to maturity on the bonds to be refunded plus the principal amount of the bonds to be refunded. Subject to these limitations, the principal amount of the refunding bonds may be more than, less than, or the same as the principal amount of the bonds to be refunded.

SEC. 110. Section 53363.7 of the Government Code is amended to read:

53363.7. The designated costs of issuing the refunding bonds, as defined by Section 53363.8, may be paid by the purchaser of the refunding bonds or may be paid from any other legally available source, including any available revenues of the legislative body, the proceeds of sale of the refunding bonds, the interest or other gain derived from the investment of any of the proceeds of sale of the refunding bonds, or any combination thereof, as determined by the legislative body. However, any amounts paid by the local agency other than from the proceeds of sale of the refunding bonds or from interest or other gains derived from the investment of the proceeds of sale shall be added to the total interest cost to maturity on the refunding bonds in determining whether the issuance of the refunding bonds complies with Section 53362.5.

SEC. 111. Section 53364.2 of the Government Code is amended to read:

53364.2. (a) If further facilities or services are authorized to be financed by the district, savings achieved through the issuance of refunding bonds may be used by the legislative body for those purposes.

(b) If no further facilities or services are authorized to be financed by the district, any savings achieved through the issuance of refunding bonds shall be used by the legislative body to reduce the special taxes levied to retire outstanding bonds.

(c) Savings achieved through the issuance of refunding bonds may be used pursuant to both subdivisions (a) and (b) in proportions determined by the legislative body.

(d) For purposes of this section, the terms "savings achieved through the issuance of refunding bonds" means the difference between the principal and interest to maturity of the refunded bonds and the principal and interest to maturity of the refunding bonds.

(e) If savings are to be used for authorized facilities, bonds may be issued that are secured by that savings.

SEC. 112. Section 53364.5 of the Government Code is amended to read:

53364.5. Any bonds issued by the district may be made callable by resolution of the legislative body adopted at or prior to the time of issuing the bonds. When bonds are made callable a statement to that effect shall be set forth on the face of the bonds. Callable bonds may be redeemed on any date prior to their fixed maturity in the amounts, manner, and prices prescribed by the legislative body.

SEC. 113. Section 53753 of the Government Code is amended to read:

53753. (a) The notice, protest, and hearing requirements imposed by this section supersede any statutory provisions applicable to the levy of a new or increased assessment that is in existence on the effective date of this section, whether or not that provision is in conflict with this article. Any agency that complies with the notice, protest, and hearing requirements of this section shall not be required to comply with any other statutory notice, protest, and hearing requirements that would otherwise be applicable to the levy of a new or increased assessment, with the exception of Division 4.5 (commencing with Section 3100) of the Streets and Highways Code. If the requirements of that division apply to the levy of a new or increased assessment, the levying agency shall comply with the notice, protest, and hearing requirements imposed by this section as well as with the requirements of that division.

(b) Prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, an agency shall give notice by mail to the record owner of each identified parcel. Each notice shall include the total amount of the proposed assessment chargeable to the entire district, the amount chargeable to the record owner's parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures for the completion, return, and tabulation of the assessment ballots required pursuant to subdivision (c), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the

assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property. An agency shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed assessment.

(c) Each notice given pursuant to subdivision (b) shall contain an assessment ballot that includes the agency's address for receipt of the form and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed assessment. Each assessment ballot shall be in a form that conceals its contents once it is sealed by the person submitting the assessment ballot. Each assessment ballot shall be signed and either mailed or otherwise delivered to the address indicated on the assessment ballot. Regardless of the method of delivery, all assessment ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to subdivision (e). Assessment ballots shall remain sealed until the tabulation of ballots pursuant to subdivision (e) commences, provided that an assessment ballot may be submitted, or changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the hearing required pursuant to subdivision (d). An agency may provide an envelope for the return of the assessment ballot, provided that if the return envelope is opened by the agency prior to the tabulation of ballots pursuant to subdivision (e), the enclosed assessment ballot shall remain sealed as provided in this section.

(d) At the time, date, and place stated in the notice mailed pursuant to subdivision (b), the agency shall conduct a public hearing upon the proposed assessment. At the public hearing, the agency shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.

(e) (1) At the conclusion of the public hearing conducted pursuant to subdivision (d), an impartial person designated by the agency who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. In a city, the impartial person may include, but is not limited to, the clerk of the agency. The impartial person may use technological methods of tabulating the assessment ballots, including, but not limited to, punchcard or optically readable (bar-coded) assessment ballots. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in Section 6252, and equally available for

inspection by the proponents and the opponents of the proposed assessment.

In the event that more than one of the record owners of an identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel shall be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the agency by documentation provided by those record owners.

(2) A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighting those assessment ballots by the amount of the proposed assessment to be imposed upon the identified parcel for which each assessment ballot was submitted.

(3) If there is a majority protest against the imposition of a new assessment, or the extension of an existing assessment, or an increase in an existing assessment, the agency shall not impose, extend, or increase the assessment.

(4) The majority protest proceedings described in this subdivision shall not constitute an election or voting for purposes of Article II of the California Constitution or of the California Elections Code.

SEC. 114. Section 3712 of the Revenue and Taxation Code is amended to read:

3712. The deed conveys title to the purchaser free of all encumbrances of any kind existing before the sale, except:

(a) Any lien for installments of taxes and special assessments, that installments will become payable upon the secured roll after the time of the sale.

(b) The lien for taxes or assessments or other rights of any taxing agency that does not consent to the sale under this chapter.

(c) Liens for special assessments levied upon the property conveyed that were, at the time of the sale under this chapter, not included in the amount necessary to redeem the tax-defaulted property, and, where a taxing agency that collects its own taxes has consented to the sale under this chapter, not included in the amount required to redeem from sale to the taxing agency.

(d) Easements constituting servitudes upon or burdens to the property; water rights, the record title to which is held separately from the title to the property; and restrictions of record.

(e) Unaccepted, recorded, irrevocable offers of dedication of the property to the public or a public entity for a public purpose, and recorded

options of any taxing agency to purchase the property or any interest therein for a public purpose.

(f) Unpaid assessments under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section 4671) of Part 8, or that are being collected through a foreclosure action pursuant to Part 14 (commencing with Section 8830) of Division 10 of the Streets and Highways Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Part 14 (commencing with Section 8830) of Division 10 of the Streets and Highways Code.

(g) Any federal Internal Revenue Service liens that, pursuant to provisions of federal law, are not discharged by the sale, even though the tax collector has provided proper notice to the Internal Revenue Service before that date.

(h) Unpaid special taxes under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section 4671) of Part 8, or that are being collected through a foreclosure action pursuant to Section 53356.1 of the Government Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Section 53356.1 of the Government Code.

SEC. 115. Section 3110 of the Streets and Highways Code is amended to read:

3110. (a) The proposed boundaries of the district to be specially taxed or assessed in proceedings shall be described by resolution or ordinance adopted by the legislative body prior to the hearing on the formation or extent of the district. The description of the proposed boundaries shall be by reference to a map of the district that shall indicate by a boundary line the extent of the territory included in the proposed district and the map shall govern for all details as to the extent of the district. The map shall also contain the name of the city and a distinctive designation, in words or by number, of the district shown on the map.

(b) The map shall be legibly drawn, printed or reproduced by a process that provides a permanent record. Each sheet of paper or other material used for the map shall be 18 by 26 inches in size, shall have clearly shown therein the particular number of the sheet, the total number of sheets comprising the map, and its relation to each adjoining sheet, and shall have encompassing its border a line that leaves a blank margin one inch in width.

The map shall be labeled substantially as follows: Proposed Boundaries of (here insert name or number of district) (here insert name of city and county thereafter), State of California.

In addition, if the resolution of intention to create the district proposes that some or all tax or bond proceeds of the district would be used to pay for cleanup of any hazardous substance, the map label shall include the following statement in large, conspicuous letters:

TAXES LEVIED BY THIS DISTRICT MAY BE USED TO PAY FOR CLEANUP OF HAZARDOUS SUBSTANCES.

If the map consists of more than one page, the same entitlement shall be on each page.

The map shall also have thereon legends reading substantially as follows:

(1) Filed in the office of the (clerk of the legislative body) this ____ day of ____, 20__.

_____

(Clerk of the legislative body)

(2) I hereby certify that the within map showing proposed boundaries of (here insert name or number of district) (here insert name of city, and, if not a county, insert name of county thereafter), State of California, was approved by the city council (or other appropriate legislative body) of the (here insert city) at a regular meeting thereof, held on the ____ day of ____, 20__, by its Resolution No. ____.

(3) Filed this ____ day of ____, 20__, at the hour of ____ o'clock _m. in Book ____ of Maps of Assessment and Community Facilities Districts at page ____, in the office of the county recorder in the County of ____, State of California.

_____

(County Recorder of County of _____)

SEC. 116. Section 3113 of the Streets and Highways Code is amended to read:

3113. The legislative body shall not order a modification in the boundaries of a district shown on a previously filed map of the district unless the legislative body describes the proposed modification by

reference to an amended map of the district boundary. The amended map shall be approved by resolution adopted by the legislative body and the clerk of the legislative body shall file the amended map showing the modification of boundaries of the district with the county recorder not later than 15 days after the resolution of the legislative body approving the amended boundary. The map shall also contain the legends provided for in Section 3110.

The county recorder shall endorse upon the modified or amended boundary map the time and date of the filing and shall fasten the same securely in a book of maps of assessment and community facilities districts that the county recorder keeps in his or her office pursuant to Section 3112. The county recorder shall cross-index the amended boundary map by reference to page and book of maps of assessment and community facilities districts in which the original boundary map of the affected district was filed.

The amended boundary map shall include on its face that it amends the boundary map for (here insert name or number of district or both name and number of district, together with city or county, or both city and county), State of California, prior recorded at Book __ of Maps of Assessment and Community Facilities Districts at page __, in the office of the County Recorder for the County of ____, State of California.

SEC. 117. Section 3114.5 of the Streets and Highways Code is amended to read:

3114.5. (a) This section applies only to community facilities districts.

(b) Within 15 days, in the case of a landowner vote, or 90 days, in the case of a registered voter election, after determination pursuant to Section 53328 of the Government Code that the requisite number of voters is in favor of the levy of a special tax, the clerk of the legislative body shall execute and record a notice of special tax lien in the office of the county recorder of each county in which all or any part of the community facilities district is located, and the county recorder shall accept that notice. The county recorder shall index the notice of special tax liens to the names of the property owners within the community facilities district and shown in the notice, as grantors. The notice of special tax lien shall contain the information required by Section 27288.1 of the Government Code and shall be in substantially the following form:

NOTICE OF SPECIAL TAX LIEN

Pursuant to the requirements of Section 3114.5 of the Streets and Highways Code and Section 53328.3 of the Government Code, the undersigned clerk of the legislative body of ____, State of California, hereby gives notice that a lien to secure payment of a special tax is hereby

imposed by the (here insert name of legislative body) of (here insert city and name of county thereafter), State of California. The special tax secured by this lien is authorized to be levied for the purpose of: (as applicable) (1) paying principal and interest on bonds, the proceeds of which are being used to finance (briefly describe facilities financed); (2) providing (briefly describe facilities financed without bonds); (3) providing (briefly describe services being financed).

If all or any portion of the proceeds of taxes or bonds of the district are authorized to be used to pay for cleanup of hazardous substances pursuant to subdivision (f) of Section 53313 of the Government Code, the notice shall also contain the following statement in large conspicuous type:

TAXES LEVIED BY THIS DISTRICT MAY BE USED TO PAY FOR CLEANUP OF HAZARDOUS SUBSTANCES.

The special tax is authorized to be levied within Community Facilities District No. ___ that has now been officially formed and the lien of the special tax is a continuing lien that shall secure each annual levy of the special tax and that shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of the authorized special tax is as follows: (here insert verbatim the description of the rate, method of apportionment, and manner of collection from the resolution of formation of the community facilities district). Conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied and the lien of the special tax canceled are as follows: (here insert the conditions set forth in the resolution of formation or, if no provision has been made for prepayment of the special tax obligation, so state).

Notice is further given that upon the recording of this notice in the office of the county recorder, the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within Community Facilities District No. ____ in accordance with Section 3115.5 of the Streets and Highways Code.

The name(s) of the owner(s) and the assessor's tax parcel number(s) of the real property included within this community facilities district and not exempt from the special tax are as follows: (insert name(s) of owner(s) and tax parcel number(s) shown on assessment roll).

Reference is made to the boundary map (or the amended boundary map) of the community facilities district recorded at Book ___ of Maps of Assessment and Community Facilities Districts at Page ___, in the office of the County Recorder for the County of ____, State of California which map is now the final boundary map of the community facilities district.

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact (here provide name, address, and telephone number of the appropriate office, department, or bureau of the public entity designated pursuant to Section 53340.2 of the Government Code).

(c) The county recorder shall endorse upon the notice the time and date of filing, and shall cross index the notice by reference to the page of the book of maps of assessment and community facilities districts in which the boundary map of the district was filed.

SEC. 118. Section 3115.5 of the Streets and Highways Code is amended to read:

3115.5. (a) This section applies only to community facilities districts.

(b) From the date of the recording in the office of the county recorder pursuant to Section 3114.5, or if the community facilities district is located in two or more counties, then from the date of the recording in the office of each county recorder where a notice is recorded, all persons are deemed to have notice of the contents of the Notice of Special Tax Lien with respect to parcels in that county.

(c) Upon the date of the recordings made pursuant to subdivision (b), the notice of special tax lien shall impose a lien upon all nonexempt real property in the district within that county. The lien imposed pursuant to this section shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code.

SEC. 119. Section 3117.5 of the Streets and Highways Code is amended to read:

3117.5. (a) In the event of amendment or modification of, or annexation to, the boundaries of a community facilities district, an amendment to the Notice of Special Tax Lien shall be prepared and recorded under the procedure of Section 3114.5. In the listing of property owners, the amended notice need only list separately the names of the owners and assessor's tax parcel numbers of parcels being added to the district and the names of the owners and assessor's parcel numbers of

parcels being excluded from the district. This amendment need not supersede the existing notice.

(b) If any proceedings subsequent to the approval by the voters of a special tax pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, result in a change in the authorization to levy a special tax or to issue bonds, or a change in the facilities or services authorized to be financed, the clerk of the legislative body shall record an amendment to the original (or, if it has been superseded, the most recent) Notice of Special Tax Lien and any amendments thereto that shall reference the recorder's serial or document number and recording date of that notice and any amendments to it and shall clearly set forth the changes.

SEC. 120. Section 8837 is added to the Streets and Highways Code, to read:

8837. This section applies if delinquent assessment installments, together with any penalties, interest, and costs, are collected through the sale of the property by the tax collector pursuant to Chapter 7 (commencing with Section 3691) of Part 6 of Division 1 of the Revenue and Tax Code.

(a) If the property is sold for at least the total amount necessary to redeem plus costs, as defined in Section 3698.5 of the Revenue and Taxation Code, the sale of the property shall extinguish the delinquent assessment installments, interest, penalties, and costs included in the sale price.

(b) If the property is sold for less than the total amount necessary to redeem plus costs, as defined in Section 3698.5 of the Revenue and Taxation Code, the following applies:

(1) The portion of the sales price paid by the tax collector to the local agency on account of the delinquent assessment installments shall be credited by the local agency first to delinquent interest and redemption penalties, and then to delinquent principal.

(2) The remainder of the delinquent assessment installments and redemption penalties, if any, shall remain due and owing.

(3) Redemption penalties shall continue to accrue on remaining unpaid delinquent assessment installments.

(4) The remaining unpaid amount, with penalties, may be added as postjudgment delinquencies to any existing unsatisfied foreclosure judgment against the property, or may be collected in a new foreclosure action filed pursuant to this chapter.

CHAPTER 671

An act to amend Section 16642 of, and to add Section 7513.7 to, the Government Code, relating to investments.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The Securities and Exchange Commission has determined that business activities in foreign states such as Iran sponsoring terrorism and that are subject to sanctions by the United States may materially harm the share value of foreign companies. Shares in these foreign companies may be held in the portfolio of public retirement systems in this state.

(b) Publicly traded companies in the United States are substantially restricted in doing business in or with foreign states such as Iran that the United States Department of State has identified as sponsoring terrorism.

(c) Public retirement systems in this state currently invest on behalf of the citizens of California in publicly traded foreign companies that may be at risk due to business ties with foreign states such as Iran that sponsor terrorism and are involved in the proliferation of weapons of mass destruction.

(d) Investments in publicly traded foreign companies that have business operations in or with foreign states such as Iran are liable for sanctions under United States law and risk the pensions of the dedicated public employees of this state.

(e) Excluding companies with business activities in foreign states such as Iran that sponsor terrorism and divesting from public portfolios will help protect the public retirement systems in this state from investment losses related to these business activities and may improve the investment performance of the public retirement systems.

(f) Public Law 104-172, as renewed and amended in 2001 and 2006, specifically provides for sanctions to be imposed on any entity that has invested at least twenty million dollars ($20,000,000) in any year since 1996 to develop petroleum or natural gas resources of Iran.

(g) It is unconscionable for this state to invest in foreign companies with business activities benefiting foreign states such as Iran that commit egregious violations of human rights and sponsor terrorism.

(h) It is the Government of Iran, and not the people of Iran, that is responsible for Iran's support of terrorism and which commits egregious

violations of human rights under which its own citizens are required to live.

SEC. 2. Section 7513.7 is added to the Government Code, to read:

7513.7. (a) As used in this section, the following definitions shall apply:

(1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(2) "Business operations" means maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Iran, including the ownership or possession of real or personal property located in Iran.

(3) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. "Company" also means a company owned or controlled, either directly or indirectly, by the government of Iran, that is established or organized under the laws of or has its principal place of business in the Islamic Republic of Iran.

(4) "Government of Iran" means the government of Iran or its instrumentalities or political subdivisions. "Government of Iran" also means an individual, company, or public agency located in Iran that provides material or financial support to the Islamic Republic of Iran.

(5) "Invest" or "investment" means the purchase, ownership, or control of stock of a company, association, or corporation, the capital stock of a mutual water company or corporation, bonds issued by the government or a political subdivision of Iran, corporate bonds or other debt instruments issued by a company, or the commitment of funds or other assets to a company, including a loan or extension of credit to that company.

(6) "Iran" means the Islamic Republic of Iran or a territory under the administration or control of Iran.

(7) "Military equipment" means weapons, arms, or military defense supplies.

(8) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(9) "Substantial action" means a boycott of the government of Iran, curtailing business in Iran until that time described in subdivision (m), or selling company assets, equipment, or real and personal property located in Iran.

(b) The board shall not invest public employee retirement funds in a company which has business operations in Iran as identified by the board through, as the board deems appropriate, publicly available information including, but not limited to, information provided by nonprofit and other organizations and government entities, that meets either of the following criteria:

(1) The company (A) is invested in or engaged in business operations with entities in the defense or nuclear sectors of Iran or (B) is invested in or engaged in business operations with entities involved in the development of petroleum or natural gas resources of Iran, and that company is subject to sanctions under Public Law 104-172, as renewed and amended in 2001 and 2006.

(2) The company has demonstrated complicity with an Iranian organization that has been labeled as a terrorist organization by the United States government.

(c) On or before June 30, 2008, the board shall determine which companies are subject to divestment.

(d) After the determination described in subdivision (c), the board shall determine, by the next applicable board meeting, if a company meets the criteria described in subdivision (b). If the board plans to invest or has investments in a company that meets the criteria described in subdivision (b), that planned or existing investment shall be subject to subdivisions (g) and (h).

(e) Investments of the board in a company that does not meet the criteria described in subdivision (b) are not subject to subdivision (h) if the company does not subsequently meet the criteria described in subdivision (b). The board shall identify the reasons why that company does not satisfy the criteria described in subdivision (b) in the report to the Legislature described in subdivision (i).

(f) (1) Notwithstanding subdivisions (d) and (e), if the board's investment in a company described in subdivision (b) is limited to investment via an externally and actively managed commingled fund, the board shall contact that fund manager in writing and request that the fund manager remove that company from the fund as described in subdivision (h). On or before June 30, 2008, if the fund or account manager creates a fund or account devoid of companies described in subdivision (b), the transfer of board investments from the prior fund or account to the fund or account devoid of companies with business operations in Iran shall be deemed to satisfy subdivision (h).

(2) If the board's investment in a company described in subdivision (b) is limited to an alternative fund or account, the alternative fund or account manager creates an actively managed commingled fund that excludes companies described in subdivision (b), and the new fund or

account is deemed to be financially equivalent to the existing fund or account, the transfer of board investments from the existing fund or account to the new fund or account shall be deemed to satisfy subdivision (h). If the board determines that the new fund or account is not financially equivalent to the existing fund, the board shall include the reasons for that determination in the report described in subdivision (i).

(3) The board shall make a good faith effort to identify any private equity investments that involve companies described in subdivision (b), or are linked to the government of Iran. If the board determines that a private equity investment clearly involves a company described in subdivision (b), or is linked to the government of Iran, the board shall consider, at its discretion, if those private equity investments shall be subject to subdivision (h). If the board determines that a private equity investment clearly involves a company described in subdivision (b), or is linked to the government of Iran and the board does not take action as described in subdivision (h), the board shall include the reasons for its decision in the report described in subdivision (i).

(g) Except as described in subdivisions (e) and (f), the board, in the board's capacity of shareholder or investor, shall notify any company described in subdivision (d) that the company is subject to subdivision (h) and permit that company to respond to the board. The board shall request that the company take substantial action no later than 90 days from the date the board notified the company under this subdivision. If the board determines that a company has taken substantial action or has made sufficient progress towards substantial action before the expiration of that 90-day period, that company shall not be subject to subdivision (h). The board shall, at intervals not to exceed 90 days, continue to monitor and review the progress of the company until that company has taken substantial action in Iran. A company that fails to complete substantial action within one year from the date of the initial notice by the board shall be subject to subdivision (h).

(h) If a company described in subdivision (d) fails to complete substantial action by the time described in subdivision (g), the board shall take the following actions:

(1) The board shall not make additional or new investments or renew existing investments in that company.

(2) The board shall liquidate the investments of the board in that company no later than 18 months after this subdivision applies to that company. The board shall liquidate those investments in a manner to address the need for companies to take substantial action in Iran and consistent with the board's fiduciary responsibilities as described in Section 17 of Article XVI of the California Constitution.

(i) On or before January 1, 2009, and every year thereafter, the board shall file a report with the Legislature. The report shall describe the following:

(1) A list of investments the board has in companies with business operations that satisfy the criteria in subdivision (b), including, but not limited to, the issuer, by name, of the stock, bonds, securities, and other evidence of indebtedness.

(2) A detailed summary of the business operations a company described in paragraph (1) has in Iran.

(3) Whether the board has reduced its investments in a company that satisfies the criteria in subdivision (b).

(4) If the board has not completely reduced its investments in a company that satisfies the criteria in subdivision (b), when the board anticipates that the board will reduce all investments in that company or the reasons why a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

(5) Any information described in subdivisions (d) and (e).

(6) A detailed summary of investments that were transferred to funds or accounts devoid of companies with business operations in Iran as described in subdivision (f).

(7) An annual calculation of any costs or investment losses or other financial results incurred in compliance with the provisions of this section.

(j) If the board voluntarily sells or transfers all of its investments in a company with business operations in Iran, this section shall not apply except that the board shall file a report with the Legislature related to that company as described in subdivision (i).

(k) Nothing in this section shall require the board to take action as described in this section unless the board determines, in good faith, that the action described in this section is consistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

(*l*) Subdivision (h) shall not apply to any of the following:

(1) Investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Iran.

(2) Investments in a company that promotes health, education, or journalistic, religious, or welfare activities in Iran.

(3) Investments in a United States company that is authorized by the federal government to have business operations in Iran.

(m) This section shall cease to be operative if both of the following apply:

(1) Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide support for acts of international terrorism.

(2) Pursuant to Public Law 104-172, as amended, the President of the United States determines and certifies to the appropriate committee of the Congress of the United States that Iran has ceased its efforts to design, develop, manufacture, or acquire a nuclear explosive device or related materials and technology.

(n) This section shall be known and may be cited as the California Public Divest from Iran Act.

SEC. 3. Section 16642 of the Government Code is amended to read:

16642. Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms as described in subdivision (d) of Section 7513.6, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Sections 7513.6 and 7513.7.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 672

An act to add Chapter 11 (commencing with Section 108935) to Part 3 of Division 104 of the Health and Safety Code, relating to product safety.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(a) Phthalates are a class of chemicals used in polyvinyl chloride (PVC) plastic to improve flexibility and in cosmetics to bind fragrance to the product. Phthalates are used in many products intended for use by young children, including, but not limited to, teethers, toys, and soft plastic books.

(b) There is extensive scientific literature reporting the hormone-disrupting effects phthalates and substantial evidence that levels of the phthalates of concern are found in humans at levels associated with adverse effects. Population studies show that virtually everyone carries some level of phthalates in their body. For the general population, the oral route of exposure is considered a major route.

SEC. 2. Chapter 11 (commencing with Section 108935) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

Chapter 11. Phthalates in Products for Young Children

108935. For the purposes of this chapter, the following terms have the following meanings:

(a) "Toy" means all products designed or intended by the manufacturer to be used by children when they play.

(b) "Child care article" means all products designed or intended by the manufacturer to facilitate sleep, relaxation, or the feeding of children, or to help children with sucking or teething.

108937. (a) Commencing January 1, 2009, no person or entity shall manufacture, sell, or distribute in commerce any toy or child care article that contains di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP), in concentrations exceeding 0.1 percent.

(b) Commencing January 1, 2009, no person or entity shall manufacture, sell, or distribute in commerce any toy or child care article intended for use by a child under three years of age if that product can be placed in the child's mouth and contains diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP), in concentrations exceeding 0.1 percent.

108939. (a) Manufacturers shall use the least toxic alternative when replacing phthalates in accordance with this chapter.

(b) Manufacturers shall not replace phthalates, pursuant to this chapter, with carcinogens rated by the United States Environmental Protection Agency as A, B, or C carcinogens, or substances listed as known or likely carcinogens, known to be human carcinogens, likely to be human

carcinogens, or suggestive of being human carcinogens, as described in the "List of Chemicals Evaluated for Carcinogenic Potential," or known to the state to cause cancer as listed in the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12).

(c) Manufacturers shall not replace phthalates, pursuant to this chapter, with reproductive toxicants that cause birth defects, reproductive harm, or developmental harm as identified by the United States Environmental Protection Agency or listed in the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12).

CHAPTER 673

An act to amend Section 2333.5 of, to amend and repeal Sections 2331 and 2333 of, and to add and repeal Section 2333.6 of, the Streets and Highways Code, relating to highways.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 2331 of the Streets and Highways Code, as amended by Section 1 of Chapter 392 of the Statutes of 2004, is amended to read:

2331. The Safe, Accountable, Flexible, Efficient Transportation Equity Act-A Legacy for Users of 2005 (Public Law 109-059), also known as SAFETEA-LU, elevated the Highway Safety Improvement Program (HSIP) to a core program (23 U.S.C. Sec. 148). SAFETEA-LU authorized appropriations for programs relating to highway safety improvements that can reduce the number of fatal and serious injury accidents. The core HSIP program includes two set-aside programs: the railway-highway crossing program (23 U.S.C. Sec. 130) and the high-risk rural roads program (23 U.S.C. Sec. 148(f)). The purpose of this chapter is to implement these programs in this state. The commission, the department, boards of supervisors, and city councils are authorized to do all things necessary in their respective jurisdictions to secure and expend federal funds in accordance with the intent of that federal act and this chapter, and to coordinate with local law enforcement agencies' community policing efforts.

SEC. 2. Section 2331 of the Streets and Highways Code, as amended by Section 2 of Chapter 392 of the Statutes of 2004, is repealed.

SEC. 3. Section 2333 of the Streets and Highways Code, as amended by Section 3 of Chapter 392 of the Statutes of 2004, is amended to read:

2333. In each annual proposed budget prepared pursuant to Section 165, there shall be included an amount equal to the estimated apportionment available from the federal government for the programs described in Sections 2331 and 2333.5. The commission may allocate a portion of those funds each year for use on city streets and county roads. It is the intent of the Legislature that the commission allocate the total funds received from the federal government under Section 148 of Title 23 of the United States Code in approximately equal amounts between state highways and local roads. Notwithstanding any other provision of law, the share of any railroad of the cost of maintaining railroad crossing protection facilities funded, in whole or in part, by funds described in Section 2331 shall be the same share it would be if no federal funds were involved and the crossing protection facilities were funded pursuant to an order of the Public Utilities Commission pursuant to Section 1202 of the Public Utilities Code; and in case of dispute, the Public Utilities Commission shall determine that share pursuant to this section.

SEC. 4. Section 2333 of the Streets and Highways Code, as amended by Section 4 of Chapter 392 of the Statutes of 2004, is repealed.

SEC. 5. Section 2333.5 of the Streets and Highways Code is amended to read:

2333.5. (a) The department, in consultation with the Department of the California Highway Patrol, shall establish and administer a "Safe Routes to School" construction program for construction of bicycle and pedestrian safety and traffic calming projects.

(b) The department shall award grants to local governmental agencies under the program based on the results of a statewide competition that requires submission of proposals for funding and rates those proposals on all of the following factors:

(1) Demonstrated needs of the applicant.

(2) Potential of the proposal for reducing child injuries and fatalities.

(3) Potential of the proposal for encouraging increased walking and bicycling among students.

(4) Identification of safety hazards.

(5) Identification of current and potential walking and bicycling routes to school.

(6) Consultation and support for projects by school-based associations, local traffic engineers, local elected officials, law enforcement agencies, school officials, and other relevant community stakeholders.

(c) Any annual budget allocation to fund grants described in subdivision (b) shall be in addition to any federal funding received by

the state that is designated for "Safe Routes to School" projects pursuant to Section 1404 of SAFETEA-LU or any similar program funded through a subsequent transportation act.

(d) Any federal funding received by the state that is designated for "Safe Routes to School" projects shall be distributed by the department under the competitive grant process, consistent with all applicable federal requirements.

(e) Prior to the award of any construction grant or the department's use of those funds for a "Safe Routes to School" construction project encompassing a freeway, state highway or county road, the department shall consult with, and obtain approval from, the Department of the California Highway Patrol, ensuring that the "Safe Routes to School" proposal compliments the California Highway Patrol's Pedestrian Corridor Safety Program and is consistent with its statewide pedestrian safety statistical analysis.

(f) The department is encouraged to coordinate with law enforcement agencies' community policing efforts in establishing and maintaining the "Safe Routes to School" construction program.

SEC. 6. Section 2333.6 is added to the Streets and Highways Code, to read:

2333.6. (a) Consistent with applicable laws governing the encumbrance and expenditure of funds, the department may administer the competitive grant program authorized under Section 2333.5, as amended by Chapter 392 of the Statutes of 2004, for purposes of awarding grants, and encumbering and expending any funds allocated by the commission during the 2006–07 and 2007–08 fiscal years pursuant to Section 2333 as amended by that chapter.

(b) For any funds allocated by the commission during the 2006–07 and 2007–08 fiscal years pursuant to Section 2333, as amended by Section 3 of Chapter 392 of the Statutes of 2004, the department may substitute State Highway Account funds in accordance with the department's policy for state funding in place at the time of the project fund allocation, if those federal funds are directed to projects on state highways that are eligible for funding under Section 148 of Title 23 of the United States Code.

(c) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is chaptered before January 1, 2013, deletes or extends that date.

CHAPTER 674

An act to amend Section 25240 of, and to add Section 25244 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(a) That wine produced in Paso Robles from grapes grown in the Paso Robles region has national and international recognition.

(b) That Paso Robles was designated a viticultural area in 1983 by the federal government, and that designation authorizes growers and vintners, whose wine is derived from at least 85 percent of grapes grown in the Paso Robles region, to label their wines as Paso Robles wines.

(c) California's Central Coast is geologically different from other California winegrowing regions. The proximity of the Pacific Ocean, orientation of numerous canyons and valleys, and varying elevations produce many different distinct microclimates, including the largest variation between high daytime and low nighttime temperatures of any region in California because of the cool marine air that flows east through the Templeton Gap and south along the Salinas River Valley from the Monterey Bay.

(d) Since the early 1990s, Paso Robles wines have proven consistent gold medal winners and have been featured regularly in the top rankings of national and international wine reviews. A milestone in the worldwide recognition of Paso Robles as a premier wine region came in 1997 when a local product was named one of the top 10 wines in the world by the Wine Spectator.

(e) In the last eight years, the number of wineries in the Paso Robles wine country has tripled from 50 to 170, mostly due to an increase of boutique and small family owned vineyards and wineries. The appellation's burgeoning reputation has also lured a number of winemakers from France, Australia, South Africa, and Switzerland who are eager to find new applications for their winemaking skills.

(f) The likely proliferation of smaller, separate viticultural area designations, while highly desirable within the developing Paso Robles region, has the potential of diminishing the historical, agricultural, and economic importance of the Paso Robles winegrowing area and confusing consumers.

(g) Thus, it is necessary to require wines produced within the boundaries of the existing Paso Robles appellation to be labeled as being derived from that region, if the wine label indicates that they are produced within a separate viticultural area within Paso Robles wine country, to preserve consumer identification and understanding of the name "Paso Robles" and to protect this important state agricultural resource and wine products derived from that area.

SEC. 2. Section 25240 of the Business and Professions Code is amended to read:

25240. (a) Any wine labeled with a viticultural area appellation of origin established pursuant to Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations, other than the viticultural area "Napa Valley," and which is located entirely within a county of the 29th class, shall bear the designation "Napa Valley" on the label in direct conjunction therewith in a type size not smaller than 1mm less than that of the viticultural area designation provided neither designation is smaller than 2mm on containers of more than 187ml or smaller than 1mm on containers of 187ml or less. This requirement shall apply to all wines bottled on or after January 1, 1990.

(b) The department may suspend or revoke the license of any person who violates this section.

(c) This section shall not apply to any wine labeled with a viticultural area appellation of origin established pursuant to Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations when the name of the appellation includes the term "Napa Valley."

SEC. 3. Section 25244 is added to the Business and Professions Code, to read:

25244. (a) Any wine labeled with a viticultural area appellation of origin established pursuant to Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations that is located entirely within the "Paso Robles" viticultural area shall bear the designation "Paso Robles" on the label in direct conjunction therewith in a type size not smaller than 1mm less than that of said viticultural area designation, provided neither designation is smaller than 2mm on containers of more than 187ml or smaller than 1mm on containers of 187ml or less.

(b) The department may suspend or revoke the license of any person who violates this section.

(c) This section shall not apply to any wine labeled with a viticultural area appellation of origin established pursuant to Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations when the name of the appellation includes the term "Paso Robles."

(d) This section applies only to wine that is bottled on or after January 1, 2008.

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 675

An act to amend Sections 5100, 5103, and 10004.6 of, and to add Article 4.3 (commencing with Section 531) to Chapter 8 of Division 1 of, the Water Code, relating to water.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(a) As growth and development continue to make California's water resources increasingly scarce, diverse stakeholder groups have recognized the importance of accurate water measurement. Appropriate measurement of water use facilitates better water management by making critical information available to local, state, and federal water managers and planners. A greater understanding of water use will support better decisions related to water planning, water allocations, water transfers, and water use efficiency.

(b) On April 8, 2004, the California Bay-Delta Authority approved an urban and agricultural water use measurement proposal that was developed through an open multiyear process of technical review and consultation by diverse stakeholders and agencies. The review and consultation were designed to result in a balanced package of actions that together can advance meaningful and beneficial change.

(c) Agricultural water measurement recommendations were developed by an independent panel that issued a report in September 2003 entitled "Independent Panel on Appropriate Measurement of Agricultural Water Use." The independent panel identified seven categories for improving agricultural water measurement, and on a region-by-region basis evaluated the costs and benefits associated with changing the current practices. The panel emphasized that implementation of new

measurement methods must be adaptive, account for changes in technology and economics, and allow for local flexibility. Implementation approaches were directed to be regionally sensitive, incentive driven, and cost effective.

(d) The Department of Water Resources, the State Water Resources Control Board, the State Department of Public Health, and the California Bay-Delta Authority should cooperate and coordinate their efforts in collecting, managing, and utilizing water use measurement information to ensure that the information is put to optimal use in water resource planning and decisionmaking, to increase efficiency, and to reduce redundancy of effort, administrative costs, and duplicative reporting burdens on persons required to report measurement information.

(e) Interagency coordination is particularly necessary for the purposes of developing forms, protocols, data sets, and research on measurement-related issues, and for the purpose of undertaking adaptive management to identify future actions to improve water use measurement and water use efficiency in California.

SEC. 2. Article 4.3 (commencing with Section 531) is added to Chapter 8 of Division 1 of the Water Code, to read:

Article 4.3. Agricultural and Urban Water Use Reporting

531. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this article.

(a) "Aggregated farm-gate delivery data" means information reflecting the total volume of water an agricultural water supplier provides to its customers and is calculated by totaling its deliveries to individual customers.

(b) "Agricultural water supplier" means a supplier either publicly or privately owned, supplying 2,000 acre-feet or more of surface water annually for agricultural purposes or serving 2,000 or more acres of agricultural land. An agricultural water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells water for ultimate resale to customers.

(c) "Authority" means the California Bay-Delta Authority.

(d) "Best professional practices" means practices attaining and maintaining accuracy of measurement and reporting devices and methods.

(e) "Diversion" has the meaning set forth in subdivision (c) of Section 5100.

(f) "Farm-gate" means the point at which water is delivered from the agricultural water supplier's distribution system to each of its customers.

(g) "Person" has the meaning set forth in subdivision (d) of Section 5100.

531.2. The department, the board, and the State Department of Public Health shall coordinate the collection, management, and use of agricultural and urban water measurement information provided to each agency.

531.5. (a) The board, in collaboration with the department, the authority or its successor agency, and the State Department of Public Health, shall prepare and submit a report to the Legislature by January 1, 2009, evaluating the feasibility, estimated costs, and potential means of financing a coordinated water measurement database. The evaluation shall include, but is not necessarily limited to, agricultural and urban water measurement data related to deliveries, diversions, licenses, permits, and other information received by these state agencies that supports effective state and regional water management planning and decisionmaking. The evaluation shall also consider how the database can provide information to address impacts related to climate change mitigation and adaptation.

(b) The report shall consider coordinating the collection and sharing of data through the use of technologies used by the National Environmental Information Exchange Network and the existing data exchange infrastructure of the involved agencies.

(c) It is the intent of the Legislature that the report provide an initial feasibility assessment, and is not intended to serve as the final Feasibility Study Report required by the State Administrative Manual.

531.10. (a) An agricultural water supplier shall submit an annual report to the department that summarizes aggregated farm-gate delivery data, on a monthly or bimonthly basis, using best professional practices.

(b) Nothing in this article shall be construed to require the implementation of water measurement programs or practices that are not locally cost effective.

(c) It is the intent of the Legislature that the requirements of this section shall complement and not affect the scope of authority granted to the department or the board by provisions of law other than this article.

531.15. Notwithstanding any other provision of the law, state agencies shall carry out the duties described in this article only to the extent that funds are made available for the purposes of implementing those duties.

531.20. To the extent that the provisions of this article conflict with the requirements of Chapter 4800 of the State Administrative Manual, the requirements of that chapter shall control.

SEC. 3. Section 5100 of the Water Code is amended to read:

5100. As used in this part:

(a) "Best available technologies" means technologies at the highest technically practical level, using flow totaling devices, and if necessary, data loggers and telemetry.

(b) "Best professional practices" means practices attaining and maintaining the accuracy of measurement and reporting devices and methods.

(c) "Diversion" means taking water by gravity or pumping from a surface stream or subterranean stream flowing through a known and definite channel, or other body of surface water, into a canal, pipeline, or other conduit, and includes impoundment of water in a reservoir.

(d) "Person" means all persons whether natural or artificial, including the United States of America, State of California, and all political subdivisions, districts, municipalities, and public agencies.

(e) "Tidal zone" means those portions of the Sacramento-San Joaquin Delta as described in Section 12220 that are ordinarily subject to tidal action.

SEC. 4. Section 5103 of the Water Code is amended to read:

5103. Each statement shall be prepared on a form provided by the board. The statement shall include all of the following information:

(a) The name and address of the person who diverted water and of the person filing the statement.

(b) The name of the stream or other source from which water was diverted, and the name of the next major stream or other body of water to which the source is tributary.

(c) The place of diversion. If a public land survey has been made, location of diversion works shall be described to the nearest 40-acre subdivision. If not, it shall be described by reference to nearest local landmarks or other recorded surveys.

(d) The capacity of the diversion works and of the storage reservoir, if any, and the months in which water was used during the preceding calendar year.

(e) (1) On and after January 1, 2012, monthly records of water diversions. The measurements of the diversion shall be made using best available technologies and best professional practices. Nothing in this paragraph shall be construed to require the implementation of technologies or practices that are not locally cost effective.

(2) Paragraph (1) does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone.

(3) (A) The terms of, and eligibility for, any grant or loan awarded or administered by the department, the board, or the California Bay-Delta Authority on behalf of a person that is subject to paragraph (1) shall be conditioned on compliance with that paragraph.

(B) Notwithstanding subparagraph (A), the board may determine that a person is eligible for a grant or loan even though the person is not complying with paragraph (1), if both of the following apply:

(i) The board determines that the grant or loan will assist the grantee or loan recipient in complying with paragraph (1).

(ii) The person has submitted to the board a one-year schedule for complying with paragraph (1).

(C) It is the intent of the Legislature that the requirements of this subdivision shall complement and not affect the scope of authority granted to the board by provisions of law other than this article.

(f) For persons not subject to paragraph (1) of subdivision (e), a description of the acreage of each crop irrigated, the average number of people served with water, the average number of stock watered, and the nature and extent of any other use during the preceding calendar year, or other equivalent information that indicates the quantity of water used as may be prescribed by the board. Those who maintain water measuring devices and keep monthly records of water diversions shall state the quantity of water diverted by months during the preceding calendar year.

(g) The purpose of use.

(h) A general description of the area in which the water was used. If the water was used on an area within the $\frac{1}{16}$ section containing the point of diversion, a statement to that effect will suffice; otherwise a description or sketch of the general area of use shall be given.

(i) The year in which the diversion was commenced as near as is known.

SEC. 5. Section 10004.6 of the Water Code is amended to read:

10004.6. (a) As part of updating The California Water Plan every five years pursuant to subdivision (b) of Section 10004, the department shall conduct a study to determine the amount of water needed to meet the state's future needs and to recommend programs, policies, and facilities to meet those needs.

(b) The department shall consult with the advisory committee established pursuant to subdivision (b) of Section 10004 in carrying out this section.

(c) On or before January 1, 2002, and one year prior to issuing each successive update to The California Water Plan, the department shall release a preliminary draft of the assumptions and other estimates upon which the study will be based, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these documents when adopting the final assumptions and estimates for the study. For the purpose of carrying out this subdivision, the department shall release, at a minimum, assumptions and other estimates relating to all of the following:

(1) Basin hydrology, including annual rainfall, estimated unimpaired streamflow, depletions, and consumptive uses.

(2) Groundwater supplies, including estimates of sustainable yield, supplies necessary to recover overdraft basins, and supplies lost due to pollution and other groundwater contaminants.

(3) Current and projected land use patterns, including the mix of residential, commercial, industrial, agricultural, and undeveloped lands.

(4) Environmental water needs, including regulatory instream flow requirements, nonregulated instream uses, and water needs by wetlands, preserves, refuges, and other managed and unmanaged natural resource lands.

(5) Current and projected population.

(6) Current and projected water use for all of the following:

(A) Interior uses in a single-family dwelling.

(B) Exterior uses in a single-family dwelling.

(C) All uses in a multifamily dwelling.

(D) Commercial uses.

(E) Industrial uses.

(F) Parks and open spaces.

(G) Agricultural water diversion and use.

(7) Evapotranspiration rates for major crop types, including estimates of evaporative losses by irrigation practice and the extent to which evaporation reduces transpiration.

(8) Current and projected adoption of urban and agricultural conservation practices.

(9) Current and projected supplies of water provided by water recycling and reuse.

(d) The department shall include a discussion of the potential for alternative water pricing policies to change current and projected water uses identified pursuant to paragraph (6) of subdivision (c).

(e) Nothing in this section requires or prohibits the department from updating any data necessary to update The California Water Plan pursuant to subdivision (b) of Section 10004.

SEC. 5.5. Section 10004.6 of the Water Code is amended to read:

10004.6. (a) As part of updating the California Water Plan every five years pursuant to subdivision (b) of Section 10004, the department shall conduct a study to determine the amount of water needed to meet the state's future needs and to recommend programs, policies, and facilities to meet those needs.

(b) The department shall consult with the advisory committee established pursuant to subdivision (b) of Section 10004 in carrying out this section.

(c) One year prior to issuing each update to the California Water Plan, the department shall release a preliminary draft of the assumptions and other estimates upon which the study will be based, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these documents when adopting the final assumptions and estimates for the study. For the purpose of carrying out this subdivision, the department shall release, at a minimum, assumptions and other estimates relating to all of the following:

(1) Basin hydrology, including annual rainfall, estimated unimpaired streamflow, depletions, and consumptive uses.

(2) Groundwater supplies, including estimates of sustainable yield, supplies necessary to recover overdraft basins, and supplies lost due to pollution and other groundwater contaminants.

(3) Current and projected land use patterns, including the mix of residential, commercial, industrial, agricultural, and undeveloped lands.

(4) Environmental water needs, including regulatory instream flow requirements, nonregulated instream uses, and water needs by wetlands, preserves, refuges, and other managed and unmanaged natural resource lands.

(5) Current and projected population.

(6) Current and projected water use for all of the following:

(A) Interior uses in a single-family dwelling.

(B) Exterior uses in a single-family dwelling.

(C) All uses in a multifamily dwelling.

(D) Commercial uses.

(E) Industrial uses.

(F) Parks and open spaces.

(G) Agricultural water diversion and use.

(7) Evapotranspiration rates for major crop types, including estimates of evaporative losses by irrigation practice and the extent to which evaporation reduces transpiration.

(8) Current and projected adoption of urban and agricultural conservation practices.

(9) Current and projected supplies of water provided by water recycling and reuse.

(10) For a preliminary draft of the assumptions and other estimates due on or after December 31, 2012, the amount of energy both produced by and required to provide current and projected water supplies during periods of both peak and nonpeak use, including consideration of the costs and benefits of the energy both produced and required by the current and projected water supplies.

(d) The department shall include a discussion of the potential for alternative water pricing policies to change current and projected water uses identified pursuant to paragraph (6) of subdivision (c).

(e) Nothing in this section requires or prohibits the department from updating any data necessary to update the California Water Plan pursuant to subdivision (b) of Section 10004.

SEC. 6. Section 5.5 of this bill incorporates amendments to Section 10004.6 of the Water Code proposed by both this bill and SB 862. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 10004.6 of the Water Code, and (3) this bill is enacted after SB 862, in which case Section 5 of this bill shall not become operative.

CHAPTER 676

An act to amend Sections 4354, 4355, and 4358.5 of, and to add Section 14132.992 to, the Welfare and Institutions Code, relating to traumatic brain injury.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 4354 of the Welfare and Institutions Code is amended to read:

4354. For purposes of this chapter, the following definitions shall apply:

(a) "Acquired traumatic brain injury" is an injury that is sustained after birth from an external force to the brain or any of its parts, resulting in cognitive, psychological, neurological, or anatomical changes in brain functions.

(b) "Department" means the State Department of Mental Health.

(c) "Director" means the Director of Mental Health.

(d) (1) "Vocational supportive services" means a method of providing vocational rehabilitation and related services that may include prevocational and educational services to individuals who are unserved or underserved by existing vocational rehabilitation services.

(2) "Extended supported employment services" means ongoing support services and other appropriate services that are needed to support and maintain an individual with an acquired traumatic brain injury in supported employment following that individual's transition from support

provided as a vocational rehabilitation service, including job coaching, by the State Department of Rehabilitation, as defined in paragraphs (1) and (5) of subdivision (a) of Section 19150.

(e) The following four characteristics distinguish "vocational supportive services" from traditional methods of providing vocational rehabilitation and day activity services:

(1) Service recipients appear to lack the potential for unassisted competitive employment.

(2) Ongoing training, supervision, and support services must be provided.

(3) The opportunity is designed to provide the same benefits that other persons receive from work, including an adequate income level, quality of working life, security, and mobility.

(4) There is flexibility in the provision of support which is necessary to enable the person to function effectively at the worksite.

(f) "Community reintegration services" means services as needed by clients, designed to develop, maintain, increase, or maximize independent functioning, with the goal of living in the community and participating in community life. These services may include, but are not limited to, providing, or arranging for access to, housing, transportation, medical care, rehabilitative therapies, day programs, chemical dependency recovery programs, personal assistance, and education.

(g) "Fund" means the Traumatic Brain Injury Fund.

(h) "Supported living services" means a range of appropriate supervision, support, and training in the client's place of residence, designed to maximize independence.

(i) "Functional assessment" means measuring the level or degree of independence, amount of assistance required, and speed and safety considerations for a variety of categories, including activities of daily living, mobility, communication skills, psychosocial adjustment, and cognitive function.

(j) "Residence" means the place where a client makes his or her home, that may include, but is not limited to, a house or apartment where the client lives independently, assistive living arrangements, congregate housing, group homes, residential care facilities, transitional living programs, and nursing facilities.

SEC. 2. Section 4355 of the Welfare and Institutions Code is amended to read:

4355. (a) The department shall designate sites in order to develop a system of postacute continuum-of-care models for adults 18 years of age or older with an acquired traumatic brain injury.

(b) The project sites shall coordinate vocational supportive services, community reintegration services, and supported living services. The

purpose of the project is to demonstrate the effectiveness of a coordinated service approach that furthers the goal of assisting those persons to attain productive, independent lives which may include paid employment.

(c) Project sites that are authorized to provide home- and community-based waiver services pursuant to Section 14132.992 shall also provide extended supported employment services, as defined in paragraph (2) of subdivision (d) of Section 4354.

SEC. 3. Section 4358.5 of the Welfare and Institutions Code is amended to read:

4358.5. (a) Funds deposited into the Traumatic Brain Injury Fund pursuant to paragraph (8) of subdivision (f) of Section 1464 of the Penal Code shall be matched by federal vocational rehabilitation services funds for implementation of the Traumatic Brain Injury program pursuant to this chapter. However, this matching of funds shall be required only to the extent it is required by other state and federal law, and to the extent the matching of funds would be consistent with the policies and priorities of the State Department of Rehabilitation regarding funding.

(b) The department shall seek and secure funding from available federal resources, including, but not limited to, Medicaid and drug and alcohol funds, utilizing the Traumatic Brain Injury Fund as the state's share for obtaining federal financial participation, and shall seek any necessary waiver of federal program requirements to maximize available federal dollars.

SEC. 4. Section 14132.992 is added to the Welfare and Institutions Code, to read:

14132.992. (a) (1) By March 15, 2009, the department shall submit to the federal Centers for Medicare and Medicaid Services a home- and community-based services waiver application pursuant to Section 1396n(c) of Title 42 of the United States Code, or an amendment of the state plan for home- and community-based services pursuant to Section 1396n(i) of Title 42 of the United States Code, to serve at least 100 adults with acquired traumatic brain injuries who otherwise would require care in a Medi-Cal funded nursing facility or an intermediate care facility for persons with developmental disabilities or, for the amendment of the state plan, who would meet the eligibility criteria in Section 1396n(i).

(2) As authorized by Section 1396n(c)(3) and 1396n(i)(3) of Title 42 of the United States Code, the waiver or amendment of the state plan shall waive the statewide application of this section as well as comparability of services so that waiver services may be provided by one or more of the sites designated to provide services to persons with acquired traumatic brain injury pursuant to Section 4356.

(3) The waiver services to be provided to eligible Medi-Cal recipients shall include case management services, community reintegration and

supported living services, vocational supportive services including prevocational services, neuropsychological assessments, and rehabilitative services provided by project sites currently serving persons with acquired traumatic brain injuries pursuant to Chapter 5 (commencing with Section 4353).

(4) The waiver services to be provided shall include as a habilitation service pursuant to Section 1396n(c)(5) of Title 42 of the United States Code "extended supported employment services" to support and maintain an individual with an acquired traumatic brain injury in supported employment following that individual's transition from support provided as a vocational rehabilitation service, including job coaching, by the State Department of Rehabilitation pursuant to paragraphs (1) and (5) of subdivision (a) of Section 19150.

(5) The waiver services to be provided shall include rehabilitative therapies, including, but not limited to, occupational therapy, physical therapy, speech therapy, and cognitive therapy, that are different in kind and scope from state plan services.

(6) The waiver shall require an aggregate cost-effectiveness formula be used.

(b) The development process of the home- and community-based services waiver application or state plan amendment shall include the solicitation of the opinions and help of the affected communities, including the working group members pursuant to Section 4357.1 and representatives of project sites currently serving persons with acquired traumatic brain injuries pursuant to Chapter 5 (commencing with Section 4353) of Part 3 of Division 4.

(c) The waiver or state plan amendment shall be implemented only if the following conditions are met:

(1) Federal financial participation is available for the services under the waiver or state plan amendment.

(2) Cost neutrality is achieved in accordance with the terms and conditions of the waiver or state plan amendment and the requirements of the federal Centers for Medicare and Medicaid Services.

(3) State funds are appropriated, otherwise made available, or both, for this waiver or state plan amendment, including funds for staff to develop, implement, administer, monitor, and oversee the waiver or state plan amendment.

(d) It is the intent of the Legislature that the home- and community-based services waiver or state plan amendment augment funds available to meet the needs of persons with acquired traumatic

brain injuries served by the participating project sites in accordance with subdivision (b) of Section 4358.5.

CHAPTER 677

An act to add Division 113 (commencing with Section 131500) to the Health and Safety Code, relating to health care coverage.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(a) When a comprehensive health plan concept for the state is adopted, there may still be some workers who lack health care coverage.

(b) Seventy percent of the 1.7 million working uninsured are employed by a business with fewer than 50 workers.

(c) Counties generally have a responsibility to provide a health care safety net.

(d) A large number of small businesses would like to offer health care coverage to their workers but have been unable to identify an affordable, comprehensive health plan.

(e) It is therefore the intent of this act to provide health care coverage on a pilot program basis to uninsured working adults in California through the Adult Health Coverage Expansion Program.

SEC. 2. Division 113 (commencing with Section 131500) is added to the Health and Safety Code, to read:

DIVISION 113. THE ADULT HEALTH COVERAGE EXPANSION PROGRAM

Chapter 1. General Provisions

131500. This division shall be known and may be cited as the Adult Health Coverage Expansion Program.

131501. It is the intent of the Legislature that the Adult Health Coverage Expansion Program provide health care coverage on a pilot program basis to eligible adults domiciled and employed in Santa Clara County who are without health care coverage.

131502. The following definitions apply for purposes of this division:

(a) "Local initiative" has the same meaning as set forth in Section 12693.08 of the Insurance Code.

(b) "Program" means the Adult Health Coverage Expansion Program.

(c) "Small business" means an entity located in Santa Clara County that employs 50 or fewer persons, with at least 35 percent of the employees earning less than 350 percent of the federal poverty level for a family size of one, and that has not offered health care coverage to its employees for, at minimum, 12 consecutive months, provided that the provisions of any such prior coverage required the employer to contribute at least 50 percent of the total amount of the premium for that coverage. For purposes of the program authorized by this division, a small business shall be a "small employer" pursuant to Article 3.1 (commencing with Section 1357) of Chapter 2.2 of Division 2, subject to the provisions and exceptions of this division. Notwithstanding the company affiliation and tax filing provision of paragraph (1) of subdivision (*l*) of Section 1357, an individual franchise outlet shall be considered a small business.

Chapter 2. Administration

131510. The program may be implemented in Santa Clara County at the option of the local initiative, but if so implemented shall be as a pilot program. A maximum of 5,000 employees may be covered in the county, provided, however, that the number of enrollees may be increased pursuant to the prior approval of the Department of Managed Health Care. The local initiative shall administer the program.

131511. (a) In implementing the pilot program established pursuant to this division, the local initiative in Santa Clara County shall not be subject to the requirements of subdivision (a) of Section 1357.03. The program shall be otherwise subject to the requirements of Chapter 2.2 (commencing with Section 1340) of Division 2, including Article 3.1 (commencing with Section 1357) thereof, except as otherwise provided in this division, and shall be subject to approval as to regulatory filings with the Department of Managed Health Care as prescribed in Chapter 2.2 (commencing with Section 1340) of Division 2 and in implementing regulations promulgated by the department.

(b) Except in the case of a late enrollee or for satisfaction of a preexisting condition clause in the case of initial coverage for an eligible employee, the local initiative may not exclude any eligible employee who would otherwise be eligible for health care coverage under this division on the basis of an actual or expected health care condition. The local initiative may not limit or exclude coverage for any eligible employee by type of illness, treatment, medical condition, or accident, except for preexisting conditions as permitted under Section 1357.06.

(c) Coverage provided through the program to an eligible small business shall be renewable with respect to all eligible employees at the option of the participating small business.

Chapter 3. Eligibility

131520. Notwithstanding subdivision (b) of Section 1357, only an adult age 19 to 64 years, inclusive, employed by a small business for a minimum of 20 hours per week is eligible to participate in the program if he or she has a gross annual income that is less than 350 percent of the federal poverty level for a family size of one, and his or her employer participates in the program. Dependents, spouses, and domestic partners of employees are not eligible for the program.

131521. (a) A small business may apply to the local initiative that administers the program to obtain coverage for its employees who meet the requirements of Section 131520.

(b) At least 50 percent of the employees of an otherwise eligible small business must meet the eligibility requirements of Section 131520, and at least 50 percent of those eligible employees must choose to receive coverage through the program in order for the small business to qualify to participate in the program.

131522. The program shall screen potential enrollees to determine if they meet the eligibility requirements for the Medi-Cal program.

Chapter 4. Benefits

131530. The local initiative that establishes a program shall offer health care coverage through the program, and all health care services shall be provided to participants by a provider operated by the county or by a provider with whom or with which the county or the local initiative has contracted to provide health care services, except for emergency or out-of-area care or instances in which a required specialized service is not contracted for by the county or the local initiative.

131531. The health care services provided through the program to eligible employees shall, to the extent practicable, be substantially similar to the benefits offered to adults under the Healthy Families Program pursuant to Chapter 5 (commencing with Section 12693.60) of Part 6.2 of the Insurance Code, but shall include at least all of the basic health care services included in subdivision (b) of Section 1345 and in Section 1300.67 of Title 28 of the California Code of Regulations.

CHAPTER 5. FUNDING

131540. (a) (1) The cost of the health care coverage provided through the program shall be paid through a combination of contributions paid by the small business, premiums paid by participating employees, and any county, federal, state, or private sector funding made available for this purpose.

(2) The local initiative may determine the amount of the employer contribution for each participating eligible employee, which shall not exceed one hundred fifty dollars ($150) per month, and the amount of the employee premium, which shall not exceed seventy-five dollars ($75) per month. The local initiative may adjust employer contribution and employee premium levels after the first year if necessary for changes in health care costs.

(3) The local initiative may structure the required employee premium amounts according to a schedule that takes into account the individual employee's age or income level, or both, in a manner similar, but not necessarily identical, to that described in Section 12693.43 of the Insurance Code, pertaining to the Healthy Families Program.

(4) The local initiative shall establish copayment levels and amounts in a manner substantially similar to that described in Section 12693.615 of the Insurance Code, pertaining to the Healthy Families Program.

(5) For purposes of the program, the term "applicable rate charged for a covered employee" in Section 1366.26 shall mean the total premium amount paid to the health plan on behalf of an employee, including amounts paid by the small business on behalf of the employee, the premium paid by the employee, and any county, federal, state, or private sector funding, which funding shall include the value of the discounted rates negotiated pursuant to subdivision (b), as apportioned to the employee. The program shall submit to the Department of Managed Health Care the procedures the local initiative will use for purposes of establishing the rates to be paid by a person eligible for continuation coverage under Section 1366.26 and the department shall only approve those if it determines that they are consistent with the requirements of the Cal-COBRA program.

(b) In order to enhance the affordability of coverage offered through the program to eligible small businesses and employees, the county and the local initiative shall negotiate discounted rates for services provided to participants in the program by providers operated by the county or by providers with whom, or with which, the county has contracted to provide health care services.

131541. The local initiative shall be authorized to establish, participate in, or apply to funding sources in the public and private sectors

for purposes of providing or securing premium subsidies for eligible employees, pursuant to fair and equitable procedures to be established by the local initiative.

Chapter 6. Evaluation

131550. The county and the local initiative shall together evaluate the pilot program after three years, including all of the following: the number of individuals served, the demographics of the individuals served, the number of employees turned away due to the limitation on enrollment in Section 131510, the number of small businesses participating, the number of small businesses turned away due to the limitation on enrollment of individuals, funding sources (including employees, employers, county, state, federal, and other sources), and the health status of enrollees.

SEC. 3. 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.

CHAPTER 678

An act to amend Sections 2001, 2002, 2004, 2012, 2013, 2014, 2015, 2017, 2018, 2041, 2224, 2228, 2230, 2311, 2317, 2335, 2506, 2529, 2529.5, 2546.2, and 2550.1 of, to add Section 2540.1 to, to repeal Sections 2003, 2005, 2009, 2035, and 2223 of, and to repeal and add Section 2008 of, the Business and Professions Code, relating to medicine.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 2001 of the Business and Professions Code is amended to read:

2001. (a) There is in the Department of Consumer Affairs a Medical Board of California that consists of 15 members, seven of whom shall be public members.

(b) The Governor shall appoint 13 members to the board, subject to confirmation by the Senate, five of whom shall be public members. The

Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(c) Notwithstanding any other provision of law, to reduce the membership of the board to 15, the following shall occur:

(1) Two positions on the board that are public members having a term that expires on June 1, 2010, shall terminate instead on January 1, 2008.

(2) Two positions on the board that are not public members having a term that expires on June 1, 2008, shall terminate instead on August 1, 2008.

(3) Two positions on the board that are not public members having a term that expires on June 1, 2011, shall terminate instead on January 1, 2008.

(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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 2002 of the Business and Professions Code is amended to read:

2002. Unless otherwise expressly provided, the term "board" as used in this chapter means the Medical Board of California. As used in this chapter or any other provision of law, "Division of Medical Quality" and "Division of Licensing" shall be deemed to refer to the board.

SEC. 3. Section 2003 of the Business and Professions Code is repealed.

SEC. 4. Section 2004 of the Business and Professions Code is amended to read:

2004. The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(f) Approving undergraduate and graduate medical education programs.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program.

SEC. 5. Section 2005 of the Business and Professions Code is repealed.

SEC. 6. Section 2008 of the Business and Professions Code is repealed.

SEC. 7. Section 2008 is added to the Business and Professions Code, to read:

2008. The board may appoint panels from its members for the purpose of fulfilling the obligations established in subdivision (c) of Section 2004. Any panel appointed under this section shall at no time be comprised of less than four members and the number of public members assigned to the panel shall not exceed the number of licensed physician and surgeon members assigned to the panel. The president of the board shall not be a member of any panel. Each panel shall annually elect a chair and a vice chair.

SEC. 8. Section 2009 of the Business and Professions Code is repealed.

SEC. 9. Section 2012 of the Business and Professions Code is amended to read:

2012. The board shall elect a president, a vice president, and a secretary from its members.

SEC. 10. Section 2013 of the Business and Professions Code is amended to read:

2013. (a) The board and a panel appointed under this chapter may convene from time to time as deemed necessary by the board.

(b) Four members of a panel of the board shall constitute a quorum for the transaction of business at any meeting of the panel. Eight members shall constitute a quorum for the transaction of business at any board meeting.

(c) It shall require the affirmative vote of a majority of those members present at a board or panel meeting, those members constituting at least a quorum, to pass any motion, resolution, or measure. A decision by a panel to discipline a physician and surgeon shall require an affirmative vote, at a meeting or by mail, of a majority of the members of that panel; except that a decision to revoke the certificate of a physician and surgeon shall require the affirmative vote of four members of that panel.

SEC. 11. Section 2014 of the Business and Professions Code is amended to read:

2014. 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).

SEC. 12. Section 2015 of the Business and Professions Code is amended to read:

2015. The president of the board may call meetings of any duly appointed and created committee or panel of the board at a specified time and place.

SEC. 13. Section 2017 of the Business and Professions Code is amended to read:

2017. The board and each committee or panel shall keep an official record of all their proceedings.

SEC. 14. Section 2018 of the Business and Professions Code is amended to read:

2018. The board may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act, those regulations as may be necessary to enable it to carry into effect the provisions of law relating to the practice of medicine.

SEC. 15. Section 2035 of the Business and Professions Code is repealed.

SEC. 16. Section 2041 of the Business and Professions Code is amended to read:

2041. The term "licensee" as used in this chapter means the holder of a physician's and surgeon's certificate or doctor of podiatric medicine's certificate, as the case may be, who is engaged in the professional practice authorized by the certificate under the jurisdiction of the appropriate board.

SEC. 17. Section 2223 of the Business and Professions Code is repealed.

SEC. 18. Section 2224 of the Business and Professions Code is amended to read:

2224. (a) The board may delegate the authority under this chapter to conduct investigations and inspections and to institute proceedings to the executive director of the board or to other personnel as set forth in Section 2020. The board shall not delegate its authority to take final disciplinary action against a licensee as provided in Section 2227 and other provisions of this chapter. The board shall not delegate any authority of the Senior Assistant Attorney General of the Health Quality Enforcement Section or any powers vested in the administrative law judges of the Office of Administrative Hearings, as designated in Section 11371 of the Government Code.

(b) Notwithstanding subdivision (a), the board shall delegate to its executive director the authority to adopt a decision entered by default and a stipulation for surrender of a license.

SEC. 19. Section 2228 of the Business and Professions Code is amended to read:

2228. The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(d) Providing the option of alternative community service in cases other than violations relating to quality of care.

SEC. 20. Section 2230 of the Business and Professions Code is amended to read:

2230. (a) All proceedings against a licensee for unprofessional conduct, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in this chapter, and shall be prosecuted by the Senior Assistant Attorney General of the Health Quality Enforcement Section.

(b) For purposes of this article, "agency itself," as used in the Administrative Procedure Act, means any panel appointed by the board pursuant to Section 2008. The decision or order of a panel imposing any disciplinary action pursuant to this chapter and the Administrative Procedure Act shall be final.

SEC. 21. Section 2311 of the Business and Professions Code is amended to read:

2311. Whenever any person has engaged in or is about to engage in any acts or practices that constitute or will constitute an offense against this chapter, the superior court of any county, on application of the board or of 10 or more persons licensed as physicians and surgeons or as podiatrists in this state, may issue an injunction or other appropriate order restraining the conduct. 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. 22. Section 2317 of the Business and Professions Code is amended to read:

2317. If a person, not a regular employee of the board, is hired, under contract, or retained under any other arrangement, paid or unpaid, to provide expertise or nonexpert testimony to the Medical Board of California or to the California Board of Podiatric Medicine, including, but not limited to, the evaluation of the conduct of an applicant or a licensee, and that person is named as a defendant in an action for defamation, malicious prosecution, or any other civil cause of action directly resulting from opinions rendered, statements made, or testimony given to, or on behalf of, the committee or its representatives, the board shall provide for representation required to defend the defendant in that civil action. The board shall be liable for any judgment rendered against that person, except that the board shall not be liable for any punitive damages award. If the plaintiff prevails in a claim for punitive damages, the defendant shall be liable to the board for the full costs incurred in providing representation to the defendant. The Attorney General shall be utilized in those actions as provided in Section 2020.

SEC. 23. Section 2335 of the Business and Professions Code is amended to read:

2335. (a) All proposed decisions and interim orders of the Medical Quality Hearing Panel designated in Section 11371 of the Government Code shall be transmitted to the executive director of the board, or the executive director of the California Board of Podiatric Medicine as to the licensees of that board, within 48 hours of filing.

(b) All interim orders shall be final when filed.

(c) A proposed decision shall be acted upon by the board or by any panel appointed pursuant to Section 2008 or by the California Board of Podiatric Medicine, as the case may be, in accordance with Section 11517 of the Government Code, except that all of the following shall apply to proceedings against licensees under this chapter:

(1) When considering a proposed decision, the board or panel and the California Board of Podiatric Medicine shall give great weight to the findings of fact of the administrative law judge, except to the extent those findings of fact are controverted by new evidence.

(2) The board's staff or the staff of the California Board of Podiatric Medicine shall poll the members of the board or panel or of the California Board of Podiatric Medicine by written mail ballot concerning the proposed decision. The mail ballot shall be sent within 10 calendar days of receipt of the proposed decision, and shall poll each member on whether the member votes to approve the decision, to approve the decision with an altered penalty, to refer the case back to the administrative law judge for the taking of additional evidence, to defer

final decision pending discussion of the case by the panel or board as a whole, or to nonadopt the decision. No party to the proceeding, including employees of the agency that filed the accusation, and no person who has a direct or indirect interest in the outcome of the proceeding or who presided at a previous stage of the decision, may communicate directly or indirectly, upon the merits of a contested matter while the proceeding is pending, with any member of the panel or board, without notice and opportunity for all parties to participate in the communication. The votes of a majority of the board or of the panel, and a majority of the California Board of Podiatric Medicine, are required to approve the decision with an altered penalty, to refer the case back to the administrative law judge for the taking of further evidence, or to nonadopt the decision. The votes of two members of the panel or board are required to defer final decision pending discussion of the case by the panel or board as a whole. If there is a vote by the specified number to defer final decision pending discussion of the case by the panel or board as a whole, provision shall be made for that discussion before the 90-day period specified in paragraph (3) expires, but in no event shall that 90-day period be extended.

(3) If a majority of the board or of the panel, or a majority of the California Board of Podiatric Medicine vote to do so, the board or the panel or the California Board of Podiatric Medicine shall issue an order of nonadoption of a proposed decision within 90 calendar days of the date it is received by the board. If the board or the panel or the California Board of Podiatric Medicine does not refer the case back to the administrative law judge for the taking of additional evidence or issue an order of nonadoption within 90 days, the decision shall be final and subject to review under Section 2337. Members of the board or of any panel or of the California Board of Podiatric Medicine who review a proposed decision or other matter and vote by mail as provided in paragraph (2) shall return their votes by mail to the board within 30 days from receipt of the proposed decision or other matter.

(4) The board or the panel or the California Board of Podiatric Medicine shall afford the parties the opportunity to present oral argument before deciding a case after nonadoption of the administrative law judge's decision.

(5) A vote of a majority of the board or of a panel, or a majority of the California Board of Podiatric Medicine, are required to increase the penalty from that contained in the proposed administrative law judge's decision. No member of the board or panel or of the California Board of Podiatric Medicine may vote to increase the penalty except after reading the entire record and personally hearing any additional oral argument and evidence presented to the panel or board.

SEC. 24. Section 2506 of the Business and Professions Code is amended to read:

2506. As used in this article the following definitions shall apply:

(a) "Board" means the Medical Board of California.

(b) "Licensed midwife" means an individual to whom a license to practice midwifery has been issued pursuant to this article.

(c) "Certified nurse-midwife" means a person to whom a certificate has been issued pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6.

(d) "Accrediting organization" means an organization approved by the board.

SEC. 25. Section 2529 of the Business and Professions Code is amended to read:

2529. Graduates of the Southern California Psychoanalytic Institute, the Los Angeles Psychoanalytic Society and Institute, the San Francisco Psychoanalytic Institute, the San Diego Psychoanalytic Institute, or institutes deemed equivalent by the Medical Board of California who have completed clinical training in psychoanalysis may engage in psychoanalysis as an adjunct to teaching, training, or research and hold themselves out to the public as psychoanalysts, and students in those institutes may engage in psychoanalysis under supervision, if the students and graduates do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrists," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology.

Those students and graduates seeking to engage in psychoanalysis under this chapter shall register with the Medical Board of California, presenting evidence of their student or graduate status. The board may suspend or revoke the exemption of such persons for unprofessional conduct as defined in Sections 725, 2234, and 2235.

SEC. 26. Section 2529.5 of the Business and Professions Code is amended to read:

2529.5. Each person to whom registration is granted under the provisions of this chapter shall pay into the Contingent Fund of the Medical Board of California a fee to be fixed by the Medical Board of California at a sum not in excess of one hundred dollars ($100).

The registration shall expire after two years. The registration may be renewed biennially at a fee to be fixed by the board at a sum not in excess of fifty dollars ($50). Students seeking to renew their registration shall present to the board evidence of their continuing student status.

The money in the Contingent Fund of the Medical Board of California shall be used for the administration of this chapter.

SEC. 27. Section 2540.1 is added to the Business and Professions Code, to read:

2540.1. Any reference to the "Division of Medical Quality" or to the "Division of Licensing" in this chapter shall be deemed to refer to the Medical Board of California.

SEC. 28. Section 2546.2 of the Business and Professions Code is amended to read:

2546.2. All references in this chapter to the division shall mean the Medical Board of California.

SEC. 29. Section 2550.1 of the Business and Professions Code is amended to read:

2550.1. All references in this chapter to the board or the Board of Medical Examiners or division shall mean the Medical Board of California.

CHAPTER 679

An act to amend Section 89030.1 of, and to add Chapter 1.4 (commencing with Section 99040) to Part 65 of Division 14 of Title 3 of, the Education Code, and to amend, repeal, and add Section 13332.09 of the Government Code, relating to public postsecondary education.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 89030.1 of the Education Code is amended to read:

89030.1. The trustees shall adopt, amend, or repeal regulations pursuant to this section instead of pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, "regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by the university to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the university. "Regulation" does not mean or include any form prescribed by the university or any instructions relating to the use of the form, nor does it mean or include a building standard as defined in Section 18909 of the Health and Safety Code.

(a) The trustees' office of general counsel shall review the proposed regulations for matters such as necessity, authority, clarity, consistency, reference, and nonduplication, and recommend any proposed action to the trustees. For purposes of this section, "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication" shall have the same meaning as defined by Section 11349 of the Government Code.

(b) Notice of the proposed regulations shall be sent at least 45 days prior to the public hearing to those persons who have requested notices of the meetings of the trustees and shall be available to the public in electronic format. The notice shall include the right of the public to comment orally or in writing on the proposed action either prior to or during the public hearing.

(c) At the hearing, the public shall be provided the opportunity to comment on the proposed action.

(d) The trustees shall maintain a rulemaking file containing the public notice, public comments, and minutes of the public hearing, including the action taken by the trustees.

(1) The rulemaking file shall contain a summary of each objection or recommendation made with an explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reason or reasons for making no change.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(e) The trustees shall transmit the regulations as finally adopted to the Secretary of State for filing. Each regulation shall be effective upon filing with the Secretary of State, and shall be published in the California Code of Regulations.

(f) On or before January 15 of each year, the trustees shall report to the Governor, the Senate Education Committee, and the Assembly Higher Education Committee as to all regulatory actions taken by the trustees during the previous calendar year. The report shall include the statement of reasons for each regulatory action taken, indicate whether any concerns were raised regarding the proposed action, and the steps taken by the trustees to alleviate those concerns.

(g) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2. Chapter 1.4 (commencing with Section 99040) is added to Part 65 of Division 14 of Title 3 of the Education Code, to read:

CHAPTER 1.4. THE COLLEGE STUDENT CREDIT PROTECTION ACT

99040. (a) The Regents of the University of California are urged to, and the Trustees of the California State University and the Board of Governors of the California Community Colleges shall, perform the following functions:

(1) Annually direct each campus to disclose all exclusive arrangements, excluding proprietary information, with banks or other commercial entities to engage in on-campus marketing of credit cards to students through solicitation activities in public campus areas, hereafter referred to as "tabling" activities.

(2) Prohibit banks and other commercial entities, including their third-party representatives, during on-campus tabling activities from offering gifts to students for filling out student credit card applications. Banks and other commercial entities, including their third-party representatives, may rely on the self-identification of students for purposes of complying with this paragraph.

(b) The Regents of the University of California are urged to revise the University of California Policy on the On-Campus Marketing of Credit Cards to Students (July 28, 2004) by removing the exemptions in Section VIII of the policy as it relates to all future contractual agreements with any bank or other commercial entity that provides banking and other financial services to the campus community.

SEC. 3. 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 of the Public Contract Code, 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 California Victim Compensation and Government Claims Board, 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 that 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. 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.

(g) The Trustees of the California State University shall, by June 30, 2008, and on or before June 30 of each year thereafter, report to the Legislature on their motor vehicle procurement, including all of the following:

(1) An inventory of motor vehicles by campus, that includes the type of vehicle, consistent with the fleet report to the Department of General Services.

(2) The number of motor vehicles purchased during the prior fiscal year, disaggregated by campus and type of vehicle.

(3) The average amount of time taken to complete procurement of each motor vehicle purchased during the prior fiscal year.

(4) Any changes in policies or procedures made during the prior fiscal year relative to motor vehicle procurement and contracts for procurement and identifying any vehicles procured pursuant to the new policy or procedure.

(5) The estimated cost savings associated with management by the California State University of motor vehicle procurement, including average time to complete procurements, reduced administrative costs, reduced charges paid to the Department of General Services, and competitive or reduced market prices obtained for vehicles.

(h) This section shall remain in effect only until July 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted and becomes operative before July 1, 2012, deletes or extends that date.

SEC. 4. Section 13332.09 is added to the Government Code, 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 of the Public Contract Code, 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 California Victim Compensation and Government Claims Board, 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 that 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.

(g) This section shall become operative on July 1, 2012.

CHAPTER 680

An act to add Section 41511.5 to the Health and Safety Code, relating to air pollution.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 41511.5 is added to the Health and Safety Code, to read:

41511.5. The state board shall conduct a study of ambient air concentrations of manganese in the state to determine if there are areas in the state that have unhealthy concentrations of manganese. No later than January 1, 2010, the state board shall submit a report to the Legislature that describes the conclusions of this study and provides recommendations for reducing manganese exposures as needed.

CHAPTER 681

An act to add Section 14670.2 to the Government Code, relating to state property, and making an appropriation therefor.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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 Department of Motor Vehicles comes into direct contact with more residents of this state each year than any other state agency and it is imperative that the facilities that offer services to the motoring public are safe, clean, and designed for efficiency.

(b) Adding a new or replacement office is a costly and time consuming process and in order to meet the challenges of a growing population, innovative approaches will be required to ensure that adequate facilities are available for the public.

(c) There is high value in many of the existing state-owned facilities operated by the department, even though these offices have exceeded their useful life. This equity may be leveraged to develop mixed-use projects that would, in addition to the motor vehicle office, incorporate retail, office, and residential units. These projects would provide modern motor vehicle offices while offering housing opportunities, increased sales taxes, and additional jobs within the communities they serve.

(d) It is the intent of the Legislature that the department, in cooperation with the Joint Legislative Budget Committee, the Department of Finance, and the Department of General Services, pursue creative facility strategies, including the mixed-use approach, where feasible and appropriate.

(e) It is the further intent of the Legislature that when exercising options, the Department of Motor Vehicles continue to maintain its relationship as a good neighbor in the communities it serves by participating with local entities, both public and private, as appropriate, to promote and support local community activities.

SEC. 2. Section 14670.2 is added to the Government Code, to read:

14670.2. (a) Notwithstanding any other provision of law, the Director of General Services, with the consent of the Department of Motor Vehicles, may lease or exchange, if the director deems the leasing or exchanging to be in the best interest of the state, for a term of years, as determined by the director, and for fair market value, all or portions of parcels of real property, that are acquired and used by the state for the benefit of the Department of Motor Vehicles, as described in subdivision (b), for the purpose of developing mixed public and private use facilities, including adequate parking for the Department of Motor Vehicles field office, as determined by that department, subject to all of the following conditions:

(1) All proceeds from the lease or exchange of the Department of Motor Vehicles property shall be deposited into the Motor Vehicle

Account in the State Transportation Fund and shall be available for expenditure by the Department of Motor Vehicles.

(2) Each lease shall provide that the lessee may sublease for commercial, retail or residential uses that portion of the developed property that is not required for use of the state.

(3) A mixed-use facility developed pursuant to this section shall be located at the current state-owned site unless there are mitigating circumstances requiring relocation. If relocation does become necessary, the replacement facility shall be located within the geographic area that serves the current customer base.

(b) For purposes of this section, the following parcels of real properties may be leased or exchanged pursuant to subdivision (a):

(1) A parcel of real property located at 1377 Fell Street, San Francisco.

(2) 3960 Normal Street, San Diego, provided that any lease or exchange of property shall include a condition that a local farmer's market may continue to conduct regular business.

(3) 8629 Hellman Avenue, Rancho Cucamonga.

(c) The Department of General Services and the Department of Motor Vehicles, jointly, shall notify the Joint Legislative Budget Committee when the Department of General Services, with the consent of the Department of Motor Vehicles, enters into any lease for a period of 30 years or more and shall report to the committee the terms and conditions of any lease at least 45 days prior to entering into that lease.

(d) Any lease or exchange of properties carried out pursuant to this section shall be for no less than fair market value and upon terms and conditions that the Director of General Services determines to be in the best interest of the state. Compensation for the property may include land, improvements, money, or any combination thereof.

(e) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition or lease of any parcels described in this section by the Department of Motor Vehicles or from the proceeds of the lease or exchange of those parcels.

(f) None of the properties identified in this section shall be subject to Section 11011.1 or Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5, and the properties shall be or have been offered to the public through a competitive process determined by the director to be in the best interest of the state.

CHAPTER 682

An act to amend Section 68152 of the Government Code, to amend Sections 488 and 670 of the Insurance Code, to amend Sections 1203.45,

1463.14, 1463.16, and 1463.17 of the Penal Code, and to amend Sections 11110, 11215, 12810, 13201, 13351, 13352, 14601, 21051, 23103, 23104, 40800, 40804, 41610, 42008.5, 42009, and 42010 of, the Vehicle Code, relating to vehicles.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: 10 years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Infraction, except as otherwise specified: three years.

(11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(12) Misdemeanor action resulting in a requirement that the defendant register as a sex offender pursuant to Section 290 of the Penal Code: 75

years. This paragraph shall apply to records relating to a person convicted on or after September 20, 2006.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate division of the superior court: five years.

(j) Other records.

(1) Applications in forma pauperis: any time after the disposition of the underlying case.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.

(13) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or an interested member of the public for good cause shown and on those terms as are just. A fee shall not be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 1.5. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: 10 years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Misdemeanor action resulting in a requirement that the defendant register as a sex offender pursuant to Section 290 of the Penal Code: 75 years. This paragraph shall apply to records relating to a person convicted on or after September 20, 2006.

(11) Infraction, except as otherwise specified: three years.

(12) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate division of the superior court: five years.

(j) Other records.

(1) Applications in forma pauperis: any time after the disposition of the underlying case.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.

(13) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case

category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or an interested member of the public for good cause shown and on those terms as are just. A fee shall not be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 2. Section 488 of the Insurance Code is amended to read:

488. No insurer shall, in issuing or renewing a private passenger automobile insurance policy, increase the premium on that policy for the reason that the insured or applicant for insurance has been convicted for traffic violations committed while operating a motor vehicle for compensation during the hours of his employment if, with respect to a conviction, the employee or applicant has submitted to the insurer a written declaration made by the employee under penalty of perjury that the applicant or insured was, at that time, operating a motor vehicle for compensation during the hours of his or her employment. This section applies only to those individuals whose specific duties include driving their employer's motor vehicles or individuals who have authority in their name from the Public Utilities Commission to operate as a highway carrier and who are the registered owners or lease operators of the motor vehicle used in the operation as a highway carrier.

This section does not apply to an insured or applicant for insurance convicted of any of the following:

(a) Homicide or assault arising out of the operation of a motor vehicle for compensation during the hours of employment.

(b) A violation while operating a motor vehicle for compensation during the hours of employment of any of the following sections or section subdivisions of the Vehicle Code:

(1) Subdivision (a) of Section 14601.

(2) Subdivision (a) of Section 14601.1.

(3) Subdivision (a) of Section 14601.2.

(4) Section 20001 or 20002.

(5) Subdivision (a) of Section 20008.

(6) Section 23103, 23104, 23105, 23152, or 23153.

(c) This section shall not apply to a person insured under the California assigned risk plan prescribed by Article 4 (commencing with Section 11620) of Chapter 1 of Part 3 of Division 2.

SEC. 3. Section 670 of the Insurance Code is amended to read:

670. (a) No admitted insurer licensed to issue motor vehicle liability policies, as defined in Section 16450 of the Vehicle Code, shall cancel, or refuse to renew, a motor vehicle liability insurance policy covering drivers hired to drive by a commercial business establishment nor execute the agreement specified in paragraph (1) of subdivision (d) of Section 11580.1 with respect to those drivers for the reason that those drivers have been convicted of violations of the Vehicle Code or the traffic laws of any subdivision of the state that were committed while operating private passenger vehicles not owned or leased by their employer.

(b) This section does not apply to drivers convicted of any of the following:

(1) Homicide or assault arising out of the operation of a private passenger motor vehicle.

(2) A violation while operating a private passenger motor vehicle of any of the following sections or section subdivisions of the Vehicle Code:

(A) Subdivision (a) of Section 14601.

(B) Subdivision (a) of Section 14601.1.

(C) Subdivision (a) of Section 14601.2.

(D) Section 20001 or 20002.

(E) Subdivision (a) of Section 20008.

(F) Section 23104 or 23105.

(G) Subdivision (c) of Section 23152.

(H) Section 23153.

(3) A violation, while operating a private passenger motor vehicle, of subdivision (a) or (b) of Section 23152 of the Vehicle Code punishable under Section 23540 or 23546 of the Vehicle Code.

SEC. 4. Section 1203.45 of the Penal Code is amended to read:

1203.45. (a) In a case in which a person was under the age of 18 years at the time of commission of a misdemeanor and is eligible for, or has previously received, the relief provided by Section 1203.4 or 1203.4a, that person, in a proceeding under Section 1203.4 or 1203.4a, or a separate proceeding, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. If the court finds that the person was under the age of 18 at the time of the commission of the

misdemeanor, and is eligible for relief under Section 1203.4 or 1203.4a or has previously received that relief, it may issue its order granting the relief prayed for. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence.

(b) This section applies to convictions that occurred before, as well as those that occur after, the effective date of this section.

(c) This section shall not apply to offenses for which registration is required under Section 290, to violations of Division 10 (commencing with Section 11000) of the Health and Safety Code, or to misdemeanor violations of the Vehicle Code relating to operation of a vehicle or of a local ordinance relating to operation, standing, stopping, or parking of a motor vehicle.

(d) This section does not apply to a person convicted of more than one offense, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action, except in the following cases:

(1) One of the offenses includes the other or others.

(2) The other conviction or convictions were for the following:

(A) Misdemeanor violations of Chapters 1 (commencing with Section 21000) to 9 (commencing with Section 22500), inclusive, Chapter 12 (commencing with Section 23100), or Chapter 13 (commencing with Section 23250) of Division 11 of the Vehicle Code, other than Section 23103, 23104, 23105, 23152, 23153, or 23220.

(B) Violation of a local ordinance relating to the operation, stopping, standing, or parking of a motor vehicle.

(3) The other conviction or convictions consisted of any combination of paragraphs (1) and (2).

(e) This section shall apply in a case in which a person was under the age of 21 at the time of the commission of an offense as to which this section is made applicable if that offense was committed prior to March 7, 1973.

(f) In an action or proceeding based upon defamation, a court, upon a showing of good cause, may order the records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(g) A person who petitions for an order sealing a record under this section may be required to reimburse the court for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to

exceed one hundred twenty dollars ($120), and to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars ($120), and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred twenty dollars ($120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in a case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

SEC. 5. Section 1463.14 of the Penal Code is amended to read:

1463.14. (a) Notwithstanding the provisions of Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) of each fine collected for each conviction of a violation of Section 23103, 23104, 23105, 23152, or 23153 of the Vehicle Code shall be deposited in a special account that shall be used exclusively to pay for the cost of performing for the county, or a city or special district within the county, analysis of blood, breath or urine for alcohol content or for the presence of drugs, or for services related to that testing. The sum shall not exceed the reasonable cost of providing the services for which the sum is intended.

On November 1 of each year, the treasurer of each county shall determine those moneys in the special account that were not expended during the preceding fiscal year, and shall transfer those moneys into the general fund of the county. The board of supervisors may, by resolution, assign the treasurer's duty to determine the amount of money that was not expended to the auditor or another county officer. The county may retain an amount of that money equal to its administrative cost incurred pursuant to this section, and shall distribute the remainder pursuant to Section 1463. If the account becomes exhausted, the public entity ordering a test performed pursuant to this subdivision shall bear the costs of the test.

(b) The board of supervisors of a county may, by resolution, authorize an additional penalty upon each defendant convicted of a violation of Section 23152 or 23153 of the Vehicle Code, of an amount equal to the cost of testing for alcohol content, less the fifty dollars ($50) deposited as provided in subdivision (a). The additional penalty authorized by this subdivision shall be imposed only in those instances where the defendant has the ability to pay, but in no case shall the defendant be ordered to

pay a penalty in excess of fifty dollars ($50). The penalty authorized shall be deposited directly with the county, or city or special district within the county, that performed the test, in the special account described in subdivision (a), and shall not be the basis for an additional assessment pursuant to Section 1464, or Chapter 12 (commencing with Section 76010) of Title 8 of the Government Code.

For purposes of this subdivision, "ability to pay" means the overall capability of the defendant to pay the additional penalty authorized by this subdivision, taking into consideration all of the following:

(1) Present financial obligations, including family support obligations, and fines, penalties, and other obligations to the court.

(2) Reasonably discernible future financial position over the next 12 months.

(3) Any other factor or factors that may bear upon the defendant's financial ability to pay the additional penalty.

(c) The Department of Justice shall promulgate rules and regulations to implement the provisions of this section.

SEC. 6. Section 1463.16 of the Penal Code is amended to read:

1463.16. (a) Notwithstanding Section 1203.1 or 1463, fifty dollars ($50) of each fine collected for each conviction of a violation of Section 23103, 23104, 23105, 23152, or 23153 of the Vehicle Code shall be deposited with the county treasurer in a special account for exclusive allocation by the county for the county's alcoholism program, with approval of the board of supervisors, for alcohol programs and services for the general population. These funds shall be allocated through the local planning process pursuant to specific provision in the county alcohol program plan that is submitted to the State Department of Alcohol and Drug Programs. Programs shall be certified by the Department of Alcohol and Drug Programs or have made application for certification to be eligible for funding under this section. The county shall implement the intent and procedures of subdivision (b) of Section 11812 of the Health and Safety Code while distributing funds under this section.

(b) In a county of the 1st, 2nd, 3rd, 15th, 19th, 20th, or 24th class, notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) for each conviction of a violation of Section 23103, 23104, 23105, 23152, or 23153 of the Vehicle Code shall be deposited in a special account for exclusive allocation by the administrator of the county's alcoholism program, with approval of the board of supervisors, for alcohol programs and services for the general population. These funds shall be allocated through the local planning process pursuant to a specific provision in the county plan that is submitted to the State Department of Alcohol and Drug Programs. For those services for which standards have been developed and

certification is available, programs shall be certified by the State Department of Alcohol and Drug Programs or shall apply for certification to be eligible for funding under this section. The county alcohol administrator shall implement the intent and procedures of subdivision (b) of Section 11812 of the Health and Safety Code while distributing funds under this section.

(c) The Board of Supervisors of Contra Costa County may, by resolution, authorize the imposition of a fifty dollar ($50) assessment by the court upon each defendant convicted of a violation of Section 23152 or 23153 of the Vehicle Code for deposit in the account from which the fifty dollar ($50) distribution specified in subdivision (a) is deducted.

(d) It is the specific intent of the Legislature that funds expended under this part shall be used for ongoing alcoholism program services as well as for contracts with private nonprofit organizations to upgrade facilities to meet state certification and state licensing standards and federal nondiscrimination regulations relating to accessibility for handicapped persons.

(e) Counties may retain up to 5 percent of the funds collected to offset administrative costs of collection and disbursement.

SEC. 7. Section 1463.17 of the Penal Code is amended to read:

1463.17. (a) In a county of the 19th class, notwithstanding any other provision of this chapter, of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) for each conviction of a violation of Section 23103, 23104, 23105, 23152, or 23153 of the Vehicle Code shall be deposited in a special account to be used exclusively to pay the cost incurred by the county or a city or special district within the county, with approval of the board of supervisors, for performing analysis of blood, breath, or urine for alcohol content or for the presence of drugs, or for services related to the testing.

(b) The application of this section shall not reduce the county's remittance to the state specified in paragraph (2) of subdivision (b) of Section 77201 of, and paragraph (2) of subdivision (b) of, Section 77201.1 of the Government Code.

SEC. 7.5. Section 1463.17 of the Penal Code is amended to read:

1463.17. (a) In a county of the 19th class, notwithstanding any other provision of this chapter, of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) for each conviction of a violation of Section 23103, 23104, 23105, 23152, or 23153 of the Vehicle Code shall be deposited in a special account to be used exclusively to pay the cost incurred by the county or a city or special district within the county, with approval of the board of supervisors, for

performing analysis of blood, breath, or urine for alcohol content or for the presence of drugs, or for services related to the testing.

(b) The application of this section shall not reduce the county's remittance to the state specified in paragraph (2) of subdivision (b) of Section 77201, paragraph (2) of subdivision (b) of Section 77201.1, and paragraph (2) of subdivision (a) of Section 77201.3 of the Government Code.

SEC. 8. Section 11110 of the Vehicle Code is amended to read:

11110. (a) The department, after notice and hearing, may suspend or revoke a license issued under this chapter if any of the following occur:

(1) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(2) The licensee fails to keep the records required by this chapter.

(3) The licensee (A) permits fraud or engages in fraudulent practices either with reference to an applicant for a driver's license or an all-terrain vehicle safety certificate or the department, or (B) induces or countenances fraud or fraudulent practices on the part of an applicant.

(4) The licensee fails to comply with this chapter or regulation or requirement of the department adopted pursuant thereto.

(5) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or that would reasonably have the effect of leading persons to believe, that the licensee is in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, that is untrue or misleading and that is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(6) The licensee, or an employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(7) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23105, 23152, or 23153 of this code or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this paragraph.

(8) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(9) The licensee conducts training, or permits training by an employee, in an unsafe manner or contrary to safe driving practices.

(10) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(11) The licensed school owner does not have in effect a bond as required by Section 11102.

(12) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(13) The licensee holds a secondary teaching credential and explicitly or implicitly recruits or attempts to recruit a pupil who is enrolled in a junior or senior high school to be a customer for a business licensed pursuant to this article that is owned by the licensee or for which the licensee is an employee.

(b) In the interest of the public's safety, as determined by the department, the department may immediately suspend the license of a licensee for an alleged violation under this chapter and shall conduct a hearing of the alleged violation within 30 days of the suspension.

SEC. 8.5. Section 11110 of the Vehicle Code is amended to read:

11110. (a) The department, after notice and hearing, may suspend or revoke a license issued under this chapter if any of the following occurs:

(1) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(2) The licensee fails to keep the records required by this chapter.

(3) The licensee (A) permits fraud or engages in fraudulent practices either with reference to an applicant for a driver's license or an all-terrain vehicle safety certificate from the department, or (B) induces or countenances fraud or fraudulent practices on the part of an applicant.

(4) The licensee fails to comply with this chapter or regulation or requirement of the department adopted pursuant thereto.

(5) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or that would reasonably have the effect of leading persons to believe, that the licensee is in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

(6) The licensee, or an employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(7) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23105, 23152, or 23153 of this code or subdivision (b) of Section 191.5 or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this paragraph.

(8) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(9) The licensee conducts training, or permits training by an employee, in an unsafe manner or contrary to safe driving practices.

(10) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(11) The licensed school owner does not have in effect a bond as required by Section 11102.

(12) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(13) The licensee holds a secondary teaching credential and explicitly or implicitly recruits or attempts to recruit a pupil who is enrolled in a junior or senior high school to be a customer for a business licensed pursuant to this article that is owned by the licensee or for which the licensee is an employee.

(b) In the interest of the public's safety, as determined by the department, the department may immediately suspend the license of a licensee for an alleged violation under this chapter and shall conduct a hearing of the alleged violation within 30 days of the suspension.

SEC. 9. Section 11215 of the Vehicle Code is amended to read:

11215. The department, after notice and hearing, may suspend or revoke a license issued under this chapter if any of the following circumstances exist:

(a) The department finds and determines that the licensee ceases to meet any requirement to obtain a license under this chapter.

(b) The holder fails to comply with, or otherwise violates, a provision of this chapter or a regulation or requirement of the department adopted pursuant to this chapter.

(c) The licensee engages in fraudulent practices with respect to its activities licensed under this chapter or induces or fails to promptly report to the department any known fraud or fraudulent practices on the part of an employee of the traffic violator school.

(d) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression,

or that would reasonably have the effect of leading persons to believe that the licensee was in fact an employee or representative of the department, or whenever the licensee advertises, in any manner or means any statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

(e) The licensee or an employee or agent of the licensee collects fees for or preregisters a person in traffic violator school or solicits traffic violator school instruction in an office of the department or in any court or within 500 feet of any court.

(f) The licensee is convicted of violating Section 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23105, 23152, or 23153 of this code or Section 192 of the Penal Code. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(g) The traffic violator school owner teaches, or permits an employee to teach, traffic safety instruction without a valid instructor's license.

(h) The traffic violator school owner does not have in effect a bond as provided in paragraph (3) of subdivision (a) of Section 11202 or a deposit in lieu of the bond, as specified in Section 11203.

SEC. 9.5. Section 11215 of the Vehicle Code is amended to read:

11215. The department, after notice and hearing, may suspend or revoke a license issued under this chapter if any of the following circumstances exist:

(a) The department finds and determines that the licensee ceases to meet any requirement to obtain a license under this chapter.

(b) The holder fails to comply with, or otherwise violates, a provision of this chapter or a regulation or requirement of the department adopted pursuant to this chapter.

(c) The licensee engages in fraudulent practices with respect to its activities licensed under this chapter or induces or fails to promptly report to the department any known fraud or fraudulent practices on the part of an employee of the traffic violator school.

(d) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or that would reasonably have the effect of leading persons to believe that the licensee was in fact an employee or representative of the department, or whenever the licensee advertises, in any manner or means, a statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

(e) The licensee or an employee or agent of the licensee collects fees for or preregisters a person in traffic violator school or solicits traffic violator school instruction in an office of the department or in a court or within 500 feet of a court.

(f) The licensee is convicted of violating Section 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23105, 23152, or 23153 of this code or subdivision (b) of Section 191.5 or Section 192 of the Penal Code. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(g) The traffic violator school owner teaches, or permits an employee to teach, traffic safety instruction without a valid instructor's license.

(h) The traffic violator school owner does not have in effect a bond as provided in paragraph (3) of subdivision (a) of Section 11202 or a deposit in lieu of the bond, as specified in Section 11203.

SEC. 10. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) A conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) A conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) A conviction of reckless driving shall be given a value of two points.

(d) (1) A conviction of a violation of subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) or (c) of Section 23109, Section 23109.1, or Section 31602 of this code, shall be given a value of two points.

(2) A conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) A conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(f) Except as provided in subdivision (i), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(g) A traffic accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(h) A conviction of a violation of Section 27360 or 27360.5 shall be given a value of one point.

(i) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) A conviction of a violation of paragraph (1) or (2) of subdivision (b) of Section 12814.6, subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of subdivision (d) of Section 21712 shall not result in a violation point count.

(4) A violation of Section 23136 shall not result in a violation point count.

(5) A violation of Section 38301.3 shall not result in a violation point count.

(j) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

SEC. 10.5. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) A conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) A conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) A conviction of reckless driving shall be given a value of two points.

(d) (1) A conviction of a violation of subdivision (b) of Section 191.5 or subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) or (c) of Section 23109, Section 23109.1, or Section 31602 of this code, shall be given a value of two points.

(2) A conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) A conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(f) Except as provided in subdivision (i), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(g) A traffic accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(h) A conviction of a violation of Section 27360 or 27360.5 shall be given a value of one point.

(i) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) A conviction of a violation of paragraph (1) or (2) of subdivision (b) of Section 12814.6, subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of subdivision (d) of Section 21712 shall not result in a violation point count.

(4) A violation of Section 23136 shall not result in a violation point count.

(5) A violation of Section 38301.3 shall not result in a violation point count.

(j) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

SEC. 11. Section 13201 of the Vehicle Code is amended to read:

13201. A court may suspend, for not more than six months, the privilege of a person to operate a motor vehicle upon conviction of any of the following offenses:

(a) Failure of the driver of a vehicle involved in an accident to stop or otherwise comply with Section 20002.

(b) Reckless driving proximately causing bodily injury to a person under Section 23104 or 23105.

(c) Failure of the driver of a vehicle to stop at a railway grade crossing as required by Section 22452.

(d) Evading a peace officer in violation of Section 2800.1 or 2800.2, or in violation of Section 2800.3 if the person's license is not revoked for that violation pursuant to paragraph (3) of subdivision (a) of Section 13351.

(e) (1) Knowingly causing or participating in a vehicular collision, or any other vehicular accident, for the purpose of presenting or causing to be presented any false or fraudulent insurance claim.

(2) In lieu of suspending a person's driving privilege pursuant to paragraph (1), the court may order the privilege to operate a motor vehicle restricted to necessary travel to and from that person's place of employment for not more than six months. If driving a motor vehicle is necessary to perform the duties of the person's employment, the court may restrict the driving privilege to allow driving in that person's scope of employment. Whenever a person's driving privilege is restricted pursuant to this paragraph, the person shall be required to maintain proof of financial responsibility.

SEC. 12. Section 13351 of the Vehicle Code is amended to read:

13351. (a) The department immediately shall revoke the privilege of a person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(1) Manslaughter resulting from the operation of a motor vehicle, except when convicted under paragraph (2) of subdivision (c) of Section 192 of the Penal Code.

(2) Conviction of three or more violations of Section 20001, 20002, 23103, 23104, or 23105 within a period of 12 months from the time of

the first offense to the third or subsequent offense, or a combination of three or more convictions of violations within the same period.

(3) Violation of Section 191.5 of the Penal Code or of Section 2800.3 causing serious bodily injury resulting in a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, serious bone fracture, protracted loss or impairment of function of any bodily member or organ, and serious disfigurement.

(b) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of three years after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility, as defined in Section 16430.

SEC. 12.5. Section 13351 of the Vehicle Code is amended to read:

13351. (a) The department immediately shall revoke the privilege of a person to drive a motor vehicle upon receipt of a duly certified abstract of the record of a court showing that the person has been convicted of any of the following crimes or offenses:

(1) Manslaughter resulting from the operation of a motor vehicle, except when convicted under paragraph (2) of subdivision (c) of Section 192 of the Penal Code.

(2) Conviction of three or more violations of Section 20001, 20002, 23103, 23104, or 23105 within a period of 12 months from the time of the first offense to the third or subsequent offense, or a combination of three or more convictions of violations within the same period.

(3) Violation of subdivision (a) of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code or of Section 2800.3 causing serious bodily injury resulting in a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, serious bone fracture, protracted loss or impairment of function of any bodily member or organ, and serious disfigurement.

(b) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of three years after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility, as defined in Section 16430.

SEC. 13. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke the privilege of a person to operate a motor vehicle upon the receipt of an abstract of the record of a court showing that the person has been convicted of a violation of Section 23152 or 23153, subdivision (a) of Section 23109, or Section 23109.1, or upon the receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109 or Section 23109.1. If an offense specified in this section

occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Sections 15300 to 15302, inclusive. For the purposes of this section, suspension or revocation shall be as follows:

(1) Except as required under Section 13352.1 or Section 13352.4, upon a conviction or finding of a violation of Section 23152 punishable under Section 23536, the privilege shall be suspended for a period of six months.

The privilege may not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code described in subdivision (b) of Section 23538. If the court, as authorized under paragraph (3) of subdivision (b) of Section 23646, elects to order a person to enroll, participate and complete either program described in subdivision (b) of Section 23542, the department shall require that program in lieu of the program described in subdivision (b) of Section 23538. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit may not be given to any program activities completed prior to the date of the current violation.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23554, the privilege shall be suspended for a period of one year. The privilege may not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in subdivision (b) of Section 23556. If the court, as authorized under paragraph (3) of subdivision (b) of Section 23646, elects to order a person to enroll, participate, and complete either program described in subdivision (b) of Section 23542, the department shall require that program in lieu of the program described in Section 23556. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit may not be given to any program activities completed prior to the date of the current violation.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23540, the privilege shall be suspended for two years. The privilege may not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section

11836 of the Health and Safety Code as described in subdivision (b) of Section 23542. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 12 months of the suspension period, which may include credit for a suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily provided, subsequent to the violation date of the current underlying conviction, either of the following:

(i) Proof of enrollment in an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) Proof of enrollment in a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the program described in subparagraph (A).

(C) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (g) of Section 13386.

(D) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(E) The person provides proof of financial responsibility, as defined in Section 16430.

(F) The person pays all administrative fees or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(4) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23560, the privilege shall be revoked for a period of three years. The privilege may not be reinstated until the person gives proof of financial responsibility, and the person gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in paragraph (4) of subdivision (b) of Section 23562. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 12 months of the revocation period, which may include

credit for a suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) The initial 12 months of an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 12 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in that 30-month program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (g) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(F) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(5) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23546, the privilege shall be revoked for a period of three years. The privilege may not be reinstated until the person files proof of financial responsibility and gives proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) or (c) of Section 23548, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 12 months of the revocation period, which may include credit for a suspension period served under subdivision (c) of Section

13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) The initial 12 months of an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 12 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (g) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) An individual convicted of a violation of Section 23152 punishable under Section 23546 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(6) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23550.5 or 23566, the privilege shall be revoked for a period of five years. The privilege may not be reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23568 or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program

specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 12 months of the revocation period, which may include credit for a suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) The initial 12 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(ii) The initial 12 months of an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if a 30-month program is unavailable in the person's county of residence or employment.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (g) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) An individual convicted of a violation of Section 23153 punishable under Section 23566 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(7) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23550 or 23550.5, or Section 23153 punishable under Section 23550.5 the privilege shall be revoked for a period of four years. The privilege may not be

reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 12 months of the revocation period, which may include credit for a suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) The initial 12 months of an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 12 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (g) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) An individual convicted of a violation of Section 23152 punishable under Section 23550 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 or Section 23109.1 that is punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if ordered by the court. The privilege may not be reinstated until the person gives proof of financial responsibility, as defined in Section 16430.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 that is punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if ordered by the court. The privilege may not be reinstated until the person gives proof of financial responsibility, as defined in Section 16430.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109 or Section 23109.1, as specified in subdivision (a) of this section, is a conviction.

(c) A judge of a juvenile court, juvenile hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for the purposes of this section, and a conviction of an offense that, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for the purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

(e) For the purposes of the restriction conditions specified in paragraphs (3) to (7), inclusive, of subdivision (a), the department shall terminate the restriction imposed pursuant to this section and shall suspend or revoke the person's driving privilege upon receipt of notification from the driving-under-the-influence program that the person has failed to comply with the program requirements. The person's driving privilege shall remain suspended or revoked for the remaining period of the original suspension or revocation imposed under this section and until all reinstatement requirements described in this section are met.

(f) For the purposes of this section, completion of a program is the following:

(1) Satisfactory completion of all program requirements approved pursuant to program licensure, as evidenced by a certificate of completion issued, under penalty of perjury, by the licensed program.

(2) Certification, under penalty of perjury, by the director of a program specified in Section 8001 of the Penal Code, that the person has completed a program specified in Section 8001 of the Penal Code.

(g) The holder of a commercial driver's license who was operating a commercial motor vehicle, as defined in Section 15210, at the time of a violation that resulted in a suspension or revocation of the person's noncommercial driving privilege under this section is not eligible for the restricted driver's license authorized under paragraphs (3) to (7), inclusive, of subdivision (a).

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, 23104, or 23105, 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) A 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 that 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 that 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, 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.

(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 21051 of the Vehicle Code is amended to read:

21051. The following sections apply to trolley coaches:

(a) Sections 1800, 4000, 4001, 4002, 4003, 4006, 4009, 4150, 4151, 4152, 4153, 4155, 4156, 4158, 4166, 4300 to 4309, inclusive, 4450 to 4454, inclusive, 4457, 4458, 4459, 4460, 4600 to 4610, inclusive, 4750, 4751, 4850, 4851, 4852, 4853, 5000, 5200 to 5205, inclusive, 5904, 6052, 8801, 9254, and 40001 with respect to 4000, relating to original and renewal of registration.

(b) Sections 9250, 9265, 9400, 9406, 9407, 9408, 9550, 9552, 9553, 9554, 9800 to 9808, inclusive, 14901, 42230 to 42233, inclusive, relating to registration and other fees.

(c) Sections 2800, 10851, 10852, 10853, 20001 to 20009, inclusive, 21052, 21053, 21054, 21450 to 21457, inclusive, 21461, 21650, 21651, 21658, 21659, 21700, 21701, 21702, 21703, 21709, 21712, 21750, 21753, 21754, 21755, 21800, 21801, 21802, 21806, 21950, 21951, 22106, 22107, 22108, 22109, 22350, 22351, 22352, 22400, 22450 to 22453, inclusive, 23103, 23104, 23105, 23110, 23152, 23153, 40831, 42002 with respect to 10852 and 10853, and 42004, relating to traffic laws.

(d) Sections 26706, 26707, and 26708, relating to equipment.

(e) Sections 17301, 17302, 17303, 21461, 35000, 35100, 35101, 35105, 35106, 35111, 35550, 35551, 35750, 35751, 35753, 40000.1 to 40000.25, inclusive, 40001, 40003, and 42031, relating to the size, weight, and loading of vehicles.

SEC. 16. Section 23103 of the Vehicle Code is amended to read:

23103. (a) A person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) A person who drives a vehicle in an offstreet parking facility, as defined in subdivision (c) of Section 12500, in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(c) Persons convicted of the offense of reckless driving shall be punished by imprisonment in a county jail for not less than five days nor more than 90 days or by a fine of not less than one hundred forty-five dollars ($145) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment, except as provided in Section 23104 or 23105.

SEC. 17. Section 23104 of the Vehicle Code is amended to read:

23104. (a) Except as provided in subdivision (b), whenever reckless driving of a vehicle proximately causes bodily injury to a person other than the driver, the person driving the vehicle shall, upon conviction thereof, be punished by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than two hundred twenty dollars ($220) nor more than one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) A person convicted of reckless driving that proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to a person other than the driver, who previously has been convicted of a violation of Section 23103, 23104, 23105, 23109, 23109.1, 23152, or 23153, shall be punished by imprisonment in the state prison, by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than two hundred twenty dollars ($220) nor more than one thousand dollars ($1,000) or by both the fine and imprisonment.

SEC. 18. Section 40800 of the Vehicle Code is amended to read:

40800. (a) A traffic officer on duty for the exclusive or main purpose of enforcing the provisions of Division 10 (commencing with Section 20000) or 11 (commencing with Section 21000) shall wear a full distinctive uniform, and if the officer while on duty uses a motor vehicle, it must be painted a distinctive color specified by the commissioner.

(b) This section does not apply to an officer assigned exclusively to the duty of investigating and securing evidence in reference to the theft of a vehicle or failure of a person to stop in the event of an accident or violation of Section 23109 or 23109.1 or in reference to a felony charge, or to an officer engaged in serving a warrant when the officer is not engaged in patrolling the highways for the purpose of enforcing the traffic laws.

SEC. 19. Section 40804 of the Vehicle Code is amended to read:

40804. (a) In any prosecution under this code upon a charge involving the speed of a vehicle, an officer or other person shall be incompetent as a witness if the testimony is based upon or obtained from or by the maintenance or use of a speed trap.

(b) An officer arresting, or participating or assisting in the arrest of, a person so charged while on duty for the exclusive or main purpose of

enforcing the provisions of Divisions 10 (commencing with Section 20000) and 11 (commencing with Section 21000) is incompetent as a witness if at the time of that arrest he was not wearing a distinctive uniform, or was using a motor vehicle not painted the distinctive color specified by the commissioner.

(c) This section does not apply to an officer assigned exclusively to the duty of investigating and securing evidence in reference to the theft of a vehicle or failure of a person to stop in the event of an accident or violation of Section 23109 or 23109.1 or in reference to a felony charge or to an officer engaged in serving a warrant when the officer is not engaged in patrolling the highways for the purpose of enforcing the traffic laws.

SEC. 20. Section 41610 of the Vehicle Code is amended to read:

41610. (a) Whenever a person who is in custody enters a guilty plea to an infraction or misdemeanor under this code and there is outstanding any warrant of arrest for a violation of this code or a local ordinance adopted pursuant to this code that is filed in any court within the same county, the defendant may elect to enter a guilty plea to any of these charged offenses of which the court has a record, except offenses specified in subdivision (b). The court shall sentence the defendant for each of the offenses for which a guilty plea has been entered pursuant to this section, and shall notify the appropriate court or department in each affected judicial district of the disposition. After receiving that notice of disposition, the court in which each complaint was filed shall prepare and transmit to the department any certification required by applicable provisions of Section 40509 as if the court had heard the case.

(b) Subdivision (a) does not authorize entry of a guilty plea as specified in that subdivision to an offense for which a notice of parking violation has been issued, nor to any offense specified in Section 14601.2, 14601.3, 20002, 23103, 23104, 23105, 23152, or 23153, subdivision (a) of Section 14601, or subdivision (a) of Section 14601.1.

SEC. 21. Section 42008.5 of the Vehicle Code is amended to read:

42008.5. (a) A county may establish a one-time amnesty program for fines and bail that have been delinquent for not less than six months as of the date upon which the program commences and were imposed for an infraction or misdemeanor violation of this code, except parking violations of this code and violations of Section 23103, 23104, 23105, 23152, or 23153.

(b) A person owing a fine or bail that is eligible for amnesty under the program may pay to the superior or juvenile court the amount scheduled by the court, that shall be accepted by the court in full satisfaction of the delinquent fine or bail and shall be either of the following:

(1) Seventy percent of the total fine or bail.

(2) The amount of one hundred dollars ($100) for an infraction or five hundred dollars ($500) for a misdemeanor.

(c) The amnesty program shall be implemented by the courts of the county on a one-time basis and conducted in accordance with Judicial Council guidelines for a period of not less than 120 days. The program shall operate not longer than six months from the date the court initiates the program.

(d) No criminal action shall be brought against a person for a delinquent fine or bail paid under the amnesty program and no other additional penalties, except as provided in Section 1214.1 of the Penal Code, shall be assessed for the late payment of the fine or bail made under the amnesty program.

(e) Notwithstanding Section 1463 of the Penal Code, the total amount of funds collected by the courts pursuant to the amnesty program shall be deposited in the county treasury until 150 percent of the cost of operating the program, excluding capital expenditures, have been so deposited. Thereafter, 37 percent of the amount of the delinquent fines and bail deposited in the county treasury shall be distributed by the county pursuant to Section 1464 of the Penal Code, 26 percent of the amount deposited shall be distributed by the county pursuant to Article 2 (commencing with Section 76100) of Chapter 12 of Title 8 of the Government Code, and the remaining 37 percent of the amount deposited shall be retained by the county.

(f) The deposit of fines and bails in the county treasury as described in subdivision (e) is limited to the amnesty program described in this section, and it is the intent of the Legislature that it shall not be considered a precedent with respect to affecting programs that receive funding pursuant to Section 1463 of the Penal Code.

(g) Each county participating in the program shall file, not later than six months after the termination of the program, a written report with the Assembly Committee on Judiciary and the Senate Committee on Judiciary. The report shall summarize the amount of money collected, operating costs of the program, distribution of funds collected, and when possible, how the funds were expended.

SEC. 22. Section 42009 of the Vehicle Code is amended to read:

42009. (a) For an offense specified in subdivision (b), committed by the driver of a vehicle within a highway construction or maintenance area, during any time when traffic is regulated or restricted through or around that area pursuant to Section 21367, when the highway construction or maintenance is actually being performed in the area by workers acting in their official capacity, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed. In an infraction case,

the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of any of the following provisions is an offense that is subject to subdivision (a):

(1) Section 21367, relating to regulation of traffic at a construction site.

(2) Article 3 (commencing with Section 21450) of Chapter 2 of Division 11, relating to obedience to traffic devices.

(3) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(4) Chapter 4 (commencing with Section 21800) of Division 11, relating to yielding the right-of-way.

(5) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

(6) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(7) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.

(8) Section 23103, relating to reckless driving.

(9) Section 23104 or 23105, relating to reckless driving that results in bodily injury to another.

(10) Section 23109 or 23109.1, relating to speed contests.

(11) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(12) Section 23153, relating to driving under the influence of alcohol or a controlled substance, that results in bodily injury to another.

(13) Section 23220, relating to drinking while driving.

(14) Section 23221, relating to drinking in a motor vehicle while on the highway.

(15) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(16) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(17) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.

(18) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(19) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when construction or maintenance work is actually being performed by workers, and there are work zone traffic

control devices, traffic controls or warning signs, or any combination of those, to notify motorists and pedestrians of construction or maintenance workers in the area.

SEC. 22.5. Section 42009 of the Vehicle Code is amended to read:

42009. (a) For an offense specified in subdivision (b), committed by the driver of a vehicle within a highway construction or maintenance area, during any time when traffic is regulated or restricted through or around that area pursuant to Section 21367, or when the highway construction or maintenance is actually being performed in the area by workers acting in their official capacity, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed. In an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of the following is an offense that is subject to subdivision (a):

(1) Section 21367, relating to regulation of traffic at a construction site.

(2) Article 3 (commencing with Section 21450) of Chapter 2 of Division 11, relating to obedience to traffic devices.

(3) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(4) Chapter 4 (commencing with Section 21800) of Division 11, relating to yielding the right-of-way.

(5) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

(6) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(7) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.

(8) Section 23103, relating to reckless driving.

(9) Section 23104 or 23105, relating to reckless driving which results in bodily injury to another.

(10) Section 23109 or 23109.1, relating to speed contests.

(11) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(12) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(13) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.

(14) Section 23220, relating to drinking while driving.

(15) Section 23221, relating to drinking in a motor vehicle while on the highway.

(16) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(17) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(18) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.

(19) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(20) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when construction or maintenance work is actually being performed by workers, and there are work zone traffic control devices, traffic controls or warning signs, or any combination of those, to notify motorists and pedestrians of construction or maintenance workers in the area.

SEC. 23. Section 42010 of the Vehicle Code is amended to read:

42010. (a) For any offense specified in subdivision (b) that is committed by the driver of a vehicle within an area that has been designated as a Safety Enhancement-Double Fine Zone pursuant to Section 97 and following of the Streets and Highways Code, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed, and, in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of any of the following provisions is an offense that is subject to subdivision (a):

(1) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(2) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(3) Section 23103, relating to reckless driving.

(4) Section 23104 or 23105, relating to reckless driving that results in bodily injury to another.

(5) Section 23109 or 23109.1, relating to speed contests.

(6) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(7) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(8) Section 23220, relating to drinking while driving.

(9) Section 23221, relating to drinking in a motor vehicle while on the highway.

(10) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(11) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(12) Section 23224, relating to being a driver or passenger under 21 years of age possessing an open alcoholic beverage container.

(13) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(14) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when traffic controls or warning signs have been placed pursuant to Section 97 or 97.1 of the Streets and Highways Code.

(d) (1) Notwithstanding any other provision of law, the enhanced fine imposed pursuant to this section shall be based only on the base fine imposed for the underlying offense and shall not include any other enhancements imposed pursuant to law.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

SEC. 23.5. Section 42010 of the Vehicle Code is amended to read:

42010. (a) For an offense specified in subdivision (b) that is committed by the driver of a vehicle within an area that has been designated as a Safety Enhancement-Double Fine Zone pursuant to Section 97 and following of the Streets and Highways Code, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed, and, in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of the following is an offense that is subject to subdivision (a):

(1) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(2) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(3) Section 23103, relating to reckless driving.

(4) Section 23104 or 23105, relating to reckless driving that results in bodily injury to another.

(5) Section 23109 or 23109.1, relating to speed contests.

(6) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(7) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(8) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.

(9) Section 23220, relating to drinking while driving.

(10) Section 23221, relating to drinking in a motor vehicle while on the highway.

(11) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(12) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(13) Section 23224, relating to being a driver or passenger under 21 years of age possessing an open alcoholic beverage container.

(14) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(15) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when traffic controls or warning signs have been placed pursuant to Section 97 or 97.1 of the Streets and Highways Code.

(d) (1) Notwithstanding any other provision of law, the enhanced fine imposed pursuant to this section shall be based only on the base fine imposed for the underlying offense and shall not include any other enhancements imposed pursuant to law.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

SEC. 24. 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, 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.

SEC. 25. Section 1.5 of this bill incorporates amendments to Section 68152 of the Government Code proposed by both this bill and AB 1248. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 68152 of the Government Code, and (3) this bill is enacted after AB 1248, in which case Section 1 of this bill shall not become operative.

SEC. 26. Section 7.5 of this bill incorporates amendments to Section 1463.17 of the Penal Code proposed by both this bill and AB 227. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1463.17 of the Penal Code, and (3) this bill is enacted after AB 227, in which case Section 7 of this bill shall not become operative.

SEC. 27. Section 8.5 of this bill incorporates amendments to Section 11110 of the Vehicle Code proposed by both this bill and AB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 11110 of the Vehicle Code, and (3) this bill is enacted after AB 678, in which case Section 8 of this bill shall not become operative.

SEC. 28. Section 9.5 of this bill incorporates amendments to Section 11215 of the Vehicle Code proposed by both this bill and AB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 11215 of the Vehicle Code, and (3) this bill is enacted after AB 678, in which case Section 9 of this bill shall not become operative.

SEC. 29. Section 10.5 of this bill incorporates amendments to Section 12810 of the Vehicle Code proposed by both this bill and AB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 12810 of the Vehicle Code, and (3) this bill is enacted after AB 678, in which case Section 10 of this bill shall not become operative.

SEC. 30. Section 12.5 of this bill incorporates amendments to Section 13351 of the Vehicle Code proposed by both this bill and AB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 13351 of the Vehicle Code, and (3) this bill is enacted after AB 678, in which case Section 12 of this bill shall not become operative.

SEC. 31. Section 22.5 of this bill incorporates amendments to Section 42009 of the Vehicle Code proposed by both this bill and AB 1165. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, but this bill becomes operative

first, (2) each bill amends Section 42009 of the Vehicle Code, and (3) this bill is enacted after AB 1165, in which case Section 42009 of the Vehicle Code, as amended by Section 22 of this bill, shall remain operative only until the operative date of AB 1165, at which time Section 22.5 of this bill shall become operative.

SEC. 32. Section 23.5 of this bill incorporates amendments to Section 42010 of the Vehicle Code proposed by both this bill and AB 1165. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, but this bill becomes operative first, (2) each bill amends Section 42010 of the Vehicle Code, and (3) this bill is enacted after AB 1165, in which case Section 42010 of the Vehicle Code, as amended by Section 23 of this bill, shall remain operative only until the operative date of AB 1165, at which time Section 23.5 of this bill shall become operative.

CHAPTER 683

An act to amend Section 1278.5 of the Health and Safety Code, relating to health care facilities.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 1278.5 of the Health and Safety Code is amended to read:

1278.5. (a) The Legislature finds and declares that it is the public policy of the State of California to encourage patients, nurses, members of the medical staff, and other health care workers to notify government entities of suspected unsafe patient care and conditions. The Legislature encourages this reporting in order to protect patients and in order to assist those accreditation and government entities charged with ensuring that health care is safe. The Legislature finds and declares that whistleblower protections apply primarily to issues relating to the care, services, and conditions of a facility and are not intended to conflict with existing provisions in state and federal law relating to employee and employer relations.

(b) (1) No health facility shall discriminate or retaliate, in any manner, against any patient, employee, member of the medical staff, or any other health care worker of the health facility because that person has done either of the following:

(A) Presented a grievance, complaint, or report to the facility, to an entity or agency responsible for accrediting or evaluating the facility, or the medical staff of the facility, or to any other governmental entity.

(B) Has initiated, participated, or cooperated in an investigation or administrative proceeding related to, the quality of care, services, or conditions at the facility that is carried out by an entity or agency responsible for accrediting or evaluating the facility or its medical staff, or governmental entity.

(2) No entity that owns or operates a health facility, or which owns or operates any other health facility, shall discriminate or retaliate against any person because that person has taken any actions pursuant to this subdivision.

(3) A violation of this section shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000). The civil penalty shall be assessed and recovered through the same administrative process set forth in Chapter 2.4 (commencing with Section 1417) for long-term health care facilities.

(c) Any type of discriminatory treatment of a patient by whom, or upon whose behalf, a grievance or complaint has been submitted, directly or indirectly, to a governmental entity or received by a health facility administrator within 180 days of the filing of the grievance or complaint, shall raise a rebuttable presumption that the action was taken by the health facility in retaliation for the filing of the grievance or complaint.

(d) (1) There shall be a rebuttable presumption that discriminatory action was taken by the health facility, or by the entity that owns or operates that health facility, or that owns or operates any other health facility, in retaliation against an employee, member of the medical staff, or any other health care worker of the facility, if responsible staff at the facility or the entity that owns or operates the facility had knowledge of the actions, participation, or cooperation of the person responsible for any acts described in paragraph (1) of subdivision (b), and the discriminatory action occurs within 120 days of the filing of the grievance or complaint by the employee, member of the medical staff or any other health care worker of the facility.

(2) For purposes of this section, discriminatory treatment of an employee, member of the medical staff, or any other health care worker includes, but is not limited to, discharge, demotion, suspension, or any unfavorable changes in, or breach of, the terms or conditions of a contract, employment, or privileges of the employee, member of the medical staff, or any other health care worker of the health care facility, or the threat of any of these actions.

(e) The presumptions in subdivisions (c) and (d) shall be presumptions affecting the burden of producing evidence as provided in Section 603 of the Evidence Code.

(f) Any person who willfully violates this section is guilty of a misdemeanor punishable by a fine of not more than twenty thousand dollars ($20,000).

(g) An employee who has been discriminated against in employment pursuant to this section shall be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the acts of the employer, and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law. A health care worker who has been discriminated against pursuant to this section shall be entitled to reimbursement for lost income and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or other applicable provision of statutory or common law. A member of the medical staff who has been discriminated against pursuant to this section shall be entitled to reinstatement, reimbursement for lost income resulting from any change in the terms or conditions of his or her privileges caused by the acts of the facility or the entity that owns or operates a health facility or any other health facility that is owned or operated by that entity, and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law.

(h) The medical staff of the health facility may petition the court for an injunction to protect a peer review committee from being required to comply with evidentiary demands on a pending peer review hearing from the member of the medical staff who has filed an action pursuant to this section, if the evidentiary demands from the complainant would impede the peer review process or endanger the health and safety of patients of the health facility during the peer review process. Prior to granting an injunction, the court shall conduct an in camera review of the evidence sought to be discovered to determine if a peer review hearing, as authorized in Section 805 and Sections 809 to 809.5, inclusive, of the Business and Professions Code, would be impeded. If it is determined that the peer review hearing will be impeded, the injunction shall be granted until the peer review hearing is completed. Nothing in this section shall preclude the court, on motion of its own or by a party, from issuing an injunction or other order under this subdivision in the interest of justice for the duration of the peer review process to protect the person from irreparable harm.

(i) For purposes of this section, "health facility" means any facility defined under this chapter, including, but not limited to, the facility's administrative personnel, employees, boards, and committees of the board, and medical staff.

(j) This section shall not apply to an inmate of a correctional facility or juvenile facility of the Department of Corrections and Rehabilitation, or to an inmate housed in a local detention facility including a county jail or a juvenile hall, juvenile camp, or other juvenile detention facility.

(k) This section shall not apply to a health facility that is a long-term health care facility, as defined in Section 1418. A health facility that is a long-term health care facility shall remain subject to Section 1432.

(*l*) Nothing in this section shall be construed to limit the ability of the medical staff to carry out its legitimate peer review activities in accordance with Sections 809 to 809.5, inclusive, of the Business and Professions Code.

(m) Nothing in this section abrogates or limits any other theory of liability or remedy otherwise available at law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 684

An act to amend Section 43869 of the Health and Safety Code, and to amend Sections 399.12, 399.12.5, 399.13, and 399.16 of the Public Utilities Code, relating to energy.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 43869 of the Health and Safety Code is amended to read:

43869. The state board shall, no later than July 1, 2008, develop and, after at least two public workshops, adopt hydrogen fuel regulations to ensure the following:

(a) That state funding for the production and use of hydrogen fuel, as described in the California Hydrogen Highway Blueprint Plan, contributes to the reduction of greenhouse gas emissions, criteria air pollutant emissions, and toxic air contaminant emissions. The regulations shall, at a minimum, do all of the following:

(1) Require that, on a statewide basis, well-to-wheel emissions of greenhouse gases for the average hydrogen powered vehicle fueled by hydrogen from fueling stations that receive state funds are at least 30 percent lower than emissions for the average new gasoline vehicle in California when measured on a per-mile basis.

(2) (A) Require that, on a statewide basis, no less than 33.3 percent of the hydrogen produced for, or dispensed by, fueling stations that receive state funds be made from eligible renewable energy resources as defined in Section 399.12 of the Public Utilities Code.

(B) If the state board determines that there is insufficient availability of hydrogen fuel from eligible renewable resources to meet the 33.3 percent requirement of this paragraph, the state board may, after at least one public workshop and on a one-time basis, reduce the requirement by an amount, not to exceed 10 percentage points, that the state board determines is necessary to result in a renewable percentage requirement for hydrogen fuel that is achievable.

(C) If the executive officer of the state board determines that it is not feasible for a public transit operator to use hydrogen fuel made from eligible renewable resources, the executive officer may exempt the operator from the requirements of this paragraph for a period of not more than five years and may extend the exemption for up to five additional years.

(3) Prohibit hydrogen fuel producers from counting as a renewable energy resource, pursuant to paragraph (2), any electricity produced from sources previously procured by a retail seller and verifiably counted by the retail seller towards meeting the renewables portfolio standard obligation, as required by Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

(4) Require that all hydrogen fuel dispensed from fueling stations that receive state funds be generated in a manner so that local well-to-tank emissions of nitrogen oxides plus reactive organic gases are at least 50 percent lower than well-to-tank emissions of the average motor gasoline sold in California when measured on an energy equivalent basis.

(5) Require that well-to-tank emissions of relevant toxic air contaminants for hydrogen fuel dispensed from fueling stations that receive state funds be reduced to the maximum extent feasible at each site when compared to well-to-tank emissions of toxic air contaminants of the average motor gasoline fuel on an energy-equivalent basis. In no

case shall the toxic emissions be greater than the emissions from gasoline on an energy equivalent basis.

(6) Require that providers of hydrogen fuel for transportation in the state report to the state board the annual mass of hydrogen fuel dispensed and the method by which the dispensed hydrogen was produced and delivered.

(7) Authorize the state board, after at least one public workshop, to grant authority to the executive officer of the state board to exempt from this subdivision, for a period of no more than five years, hydrogen dispensing facilities constructed for small demonstration or temporary purposes. The exemption may be extended on a case-by-case basis upon a finding that the extension will not harm public health. The executive officer may limit the total number of exemptions by geographic region, including by air district, but the average annual mass of hydrogen dispensed from exempted facilities shall not exceed 10 percent of the total mass of hydrogen fuel dispensed for transportation purposes in the state.

(b) That, in any year immediately following a 12-month period in which the mass of hydrogen fuel dispensed for transportation purposes in California exceeds 3,500 metric tons, the production and direct use of hydrogen fuels for motor vehicles in the state, including, but not limited to, any hydrogen highway network that is developed pursuant to the California Hydrogen Highway Blueprint Plan, contributes to a reduced dependence on petroleum, as well as reductions in greenhouse gas emissions, criteria air pollutant emissions, and toxic air contaminant emissions. For the purpose of this subdivision, the regulations, at a minimum, shall do all of the following:

(1) Require that, on a statewide basis, well-to-wheel emissions of greenhouse gases for the average hydrogen powered vehicle in California are at least 30 percent lower than emissions for the average new gasoline vehicle in California when measured on a per-mile basis.

(2) Require that, on a statewide basis, no less than 33.3 percent of the hydrogen produced or dispensed in California for motor vehicles be made from eligible renewable energy resources as defined in Section 399.12 of the Public Utilities Code.

(3) Prohibit hydrogen fuel producers from counting as a renewable energy resource, for the purposes of paragraph (2), any electricity produced from sources previously procured by a retail seller and verifiably counted by the retail seller towards meeting the requirements established by the California Renewables Portfolio Standard Program, as set forth in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

(4) Require that all hydrogen fuel dispensed in California for motor vehicles be generated in a manner so that local well-to-tank emissions of nitrogen oxides plus reactive organic gases are at least 50 percent lower than well-to-tank emissions of the average motor gasoline sold in California when measured on an energy equivalent basis.

(5) Require that well-to-tank emissions of relevant toxic air contaminants from hydrogen fuel produced or dispensed in California be reduced to the maximum extent feasible at each site when compared to well-to-tank emissions of toxic air contaminants of the average motor gasoline fuel on an energy-equivalent basis. In no case shall the toxic emissions from hydrogen fuel be greater than the toxic emissions from gasoline on an energy-equivalent basis.

(6) Authorize the state board, after at least one public workshop, to grant authority to the executive officer of the state board to exempt from this subdivision, for a period of no more than five years, hydrogen dispensing facilities that dispense an average of no more than 100 kilograms of hydrogen fuel per month. The exemption may be extended on a case-by-case basis by the executive officer upon a finding that the extension will not harm public health. The executive officer may limit the total number of exemptions by geographic region, including by air district, but the average annual mass of hydrogen dispensed statewide from exempted facilities shall not exceed 10 percent of the total mass of hydrogen fuel dispensed for transportation purposes in the state.

(7) Authorize the state board, if it determines that reporting is necessary to facilitate enforcement of the requirements of this subdivision, to require that providers of hydrogen fuel for transportation in the state report to the state board the annual mass of hydrogen fuel dispensed and the method by which the dispensed hydrogen was produced and delivered.

(c) Notwithstanding subdivision (b), the state board may increase the 3,500-metric-ton threshold in subdivision (b) by no more than 1,500 metric tons if at least one of the following requirements is met:

(1) The 3,500-metric-ton threshold is first met prior to January 1, 2011.

(2) The state board determines that the 3,500-metric-ton threshold has been met primarily due to hydrogen fuel consumed in heavy duty vehicles.

(3) The state board determines at a public hearing that increasing the threshold would accelerate the deployment of hydrogen fuel cell vehicles in the state.

(d) The state board, in consultation with other relevant agencies as appropriate, shall review the renewable resource requirements adopted pursuant to paragraphs (2) and (3) of subdivision (a) and paragraphs (2)

and (3) of subdivision (b) every four years and shall increase the renewable resource percentage requirements if it determines that it is technologically feasible to do so and will not substantially hinder the development of hydrogen as a transportation fuel in a manner that is consistent with this section.

(e) The state board shall review the emission requirements adopted pursuant to paragraphs (1), (4), and (5) of subdivision (a) and paragraphs (1), (4), and (5) of subdivision (b) every four years and shall strengthen the requirements if it determines it is technologically feasible to do so and will not substantially hinder the development of hydrogen as a transportation fuel in a manner that is consistent with this section.

(f) The state board shall produce and periodically update a handbook to inform and educate motor vehicle manufacturers, hydrogen fuel producers, hydrogen service station operators, and other interested parties on how to comply with the requirements set forth in this section. This handbook shall be made available on the agency's Internet Web site on or before July 1, 2009.

(g) The Secretary for Environmental Protection shall convene the California Environmental Protection Agency's Environmental Justice Advisory Committee at least once annually to solicit the committee's comments on the production and distribution of hydrogen fuel in the state.

(h) The Secretary for Environmental Protection, in consultation with the state board, shall recommend to the Legislature and the Governor, on or before January 1, 2010, incentives that could be offered to businesses within the hydrogen fuel industry and consumers to spur the development of clean sources of hydrogen fuel.

(i) Unless the context requires otherwise, the definitions set forth in this subdivision govern the construction of this section:

(1) "Well-to-tank emissions" means emissions resulting from production of a fuel, including resource extraction, initial processing, transport, fuel production, distribution and marketing, and delivery into the fuel tank of a consumer vehicle.

(2) "Well-to-wheel emissions" means emissions resulting from production of a fuel, including resource extraction, initial processing, transport, fuel production, distribution and marketing, and delivery and use in a consumer vehicle.

SEC. 2. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings:

(a) "Conduit hydroelectric facility" means a facility for the generation of electricity that uses only the hydroelectric potential of an existing

pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for a beneficial use.

(b) "Delivered" and "delivery" have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.

(c) "Eligible renewable energy resource" means an electric generating facility that meets the definition of "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following limitations:

(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(d) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(e) "Local publicly owned electric utility" has the same meaning as provided in subdivision (d) of Section 9604.

(f) "Procure" means that a retail seller receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(g) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article.

(h) (1) "Renewable energy credit" means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

(2) "Renewable energy credit" includes all renewable and environmental attributes associated with the production of electricity

from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

(3) No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimus quantity, as determined by the Energy Commission, shall result in the creation of a renewable energy credit.

(i) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing electricity consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned electric utility.

SEC. 3. Section 399.12.5 of the Public Utilities Code is amended to read:

399.12.5. (a) Notwithstanding subdivision (c) of Section 399.12, a small hydroelectric generation facility that satisfies the criteria for an eligible renewable energy resource pursuant to Section 399.12 shall not lose its eligibility if efficiency improvements undertaken after January 1, 2008, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in an adverse impact on instream beneficial uses or cause a change in the volume or

timing of streamflow. The entire generating capacity of the facility shall be eligible.

(b) Notwithstanding subdivision (c) of Section 399.12, the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility, is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if all of the following conditions are met:

(1) The incremental increase is the result of efficiency improvements from a retrofit that do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) The hydroelectric generation facility has, within the immediately preceding 15 years, received certification from the State Water Resources Control Board pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341), or has received certification from a regional board to which the state board has delegated authority to issue certification, unless the facility is exempt from certification because there is no potential for discharge into waters of the United States.

(3) The hydroelectric generation facility was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008.

(4) All of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller. For purposes of this paragraph, "long-term financial commitment" means either new ownership investment in the facility by the retail seller or a new or renewed contract with a term of 10 or more years, which includes procurement of the incremental generation.

(c) The incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility are not eligible for supplemental energy payments pursuant to the Renewable Energy Resources Program (Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code), or a successor program.

SEC. 4. Section 399.13 of the Public Utilities Code is amended to read:

399.13. The Energy Commission shall do all of the following:

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (c) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to certify renewable energy credits produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state. In establishing the guidelines governing this accounting system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation and delivery of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the Western Electricity Coordinating Council in the development of this system.

(d) Certify, for purposes of compliance with the renewable portfolio standard requirements by a retail seller, the eligibility of renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, if the Energy Commission determines that the following conditions have been satisfied:

(1) The local publicly owned electric utility that is procuring the electricity is in compliance with the requirements of Section 387.

(2) The local publicly owned electric utility has established an annual renewables portfolio standard target comparable to those applicable to an electrical corporation, is procuring sufficient eligible renewable energy resources to satisfy the targets, and will not fail to satisfy the targets in the event that the renewable energy credit is sold to another retail seller.

(e) Allocate and award supplemental energy payments pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to eligible renewable energy resources to cover above-market costs of renewable energy. A project selected by an electrical corporation may receive supplemental energy payments only if it results from a competitive solicitation that is found by the commission to comply with the California Renewables Portfolio Standard

Program under this article and the project has entered into an electricity purchase agreement resulting from that solicitation that is approved by the commission. A project selected for an electricity purchase agreement by another retail seller may receive supplemental energy payments only if the retail seller demonstrates to the commission that the selection of the project is consistent with the results of a least-cost and best-fit process, and that the supplemental energy payments are reasonable in comparison to those paid under similar contracts with other retail sellers.

SEC. 5. Section 399.16 of the Public Utilities Code is amended to read:

399.16. (a) The commission, by rule, may authorize the use of renewable energy credits to satisfy the requirements of the renewables portfolio standard established pursuant to this article, subject to the following conditions:

(1) Prior to authorizing any renewable energy credit to be used toward satisfying annual procurement targets, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.13, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (WECC).

(2) A renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.

(3) The electricity is delivered to a retail seller, the Independent System Operator, or a local publicly owned electric utility.

(4) All revenues received by an electrical corporation for the sale of a renewable energy credit shall be credited to the benefit of ratepayers.

(5) No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(6) No renewable energy credits shall be created for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act

of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and count towards the renewables portfolio standard obligations of the purchasing retail seller.

(7) The commission may limit the quantity of renewable energy credits that may be procured unbundled from electricity generation by any retail seller, to meet the requirements of this article.

(8) No retail seller shall be obligated to procure renewable energy credits to satisfy the requirements of this article in the event that supplemental energy payments, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of long-term contracts, of more than 10 years' duration, with eligible renewable energy resources.

(9) Any additional condition that the commission determines is reasonable.

(b) The commission shall allow an electrical corporation to recover the reasonable costs of purchasing renewable energy credits in rates.

CHAPTER 685

An act to amend Sections 25742, 25744, 25748, and 25751 of, to amend and repeal Section 25740.5 of, and to repeal and add Section 25743 of, the Public Resources Code, and to amend Sections 399.8, 399.13, 399.14, 399.15, 399.16, and 454.5 of the Public Utilities Code, relating to energy, and making an appropriation therefor.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. It is the intent of the Legislature to reform elements of the renewables portfolio standard program relating to cost containment. In recognition of numerous problems associated with the current process for awarding supplemental energy payments, the Legislature intends to restructure the renewables portfolio standard program to streamline the approval of contracts executed by electrical corporations for the purchase of electricity generated by eligible renewable energy resources involving costs above the market prices determined in subdivision (c) of Section 399.15 of the Public Utilities Code, to ensure that any above-market costs sought by generators may be relied upon in obtaining project financing, and to minimize both unnecessary delays and duplicative

agency reviews. In achieving these objectives, the Legislature intends to continue meaningful ratepayer protections through limits on the total costs of meeting the renewable energy goals established pursuant to Article 16 (commencing with Section 399.11) of Part 1 of Division 1 of the Public Utilities Code.

SEC. 2. Section 25740.5 of the Public Resources Code, as added by Section 4 of Chapter 464 of the Statutes of 2006, is amended to read:

25740.5. (a) The commission shall optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued.

(b) The commission's long-term goal shall be a fully competitive and self-sustaining supply of electricity generated from renewable sources.

(c) The program objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable electricity generation facilities, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

(d) An additional objective of the program shall be to identify and support emerging renewable technologies in distributed generation applications that have the greatest near-term commercial promise and that merit targeted assistance.

(e) The Legislature recommends allocations among all of the following:

(1) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(2) Customer education.

(3) Production incentives for reducing fuel costs, that are confirmed to the satisfaction of the commission, at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including improved air quality.

(4) Solar thermal generating resources that enhance the environmental value or reliability of the electrical system and that require financial assistance to remain economically viable, as determined by the commission. The commission may require financial disclosure from applicants for purposes of this paragraph.

(5) Specified fuel cell technologies, if the commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the report made pursuant to Section 25748.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the long-term objective of a self-sustaining, competitive supply of electricity generated from renewable sources.

(6) Existing wind-generating resources, if the commission finds that the existing wind-generating resources are a cost-effective source of reliable energy and environmental benefits compared with other in-state renewable electricity generation facilities, and that the existing wind-generating resources require financial assistance to remain economically viable. The commission may require financial disclosure from applicants for the purposes of this paragraph.

(f) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be transferred to the Renewable Resource Trust Fund. Moneys collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

SEC. 3. Section 25740.5 of the Public Resources Code, as added by Section 9 of Chapter 512 of the Statutes of 2006, is repealed.

SEC. 4. Section 25742 of the Public Resources Code is amended to read:

25742. (a) Twenty percent of the funds collected pursuant to the renewable energy public goods charge shall be used for programs that are designed to achieve fully competitive and self-sustaining existing in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide during the 2007–2011 investment cycle. Eligibility for production incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (3), (4), and (6) of subdivision (e) of Section 25740.5.

(b) Any funds used to support in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the provisions of this chapter.

(c) Facilities that are eligible to receive funding pursuant to this section shall be registered in accordance with criteria developed by the commission and those facilities shall not receive payments for any electricity produced that has any of the following characteristics:

(1) Is sold at monthly average rates equal to or greater than the applicable target price, as determined by the commission.

(2) Is used onsite.

(d) (1) Existing facilities generating electricity from biomass energy shall be eligible for funding and otherwise considered an in-state

renewable electricity generation facility only if they report to the commission the types and quantities of biomass fuels used and certify to the satisfaction of the commission that fuel utilization is limited to any of the following:

(A) Agricultural crops and agricultural wastes and residues.

(B) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(C) Wood and wood wastes that meet all of the following requirements:

(i) The wood or wood waste has been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4).

(ii) The wood or wood waste has been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(iii) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

(2) The commission shall report the types and quantities of biomass fuels used by each facility to the Legislature in the reports prepared pursuant to Section 25748.

(e) Each existing facility seeking an award pursuant to this section shall be evaluated by the commission to determine the amount of the funds being sought, the cumulative amount of funds the facility has received previously from the commission and other state sources, the value of any past and current federal or state tax credits, the facility's contract price for energy and capacity, the prices received by similar facilities, the market value of the facility, and the likelihood that the award will make the facility competitive and self-sustaining within the 2007–2011 investment cycle. The commission shall use this evaluation to determine the value of an award to the public relative to other renewable energy investment alternatives. The commission shall compile its findings and report them to the Legislature in the reports prepared pursuant to Section 25748.

SEC. 5. Section 25743 of the Public Resources Code is repealed.

SEC. 6. Section 25743 is added to the Public Resources Code, to read:

25743. (a) The commission shall terminate all production incentives awarded from the New Renewable Resources Account prior to January 1, 2002, unless the project began generating electricity by January 1, 2007.

(b) (1) The commission shall, by March 1, 2008, transfer to electrical corporations serving customers subject to the renewable energy public goods charge the remaining unencumbered funds in the New Renewable Resources Account.

(2) The Public Utilities Commission shall ensure that each electrical corporation allocates funds received from the commission pursuant to paragraph (1) in a manner that maximizes the economic benefit to all customer classes that funded the New Renewable Resources Account.

SEC. 7. Section 25744 of the Public Resources Code is amended to read:

25744. (a) Seventy-nine 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 this chapter, subject to all of the following requirements:

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that is in place for a period of not less than five years, and is structured 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 paragraph (3), 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. The commission may establish different incentive levels for systems based on technology type and system size, and may provide different incentive levels for systems used in conjunction with energy-efficiency measures.

(3) Eligible distributed emerging technologies are fuel cell technologies that utilize renewable fuels, including fuel cell technologies with an emission profile equivalent or better than the State Air Resources

Board 2007 standard, and that serve as backup generation for emergency, safety, or telecommunications systems. Eligible renewable fuels may include 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 and are not eligible for rebates, buydowns, or similar incentives from any other commission or Public Utilities Commission program. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, including systems that are used as backup power for emergency, safety, or telecommunications, 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, unless the system purpose is for backup generation used in emergency, safety, or telecommunications 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 a system or project of multiple systems and reduce the level of funding for a 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 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 27540.5, 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.

(d) Any funds for photovoltaic or solar thermal electric technologies shall be awarded in compliance with Chapter 8.8 (commencing with Section 25780), and not with this section.

SEC. 8. 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, 2007, 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 25742 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 shall not increase the allocation established in Section 25742.

SEC. 9. 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) Existing Renewable Resources Account.

(2) Emerging Renewable Resources Account.

(3) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended, only upon appropriation by the Legislature in the annual Budget Act, for the following purposes:

(1) The administration of this article by the state.

(2) The state's expenditures associated with the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code.

(d) 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 25740.5. 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 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. 10. Section 399.8 of the Public Utilities Code is amended to read:

399.8. (a) In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made.

(b) (1) Every customer of an electrical corporation shall pay a nonbypassable system benefits charge authorized pursuant to this article. The system benefits charge shall fund energy efficiency, renewable energy, and research, development and demonstration.

(2) Local publicly owned electric utilities shall continue to collect and administer system benefits charges pursuant to Section 385.

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, and ending January 1, 2012. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(2) This rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. If the amounts specified in paragraph (1) of subdivision (d) are not recovered fully in any year, the commission shall reset the rate component to restore the unrecovered balance, provided that the rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. Pending restoration, any annual shortfalls shall be allocated pro rata among the three funding categories in the proportions established in paragraph (1) of subdivision (d).

(d) The commission shall order San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to collect these funds commencing on January 1, 2002, as follows:

(1) Two hundred twenty-eight million dollars ($228,000,000) per year in total for energy efficiency and conservation activities, sixty-five million five hundred thousand dollars ($65,500,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars ($62,500,000) in total per year for research, development and demonstration. The funds for energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000 as set forth in paragraph (1) of subdivision (c) of Section 381.

(2) The amounts shall be adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.

(e) The commission shall ensure that each electrical corporation allocates funds transferred by the Energy Commission pursuant to subdivision (b) of Section 25743 in a manner that maximizes the economic benefit to all customer classes that funded the New Renewable Resources Account.

(f) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381 and 383, and Chapter 7.1 (commencing with Section 25620) and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(g) An applicant for the Large Nonresidential Standard Performance Contract Program funded pursuant to paragraph (1) of subdivision (b) and an electrical corporation shall promptly attempt to resolve disputes that arise related to the program's guidelines and parameters prior to entering into a program agreement. The applicant shall provide the electrical corporation with written notice of any dispute. Within 10 business days after receipt of the notice, the parties shall meet to resolve the dispute. If the dispute is not resolved within 10 business days after the date of the meeting, the electrical corporation shall notify the applicant of his or her right to file a complaint with the commission, which complaint shall describe the grounds for the complaint, injury, and relief sought. The commission shall issue its findings in response to a filed complaint within 30 business days of the date of receipt of the complaint. Prior to issuance of its findings, the commission shall provide a copy of the complaint to the electrical corporation, which shall provide a response to the complaint to the commission within five business days

of the date of receipt. During the dispute period, the amount of estimated financial incentives shall be held in reserve until the dispute is resolved.

SEC. 11. Section 399.13 of the Public Utilities Code is amended to read:

399.13. The Energy Commission shall do all of the following:

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (b) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to certify renewable energy credits produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state. In establishing the guidelines governing this accounting system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation and delivery of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the Western Electricity Coordinating Council in the development of this system.

(d) Certify, for purposes of compliance with the renewable portfolio standard requirements by a retail seller, the eligibility of renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, if the Energy Commission determines that the following conditions have been satisfied:

(1) The local publicly owned electric utility that is procuring the electricity is in compliance with the requirements of Section 387.

(2) The local publicly owned electric utility has established an annual renewables portfolio standard target comparable to those applicable to an electrical corporation, is procuring sufficient eligible renewable energy resources to satisfy the targets, and will not fail to satisfy the targets in the event that the renewable energy credit is sold to another retail seller.

SEC. 12. Section 399.14 of the Public Utilities Code is amended to read:

399.14. (a) (1) The commission shall direct each electrical corporation to prepare a renewable energy procurement plan that includes the matter in paragraph (3), to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(2) The commission shall adopt, by rulemaking, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) (i) Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.

(ii) The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewable energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:

(I) Utilize flexible delivery points.

(II) Ensure the availability of any needed transmission capacity.

(III) If the retail seller is an electric corporation, to construct needed transmission facilities.

(IV) Nothing in this subparagraph shall be construed to revise any portion of Section 454.5.

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources,

including performance requirements for renewable generators. A contract for the purchase of electricity generated by an eligible renewable energy resource shall, at a minimum, include the renewable energy credits associated with all electricity generation specified under the contract. The standard terms and conditions shall include the requirement that, no later than six months after the commission's approval of an electricity purchase agreement entered into pursuant to this article, the following information about the agreement shall be disclosed by the commission: party names, resource type, project location, and project capacity.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of eligible renewable energy resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

(C) A bid solicitation setting forth the need for eligible renewable energy resources of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.

(c) The commission shall review and accept, modify, or reject each electrical corporation's renewable energy procurement plan prior to the commencement of renewable procurement pursuant to this article by an electrical corporation.

(d) The commission shall review the results of an eligible renewable energy resources solicitation submitted for approval by an electrical

corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable energy procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition among the bidders, the commission shall direct the electrical corporation to renegotiate the contracts or conduct a new solicitation.

(e) If an electrical corporation fails to comply with a commission order adopting a renewable energy procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance. The commission shall enforce comparable penalties on any other retail seller that fails to meet annual procurement targets established pursuant to Section 399.15.

(f) (1) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for deliveries of eligible renewable energy resources to satisfy annual renewables portfolio standard obligations. The commission may not require any person or corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.

(2) Subject to review and approval by the commission, the procurement entity shall be permitted to recover reasonable administrative and procurement costs through the retail rates of end-use customers that are served by the procurement entity and are directly benefiting from the procurement of eligible renewable energy resources.

(g) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article and approved by the commission shall be deemed reasonable per se, and shall be recoverable in rates.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives pursuant to Section 25742 of the Public Resources Code, including work performed to qualify, receive, or maintain production incentives is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 13. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, subject to limits on the total amount of costs expended above the market prices determined in subdivision (c), to achieve the targets established under this article.

(b) The commission shall implement annual procurement targets for each retail seller as follows:

(1) Each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. A retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year.

(2) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each retail seller based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and to the extent applicable, adjusted going forward pursuant to Section 399.12.

(3) Only for purposes of establishing these targets, the commission shall include all electricity sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(4) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall, subject to the limitation on costs for electrical corporations established pursuant to subdivision (d).

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available electricity.

(d) The commission shall establish, for each electrical corporation, a limitation on the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources to achieve the annual procurement targets established under this article.

(1) The cost limitation shall be equal to the amount of funds transferred to each electrical corporation by the Energy Commission

pursuant to subdivision (b) of Section 25743 of the Public Resources Code and the 51.5 percent of the funds which would have been collected through January 1, 2012, from the customers of the electrical corporation based on the renewable energy public goods charge in effect as of January 1, 2007.

(2) The above-market costs of a contract selected by an electrical corporation may be counted toward the cost limitation if all of the following conditions are satisfied:

(A) The contract has been approved by the commission and was selected through a competitive solicitation pursuant to the requirements of subdivision (d) of Section 399.14.

(B) The contract covers a duration of no less than 10 years.

(C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.

(D) No purchases of renewable energy credits may be eligible for consideration as an above-market cost.

(E) The above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

(3) If the cost limitation for an electrical corporation is insufficient to support the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources satisfying the conditions of paragraph (2), the commission shall allow the electrical corporation to limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c).

(4) Nothing in this section prevents an electrical corporation from voluntarily proposing to procure eligible renewable energy resources at above-market prices that are not counted toward the cost limitation. Any voluntary procurement involving above-market costs shall be subject to commission approval prior to the expense being recovered in rates.

(e) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(f) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

SEC. 14. Section 399.16 of the Public Utilities Code is amended to read:

399.16. (a) The commission, by rule, may authorize the use of renewable energy credits to satisfy the requirements of the renewables portfolio standard established pursuant to this article, subject to the following conditions:

(1) Prior to authorizing any renewable energy credit to be used toward satisfying annual procurement targets, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.13, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (WECC).

(2) A renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.

(3) The electricity is delivered to a retail seller, the Independent System Operator, or a local publicly owned electric utility.

(4) All revenues received by an electrical corporation for the sale of a renewable energy credit shall be credited to the benefit of ratepayers.

(5) No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(6) No renewable energy credits shall be created for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.12 and count toward the renewables portfolio standard obligations of the purchasing retail seller.

(7) The commission may limit the quantity of renewable energy credits that may be procured unbundled from electricity generation by any retail seller, to meet the requirements of this article.

(8) No electrical corporation shall be obligated to procure renewable energy credits to satisfy the requirements of this article in the event that the total costs expended above the applicable market prices for the procurement of eligible renewable energy resources exceeds the cost limitation established pursuant to subdivision (d) of Section 399.15.

(9) Any additional condition that the commission determines is reasonable.

(b) The commission shall allow an electrical corporation to recover the reasonable costs of purchasing renewable energy credits in rates.

SEC. 15. Section 454.5 of the Public Utilities Code is amended to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 60 days before the electrical corporation resumes procurement pursuant to this section.

(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served by spot market transactions.

(2) A definition of each electricity product, electricity-related product, and procurement related financial product, including support and justification for the product type and amount to be procured under the plan.

(3) The duration of the plan.

(4) The duration, timing, and range of quantities of each product to be procured.

(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.

(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the

transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will achieve the following:

(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Sections 399.6 and 399.15, to cover the above-market costs for new renewable energy resources.

(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reduction products.

(C) The electrical corporation will first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

(10) The electrical corporation's risk management policy, strategy, and practices, including specific measures of price stability.

(11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.

(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:

(1) A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the

commission-authorized process shall be recovered in the generation component of rates.

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in

the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.

(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.

(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

SEC. 16. The amendments made to Section 25751 of the Public Resources Code made by Section 9 of this act shall become operative on July 1, 2008.

CHAPTER 686

An act to amend Sections 1569.651, 1569.884, and 1569.886 of, and to add Section 1569.682 to, the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 1569.651 of the Health and Safety Code is amended to read:

1569.651. (a) A licensee of a residential care facility for the elderly shall not require any form of preadmission fee or deposit from a recipient under the State Supplementary Program for the Aged, Blind and Disabled (Article 5 (commencing with Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code) who applies for admission to the facility.

(b) If a licensee charges a preadmission fee, the licensee shall provide the applicant or his or her representative with a written general statement describing all costs associated with the preadmission fee charges and

stating that the preadmission fee is refundable. The statement shall describe the conditions for the refund as specified in subdivision (g). A licensee shall only charge a single preadmission fee as defined in subdivision (e) per resident admission.

(c) A licensee of a residential care facility for the elderly shall not require, request, or accept any funds from a resident or a resident's representative that constitutes a deposit against any possible damages by the resident.

(d) Any fee charged by a licensee of a residential care facility for the elderly, whether prior to or after admission, shall be clearly specified in the admission agreement.

(e) For the purposes of this section, "preadmission fee" means an application fee, processing fee, admission fee, entrance fee, community fee, or other fee, however designated, that is requested or accepted by a licensee of a residential care facility for the elderly prior to admission.

(f) This section shall not apply to licensees of residential care facilities for the elderly that have obtained a certificate of authority to offer continuing care contracts, as defined in paragraph (8) of subdivision (c) of Section 1771.

(g) If the applicant decides not to enter the facility prior to the facility's completion of a preadmission appraisal or if the facility fails to provide full written disclosure of the preadmission fee charges and refund conditions, the applicant or the applicant's representative shall be entitled to a refund of 100 percent of the preadmission fee.

(h) Unless subdivision (g) applies, preadmission fees in excess of five hundred dollars ($500) shall be refunded according to the following:

(1) If the applicant does not enter the facility after a preadmission appraisal is conducted, the applicant or the applicant's representative shall be entitled to a refund of at least 80 percent of the preadmission fee amount in excess of five hundred dollars ($500).

(2) If the resident leaves the facility for any reason during the first month of residency, the resident shall be entitled to a refund of at least 80 percent of the preadmission fee amount in excess of five hundred dollars ($500).

(3) If the resident leaves the facility for any reason during the second month of residency, the resident shall be entitled to a refund of at least 60 percent of the preadmission fee amount in excess of five hundred dollars ($500).

(4) If the resident leaves the facility for any reason during the third month of residency, the resident shall be entitled to a refund of at least 40 percent of the preadmission fee amount in excess of five hundred dollars ($500).

(5) The facility may, but is not required to, make a refund of the preadmission fee for residents living in the facility for four or more months.

(i) (1) Notwithstanding subdivision (g), if a resident is evicted by a facility pursuant to subdivision (a) of Section 1569.682, the resident or the resident's legal representative shall be entitled to a refund of preadmission fees in excess of five hundred dollars ($500) in accordance with all of the following:

(A) A 100-percent refund if preadmission fees were paid within six months of notice of eviction.

(B) A 75-percent refund if preadmission fees were paid more than six months but not more than 12 months before notice of eviction.

(C) A 50-percent refund if preadmission fees were paid more than 12 months but not more than 18 months before notice of eviction.

(D) A 25-percent refund if preadmission fees were paid more than 18 months but less than 25 months before notice of eviction.

(2) No preadmission refund is required if preadmission fees were paid 25 months or more before the notice of eviction.

(3) The preadmission refund required by this subdivision shall be paid within 15 days of issuing the eviction notice.

SEC. 2. Section 1569.682 is added to the Health and Safety Code, to read:

1569.682. (a) A licensee of a licensed residential care facility for the elderly shall, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license, as described in subdivision (a), (b), or (f) of Section 1569.19 or change of use of the facility pursuant to the department's regulations, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, and shall, at a minimum, do all of the following:

(1) Prepare, for each resident, a relocation evaluation of the needs of that resident, which shall include both of the following:

(A) Recommendations on the type of facility that would meet the needs of the resident based on the current service plan.

(B) A list of facilities, within a 60-mile radius of the resident's current facility, that meet the resident's present needs.

(2) Provide each resident or the resident's responsible person with a written notice no later than 60 days before the intended eviction. The notice shall include all of the following:

(A) The reason for the eviction, with specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reasons.

(B) A copy of the resident's current service plan.

(C) The relocation evaluation.

(D) A list of referral agencies.

(E) The right of the resident or resident's legal representative to contact the department to investigate the reasons given for the eviction pursuant to Section 1569.35.

(3) Discuss the relocation evaluation with the resident and his or her legal representative within 30 days of issuing the notice of eviction.

(4) Submit a written report of any eviction to the licensing agency within five days.

(5) Upon issuing the written notice of eviction, a licensee shall not accept new residents or enter into new admission agreements.

(6) (A) For paid preadmission fees in excess of five hundred dollars ($500), the resident is entitled to a refund in accordance with all of the following:

(i) A 100-percent refund if preadmission fees were paid within six months of notice of eviction.

(ii) A 75-percent refund if preadmission fees were paid more than six months but not more than 12 months before notice of eviction.

(iii) A 50-percent refund if preadmission fees were paid more than 12 months but not more than 18 months before notice of eviction.

(iv) A 25-percent refund if preadmission fees were paid more than 18 months but less than 25 months before notice of eviction.

(B) No preadmission refund is required if preadmission fees were paid 25 months or more before the notice of eviction.

(C) The preadmission refund required by this paragraph shall be paid within 15 days of issuing the eviction notice. In lieu of the refund, the resident may request that the licensee provide a credit toward the resident's monthly fee obligation in an amount equal to the preadmission fee refund due.

(7) If the resident gives notice five days before leaving the facility, the licensee shall refund to the resident or his or her legal representative a proportional per diem amount of any prepaid monthly fees at the time the resident leaves the facility and the unit is vacated. Otherwise the licensee shall pay the refund within seven days from the date that the resident leaves the facility and the unit is vacated.

(8) Within 10 days of all residents having left the facility, the licensee, based on information provided by the resident or resident's legal representative, shall submit a final list of names and new locations of all residents to the department and the local ombudsperson program.

(b) If seven or more residents of a residential care facility for the elderly will be transferred as a result of the forfeiture of a license or change in the use of the facility pursuant to subdivision (a), the licensee shall submit a proposed closure plan to the department for approval. The

department shall approve or disapprove the closure plan, and monitor its implementation, in accordance with the following requirements:

(1) Upon submission of the closure plan, the licensee shall be prohibited from accepting new residents and entering into new admission agreements for new residents.

(2) The closure plan shall meet the requirements described in subdivision (a), and describe the staff available to assist in the transfers. The department's review shall include a determination as to whether the licensee's closure plan contains a relocation evaluation for each resident.

(3) Within 15 working days of receipt, the department shall approve or disapprove the closure plan prepared pursuant to this subdivision, and, if the department approves the plan, it shall become effective upon the date the department grants its written approval of the plan.

(4) If the department disapproves a closure plan, the licensee may resubmit an amended plan, which the department shall promptly either approve or disapprove, within 10 working days of receipt by the department of the amended plan. If the department fails to approve a closure plan, it shall inform the licensee, in writing, of the reasons for the disapproval of the plan.

(5) If the department fails to take action within 20 working days of receipt of either the original or the amended closure plan, the plan, or amended plan, as the case may be, shall be deemed approved.

(6) Until such time that the department has approved a licensee's closure plan, the facility shall not issue a notice of transfer or require any resident to transfer.

(7) Upon approval by the department, the licensee shall send a copy of the closure plan to the local ombudsperson program.

(c) (1) If a licensee fails to comply with the requirements of subdivision (a), and if the director determines that it is necessary to protect the residents of a facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department shall take any necessary action to minimize trauma for the residents. The department shall contact any local agency that may have placement or advocacy responsibility for the residents, and shall work with those agencies to locate alternative placement sites, contact relatives or other persons responsible for the care of these residents, provide onsite evaluation of the residents, and assist in the transfer of residents.

(2) The participation of the department and local agencies in the relocation of residents from a residential care facility for the elderly shall not relieve the licensee of any responsibility under this section. A licensee that fails to comply with the requirements of this section shall be required to reimburse the department and local agencies for the cost of providing the relocation services. If the licensee fails to provide the relocation

services required in subdivisions (a) and (b), then the department may request that the Attorney General's office, the city attorney's office, or the local district attorney's office seek injunctive relief and damages in the same manner as provided for in Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(d) A licensee who fails to comply with requirements of this section shall be liable for the imposition of civil penalties in the amount of one hundred dollars ($100) per violation per day for each day that the licensee is in violation of this section, until such time that the violation has been corrected. The civil penalties shall be issued immediately following the written notice of violation. However, if the violation does not present an immediate or substantial threat to the health or safety of residents and the licensee corrects the violation within three days after receiving the notice of violation, the licensee shall not be liable for payment of any civil penalties pursuant to this subdivision related to the corrected violation.

(e) A resident of a residential care facility for the elderly covered under this section, may bring a civil action against any person, firm, partnership, or corporation who owns, operates, establishes, manages, conducts, or maintains a residential care facility for the elderly who violates the rights of a resident, as set forth in this section. Any person, firm, partnership, or corporation who owns, operates, establishes, manages, conducts, or maintains a residential care facility for the elderly who violates this section shall be responsible for the acts of the facility's employees and shall be liable for costs and attorney fees. Any such residential care facility for the elderly may also be enjoined from permitting the violation to continue. The remedies specified in this section shall be in addition to any other remedy provided by law.

(f) This section does not apply to a licensee that has obtained a certificate of authority to offer continuing care contracts, as defined in paragraph (8) of subdivision (c) of Section 1771.

SEC. 3. Section 1569.884 of the Health and Safety Code is amended to read:

1569.884. The admission agreement shall include all of the following:

(a) A comprehensive description of any items and services provided under a single fee, such as a monthly fee for room, board, and other items and services.

(b) A comprehensive description of, and the fee schedule for, all items and services not included in a single fee. In addition, the agreement shall indicate that the resident shall receive a monthly statement itemizing all separate charges incurred by the resident.

(c) A facility may assess a separate charge for an item or service only if that separate charge is authorized by the admission agreement. If

additional services are available through the facility to be purchased by the resident that were not available at the time the admission agreement was signed, a list of these services and charges shall be provided to the resident or the resident's representative. A statement acknowledging the acceptance or refusal to purchase the additional services shall be signed and dated by the resident or the resident's representative and attached to the admission agreement.

(d) An explanation of the use of third-party services within the facility that are related to the resident's service plan, including, but not limited to, ancillary, health, and medical services, how they may be arranged, accessed, and monitored, any restrictions on third-party services, and who is financially responsible for the third-party services.

(e) A comprehensive description of billing and payment policies and procedures.

(f) The conditions under which rates may be increased pursuant to Section 1569.655.

(g) The facility's policy concerning family visits and other communication with residents, pursuant to Section 1569.313.

(h) The facility's policy concerning refunds.

(i) Conditions under which the agreement may be terminated.

(j) An explanation of the facility's responsibility to prepare a relocation evaluation, for each resident and a closure plan and to provide notice in the case of an eviction pursuant to Section 1569.682.

SEC. 4. Section 1569.886 of the Health and Safety Code is amended to read:

1569.886. (a) The admission agreement shall not include any ground for involuntary transfer or eviction of the resident unless those grounds are specifically enumerated under state law or regulation.

(b) The admission agreement shall list the justifications for eviction permissible under state law or regulation, exactly as they are worded in the applicable law or regulation.

(c) The admission agreement shall include an explanation of the resident's right to notice prior to an involuntary transfer, discharge, or eviction, the process by which the resident may appeal the decision and a description of the relocation assistance offered by the facility.

(d) The admission agreement shall state the responsibilities of the licensee and the rights of the resident when a facility evicts residents pursuant to Section 1569.682.

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 687

An act to amend Section 19630.5 of the Welfare and Institutions Code, relating to blind persons, and making an appropriation therefor.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 19630.5 of the Welfare and Institutions Code is amended to read:

19630.5. (a) The Blind Vendor Revolving Loan Fund is hereby created in the State Treasury, and, notwithstanding Section 13340 of the Government Code, is continuously appropriated without regard to fiscal years to the department for the purposes specified in this section. The fund shall be interest bearing. Commencing January 1, 2008, the fund is hereby renamed the BEP Vendor Loan Interest Rate Buy-Down Fund.

(b) The fund shall consist of moneys appropriated to that fund by the Legislature, and notwithstanding Section 16305.7 of the Government Code, all interest, dividends, and pecuniary gains from investments or deposits of moneys in the fund.

(c) (1) Moneys in the fund shall be used by the department for the purpose of reducing the interest that vendors must pay for loans issued by an eligible lender to purchase inventory and equipment for vending facilities.

(2) The department shall make any funding contingent upon the vendor's good standing in the Business Enterprises Program and a determination that the department has not paid interest on any other loan obtained by the vendor.

(3) Upon a determination that a vendor is eligible, the department shall pay, on behalf of the vendor, to an eligible lender, an amount not to exceed five thousand dollars ($5,000) to reduce the fair market interest rate of a loan described in paragraph (1) by up to 3 percent.

(4) In the event that a vendor fails to repay a loan to an eligible lender, the lender shall reimburse the fund for the fund's share of any interest not yet accrued as of the time of default by the vendor.

(d) In determining eligibility for a loan interest buy-down assistance from this fund, the department shall make any loan interest buy-down assistance contingent upon a determination that the blind vendor reasonably can be expected to repay the loan based on the vendor's expected income and that the applicant is currently an active vendor and has been in the Business Enterprises Program for at least one year.

(e) For purposes of this section, "eligible lender" means a financial institution organized, chartered, or holding a license or authorization certificate under a law of this state or in the United States to make loans or extend credit and subject to supervision by an official or agency of this state or the United States.

(f) Loan interest buy-down assistance pursuant to this section shall be made without regard to race, religion, creed, or sex.

(g) The total amount of interest buy-down assistance that may be provided under this section is limited to the amount contained in the fund, and the state shall not be liable beyond the amount contained in that fund for these debts, obligations, and liabilities.

(h) In the event that the total amount of loan interest buy-down assistance applied for under this section exceeds the total amount of assistance that may be provided pursuant to this section, the department may establish a system of priorities for the approval of applications.

CHAPTER 688

An act relating to speech-language pathologists.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(1) Children and adults with a wide variety of accidents, illnesses, congenital defects, and cognitive impairments require speech-language and hearing services for their communication and related disorders.

(2) The need for speech-language pathology services is increasing with newborn hearing screenings, with the survival of premature babies, with increasing numbers of babies with fetal alcohol syndrome, with improvements in cochlear implants, with early intervention of growing populations of children with autism spectrum disorders, with improvements in augmentative and alternative communication devices,

with advances in services for traumatic head injuries, with survival rates in throat and other cancers, as well as a broad array of communication and swallowing needs of all age groups.

(3) The increasing critical shortages of speech-language pathologists across California's educational and health care settings prevent Californians with communication and related disorders from developing speech and language, from achieving success in personal and educational development, from achieving or returning to independence, and from successfully integrating into society.

(4) Persons with communication disorders who range from infancy to 22 years of age fall under the provisions of the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C., Secs. 1400 et seq.), which requires public schools and other agencies such as regional centers to provide mandated services.

(5) Shortages of speech-language pathologists in public schools result in school districts expending scarce funds to contract out for services as well as utilizing limited resources for IDEA due process legal mandates.

(6) The shortages of school-based speech-language pathologists create unmanageable caseloads, excessive paperwork, and excessive workloads for school-based speech-language pathologists, further challenging public schools charged with the recruitment and retention of these professionals.

(7) Limited state and local education resources challenge current efforts underway to expand and create new innovative university master's degree programs to train additional speech-language pathologists.

(8) Seven California community college speech-language pathology assistant training programs have been initiated, and these programs have graduated over 400 speech-language pathology assistants.

(9) Many public school districts and county offices of education have incorporated these speech-language pathology assistants into their special education teams with appropriate classified personnel job descriptions, appropriate salary and benefit packages, continuing in-service and professional development, and recognition.

(10) Section 300.156 of Title 34 of the Code of Federal Regulations (Section 300.156) establishes personnel requirements for special education "related services," which include speech-language pathology services and personnel.

(11) Section 300.156 requires that a state education agency ensure that paraprofessionals are adequately prepared and trained, and have the content knowledge and skills to provide to children with disabilities services that are consistent with any state-recognized certification, licensing registration, or comparable requirements.

(12) The Legislature of the State of California has previously recognized the necessity to expand and extend the services provided by

existing speech-language pathologists with the utilization of trained paraprofessionals.

(13) The Legislature and the Governor enacted Chapter 1058 of the Statutes of 1998 (Assembly Bill 205 of the 1997–98 Regular Session), which created a trained paraprofessional category of licensed speech-language pathology assistant, authorized to provide public school services under the supervision of a licensed or credentialed speech-language pathologist.

(b) Therefore, it is the intent of the Legislature to explore the development of additional community college speech-language pathology assistant training programs, and to require the Superintendent of Public Instruction to distribute information to school districts and county offices of education to encourage the appropriate utilization of licensed speech-language pathology assistants under the supervision of qualified professionals.

SEC. 2. The California Postsecondary Education Commission shall assess and discuss issues, information, and barriers relating to, and progress made in the accomplishment of, the creation of additional speech-language pathology assistant training programs in a report to the Legislature. With respect to this report, the commission shall consult with stakeholder groups including, but not necessarily limited to, the California Speech-Language Pathology and Audiology Board, the California Speech-Language-Hearing Association, the California School Employees Association, and the Association of California School Administrators. This report shall be submitted to the appropriate policy committees of the Assembly and the Senate on or before June 1, 2008. The commission shall produce this report using existing resources.

CHAPTER 689

An act to add Sections 1098, 1098.5, and 1102.6e to the Civil Code, relating to real estate transfer fees.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 1098 is added to the Civil Code, to read:

1098. A "transfer fee" is any fee payment requirement imposed within a covenant, restriction, or condition contained in any deed, contract, security instrument, or other document affecting the transfer or sale of,

or any interest in, real property that requires a fee be paid upon transfer of the real property. A transfer fee does not include any of the following:

(a) Fees or taxes imposed by a governmental entity.

(b) Fees pursuant to mechanics' liens.

(c) Fees pursuant to court-ordered transfers, payments, or judgments.

(d) Fees pursuant to property agreements in connection with a legal separation or dissolution of marriage.

(e) Fees, charges, or payments in connection with the administration of estates or trusts pursuant to Division 7 (commencing with Section 7000), Division 8 (commencing with Section 13000), or Division 9 (commencing with Section 15000) of the Probate Code.

(f) Fees, charges, or payments imposed by lenders or purchasers of loans, as these entities are described in subdivision (c) of Section 10232 of the Business and Professions Code.

(g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling Common Interest Development Act (Title 6 (commencing with Section 1350) of Part 4).

(h) Fees, charges, or payments for failing to comply with, or for transferring the real property prior to satisfying, an obligation to construct residential improvements on the real property.

(i) Any fee reflected in a document recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that substantially complies with subdivision (a) of Section 1098.5 by providing a prospective transferee notice of the following:

(1) Payment of a transfer fee is required.

(2) The amount or method of calculation of the fee.

(3) The date or circumstances under which the transfer fee payment requirement expires, if any.

(4) The entity to which the fee will be paid.

(5) The general purposes for which the fee will be used.

SEC. 2. Section 1098.5 is added to the Civil Code, to read:

1098.5. (a) For transfer fees, as defined in Section 1098, imposed prior to January 1, 2008, the receiver of the fee, as a condition of payment of the fee on or after January 1, 2009, shall record, on or before December 31, 2008, against the real property in the office of the county recorder for the county in which the real property is located a separate document that meets all of the following requirements:

(1) The title of the document shall be "Payment of Transfer Fee Required" in at least 14-point boldface type.

(2) The document shall include all of the following information:

(A) The names of all current owners of the real property subject to the transfer fee, and the legal description and assessor's parcel number for the affected real property.

(B) The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the fee.

(C) If the real property is residential property, actual dollar-cost examples of the fee for a home priced at two hundred fifty thousand dollars ($250,000), five hundred thousand dollars ($500,000), and seven hundred fifty thousand dollars ($750,000).

(D) The date or circumstances under which the transfer fee payment requirement expires, if any.

(E) The purpose for which the funds from the fee will be used.

(F) The entity to which funds from the fee will be paid and specific contact information regarding where the funds are to be sent.

(G) The signature of the authorized representative of the entity to which funds from the fee will be paid.

(b) When a transfer fee, as defined in Section 1098, is imposed upon real property on or after January 1, 2008, the person or entity imposing the transfer fee, as a condition of payment of the fee, shall record in the office of the county recorder for the county in which the real property is located, concurrently with the instrument creating the transfer fee requirement, a separate document that meets all of the following requirements:

(1) The title of the document shall be "Payment of Transfer Fee Required" in at least 14-point boldface type.

(2) The document shall include all of the following information:

(A) The names of all current owners of the real property subject to the transfer fee, and the legal description and assessor's parcel number for the affected real property.

(B) The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the fee.

(C) If the real property is residential property, actual dollar-cost examples of the fee for a home priced at two hundred fifty thousand dollars ($250,000), five hundred thousand dollars ($500,000), and seven hundred fifty thousand dollars ($750,000).

(D) The date or circumstances under which the transfer fee payment requirement expires, if any.

(E) The purpose for which the funds from the fee will be used.

(F) The entity to which funds from the fee will be paid and specific contact information regarding where the funds are to be sent.

(G) The signature of the authorized representative of the entity to which funds from the fee will be paid.

(c) The recorder shall only be responsible for examining that the document required by subdivision (a) or (b) contains the information required by subparagraphs (A), (F), and (G) of paragraph (2) of subdivision (a) or (b). The recorder shall index the document under the names of the persons and entities identified in subparagraphs (A) and (F) of paragraph (2) of subdivision (a) or (b). The recorder shall not examine any other information contained in the document required by subdivision (a) or (b).

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

1102.6e. If a property being transferred on or after January 1, 2008, is subject to a transfer fee, as defined in Section 1098, the transferor shall provide, at the same time as the transfer disclosure statement required pursuant to Section 1102.6 is provided, an additional disclosure statement containing all of the following:

(a) Notice that payment of a transfer fee is required upon transfer of the property.

(b) The amount of the fee required for the asking price of the real property and a description of how the fee is calculated.

(c) Notice that the final amount of the fee may be different if the fee is based upon a percentage of the final sale price.

(d) The entity to which funds from the fee will be paid.

(e) The purposes for which funds from the fee will be used.

(f) The date or circumstances under which the obligation to pay the transfer fee expires, if any.

CHAPTER 690

An act to amend Sections 33334.3, 33413, and 33418 of the Health and Safety Code, relating to housing.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds that are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund and any repayments or other income to the agency for loans, advances, or grants, of any kind from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve the supply of low- and moderate-income housing within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation of that housing. The agency shall determine annually that the planning and administrative expenses are necessary for the production, improvement, or preservation of low- and moderate-income housing.

(e) (1) Planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund are those expenses incurred by the agency which are directly related to the programs and activities authorized under subdivision (e) of Section 33334.2 and are limited to the following:

(A) Costs incurred for salaries, wages, and related costs of the agency's staff or for services provided through interagency agreements, and agreements with contractors, including usual indirect costs related thereto.

(B) Costs incurred by a nonprofit corporation which are not directly attributable to a specific project.

(2) Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific project that are authorized under subdivision (e) of Section 33334.2 and that are incurred by a nonprofit housing sponsor are not planning and administrative costs for the purposes of this section, but are instead project costs.

(f) (1) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent that a longer period of time may be required by other provisions of law, the agency shall require that housing units

subject to this subdivision shall remain available at affordable housing cost to, and occupied by, persons and families of low or moderate income and very low income and extremely low income households for the longest feasible time, but for not less than the following periods of time:

(A) Fifty-five years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (i) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (ii) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(B) Forty-five years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(2) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(3) The agency shall require the recording in the office of the county recorder of the following documents:

(A) The covenants or restrictions implementing this subdivision for each parcel or unit of real property that is subject to this subdivision. The agency shall obtain and maintain a copy of the recorded covenants or restrictions for not less than the life of the covenant or restriction.

(B) For all new or substantially rehabilitated units developed or otherwise assisted with moneys from the Low to Moderate Income Fund on or after January 1, 2008, a separate document called "Notice of Affordability Restrictions on Transfer of Property," set forth in 14-point type or larger. This document shall contain all of the following information:

(i) A recitation of the affordability covenants or restrictions. If the document recorded under this subparagraph is recorded concurrently with the covenants or restrictions recorded under subparagraph (A), the recitation of the affordability covenants or restrictions shall also reference the concurrently recorded document. If the document recorded under

this subparagraph is not recorded concurrently with the covenants or restrictions recorded under subparagraph (A), the recitation of the affordability covenants or restrictions shall also reference the recorder's identification number of the document recorded under subparagraph (A).

(ii) The date the covenants or restrictions expire.

(iii) The street address of the property, including, if applicable, the unit number.

(iv) The assessor's parcel number for the property.

(v) The legal description of the property.

(4) The agency shall require the recording of the document required under subparagraph (B) of paragraph (3) not more than 30 days after the date of recordation of the covenants or restrictions required under subparagraph (A) of paragraph (3).

(5) The county recorder shall index the documents required to be recorded under paragraph (3) by the agency and current owner.

(6) Notwithstanding Section 27383 of the Government Code, a county recorder may charge all authorized recording fees to any party, including a public agency, for recording the document specified in subparagraph (B) of paragraph (3).

(7) Notwithstanding any other provision of law, the covenants or restrictions implementing this subdivision shall run with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the following:

(A) The agency.

(B) The community, as defined in Section 33002.

(C) A resident of a unit subject to this subdivision.

(D) A residents' association with members who reside in units subject to this subdivision.

(E) A former resident of a unit subject to this subdivision who last resided in that unit.

(F) An applicant seeking to enforce the covenants or restrictions for a particular unit that is subject to this subdivision, if the applicant conforms to all of the following:

(i) Is of low or moderate income, as defined in Section 50093.

(ii) Is able and willing to occupy that particular unit.

(iii) Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing this subdivision.

(G) A person on an affordable housing waiting list who is of low or moderate income, as defined in Section 50093, and who is able and willing to occupy a unit subject to this subdivision.

(8) A dwelling unit shall not be counted as satisfying the affordable housing requirements of this part, unless covenants for that dwelling unit are recorded in compliance with subparagraph (A) of paragraph (3).

(9) Failure to comply with the requirements of subparagraph (B) of paragraph (3) shall not invalidate any covenants or restrictions recorded pursuant to subparagraph (A) of paragraph (3).

(g) "Housing," as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of "lower income households," "very low income households," and "extremely low income households" in Sections 50079.5, 50105, and 50106 shall apply to this section. "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

(h) "Increasing, improving, and preserving the community's supply of low- and moderate-income housing," as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to, and occupied by, low- and moderate-income households, including extremely low and very low income households, for the longest feasible time, but not less than 55 years, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require that the units remain affordable to, and occupied by, persons and families of low- and moderate-income and extremely low and very low income households for the longest feasible time but not less than 55 years. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (1) the replacement units in another location are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (2) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(i) Agencies that have more than one project area may satisfy the requirements of Sections 33334.2 and 33334.6 and of this section by allocating, in any fiscal year, less than 20 percent in one project area, if the difference between the amount allocated and the 20 percent required is instead allocated, in that same fiscal year, to the Low and Moderate Income Housing Fund from tax increment revenues from other project areas. Prior to allocating funds pursuant to this subdivision, the agency shall make the finding required by subdivision (g) of Section 33334.2.

(j) Funds from the Low and Moderate Income Housing Fund shall not be used to the extent that other reasonable means of private or commercial financing of the new or substantially rehabilitated units at the same level of affordability and quantity are reasonably available to

the agency or to the owner of the units. Prior to the expenditure of funds from the Low and Moderate Income Housing Fund for new or substantially rehabilitated housing units, where those funds will exceed 50 percent of the cost of producing the units, the agency shall find, based on substantial evidence, that the use of the funds is necessary because the agency or owner of the units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity.

SEC. 1.5. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds that are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund and any repayments or other income to the agency for loans, advances, or grants, of any kind from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve the supply of low- and moderate-income housing within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation of that housing. The agency shall determine annually that the planning and administrative expenses are necessary for the production, improvement, or preservation of low- and moderate-income housing.

(e) (1) Planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund are those expenses incurred by the agency which are directly related to the programs and activities authorized under subdivision (e) of Section 33334.2 and are limited to the following:

(A) Costs incurred for salaries, wages, and related costs of the agency's staff or for services provided through interagency agreements,

and agreements with contractors, including usual indirect costs related thereto.

(B) Costs incurred by a nonprofit corporation which are not directly attributable to a specific project.

(2) Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific project that are authorized under subdivision (e) of Section 33334.2 and that are incurred by a nonprofit housing sponsor are not planning and administrative costs for the purposes of this section, but are instead project costs.

(f) (1) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent that a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at affordable housing cost to, and occupied by, persons and families of low or moderate income and very low income and extremely low income households for the longest feasible time, but for not less than the following periods of time:

(A) Fifty-five years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (i) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (ii) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(B) Forty-five years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(C) Fifteen years for mutual self-help housing units that are occupied by and affordable to very low and low-income households. However, the agency may permit sales of mutual self-help housing units prior to expiration of the 15-year period for a price in excess of that otherwise

permitted under this subdivision pursuant to an adopted program that (i) protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy; and (ii) ensures through a recorded regulatory agreement, deed of trust, or similar recorded instrument that if a mutual self-help housing unit is sold at any time after expiration of the 15-year period and prior to 45 years after the date of recording of the covenants or restrictions required pursuant to paragraph (2), the agency recovers, at a minimum, its original principal from the Low and Moderate Income Housing Fund from the proceeds of the sale and deposits those funds into the Low and Moderate Income Housing Fund. The remainder of the excess proceeds of the sale not retained by the seller shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. For the purposes of this subparagraph, "mutual self-help housing unit" means an owner-occupied housing unit for which persons and families of very low and low income contribute no fewer than 500 hours of their own labor in individual or group efforts to provide a decent, safe, and sanitary ownership housing unit for themselves, their families, and others authorized to occupy that unit. Nothing in this subparagraph precludes the agency and the developer of the mutual self-help housing units from agreeing to 45-year deed restrictions.

(2) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(3) The agency shall require the recording in the office of the county recorder of the following documents:

(A) The covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision. The agency shall obtain and maintain a copy of the recorded covenants or restrictions for not less than the life of the covenant or restriction.

(B) For all new or substantially rehabilitated units developed or otherwise assisted with moneys from the Low and Moderate Income Housing Fund on or after January 1, 2008, a separate document called "Notice of Affordability Restrictions on Transfer of Property," set forth in 14-point type or larger. This document shall contain all of the following information:

(i) A recitation of the affordability covenants or restrictions. If the document recorded under this subparagraph is recorded concurrently with the covenants or restrictions recorded under subparagraph (A), the recitation of the affordability covenants or restrictions shall also reference the concurrently recorded document. If the document recorded under

this subparagraph is not recorded concurrently with the covenants or restrictions recorded under subparagraph (A), the recitation of the affordability covenants or restrictions shall also reference the recorder's identification number of the document recorded under subparagraph (A).

(ii) The date the covenants or restrictions expire.

(iii) The street address of the property, including, if applicable, the unit number.

(iv) The assessor's parcel number for the property.

(v) The legal description of the property.

(4) The agency shall require the recording of the document required under subparagraph (B) of paragraph (3) not more than 30 days after the date of recordation of the covenants or restrictions required under subparagraph (A) of paragraph (3).

(5) The county recorder shall index the documents required to be recorded under paragraph (3) by the agency and current owner.

(6) Notwithstanding Section 27383 of the Government Code, a county recorder may charge all authorized recording fees to any party, including a public agency, for recording the document specified in subparagraph (B) of paragraph (3).

(7) Notwithstanding any other provision of law, the covenants or restrictions implementing this subdivision shall run with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the following:

(A) The agency.

(B) The community, as defined in Section 33002.

(C) A resident of a unit subject to this subdivision.

(D) A residents' association with members who reside in units subject to this subdivision.

(E) A former resident of a unit subject to this subdivision who last resided in that unit.

(F) An applicant seeking to enforce the covenants or restrictions for a particular unit that is subject to this subdivision, if the applicant conforms to all of the following:

(i) Is of low or moderate income, as defined in Section 50093.

(ii) Is able and willing to occupy that particular unit.

(iii) Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing this subdivision.

(G) A person on an affordable housing waiting list who is of low or moderate income, as defined in Section 50093, and who is able and willing to occupy a unit subject to this subdivision.

(8) A dwelling unit shall not be counted as satisfying the affordable housing requirements of this part, unless covenants for that dwelling unit are recorded in compliance with subparagraph (A) of paragraph (3).

(9) Failure to comply with the requirements of subparagraph (B) of paragraph (3) shall not invalidate any covenants or restrictions recorded pursuant to subparagraph (A) of paragraph (3).

(g) "Housing," as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of "lower income households," "very low income households," and "extremely low income households" in Sections 50079.5, 50105, and 50106 shall apply to this section. "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

(h) "Increasing, improving, and preserving the community's supply of low- and moderate-income housing," as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to, and occupied by, low- and moderate-income households, including extremely low and very low income households, for the longest feasible time, but not less than 55 years, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require that the units remain affordable to, and occupied by, persons and families of low- and moderate-income and extremely low and very low income households for the longest feasible time but not less than 55 years. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (1) the replacement units in another location are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (2) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(i) Agencies that have more than one project area may satisfy the requirements of Sections 33334.2 and 33334.6 and of this section by allocating, in any fiscal year, less than 20 percent in one project area, if the difference between the amount allocated and the 20 percent required is instead allocated, in that same fiscal year, to the Low and Moderate Income Housing Fund from tax increment revenues from other project areas. Prior to allocating funds pursuant to this subdivision, the agency shall make the finding required by subdivision (g) of Section 33334.2.

(j) Funds from the Low and Moderate Income Housing Fund shall not be used to the extent that other reasonable means of private or commercial financing of the new or substantially rehabilitated units at the same level of affordability and quantity are reasonably available to

the agency or to the owner of the units. Prior to the expenditure of funds from the Low and Moderate Income Housing Fund for new or substantially rehabilitated housing units, where those funds will exceed 50 percent of the cost of producing the units, the agency shall find, based on substantial evidence, that the use of the funds is necessary because the agency or owner of the units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity.

SEC. 2. Section 33413 of the Health and Safety Code is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same or a lower income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 15 percent of all new and substantially rehabilitated

dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost, to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have been required to be available inside a project area.

(iii) On or after January 1, 2002, as used in this paragraph and in paragraph (1), "substantially rehabilitated dwelling units" means all units substantially rehabilitated, with agency assistance. Prior to January 1, 2002, "substantially rehabilitated dwelling units" shall mean substantially rehabilitated multifamily rented dwelling units with three or more units regardless of whether there is agency assistance, or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), "substantial rehabilitation" means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2), (3), and (4) of subdivision (a) of Section 33490.

(c) (1) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units and 45 years for home ownership units, except as set forth in paragraph (2).

(2) Notwithstanding paragraph (1), the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units pursuant to this paragraph, expend funds to make affordable an equal number of units at the same income level as units sold pursuant to this paragraph. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(3) The requirements of this section shall be made enforceable in the same manner as provided in paragraph (7) of subdivision (f) of Section 33334.3.

(4) If land on which the dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(5) For each unit counted towards the requirements of subdivisions (a) and (b), the agency shall require the recording in the office of the county recorder of covenants or restrictions that ensure compliance with this subdivision. With respect to covenants or restrictions that are recorded on or after January 1, 2008, the agency shall comply with the requirements of paragraphs (3) and (4) of subdivision (f) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant

to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 2.5. Section 33413 of the Health and Safety Code is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same or a lower income level of very low income households, lower income households, and persons

and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost, to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have been required to be available inside a project area.

(iii) On or after January 1, 2002, as used in this paragraph and in paragraph (1), "substantially rehabilitated dwelling units" means all units substantially rehabilitated, with agency assistance. Prior to January 1, 2002, "substantially rehabilitated dwelling units" shall mean substantially rehabilitated multifamily rented dwelling units with three or more units regardless of whether there is agency assistance, or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), "substantial rehabilitation" means rehabilitation, the value of which constitutes 25

percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(D) To satisfy the requirements of paragraph (1) and subparagraph (A), each mutual self-help housing unit, as defined in subparagraph (C) of paragraph (1) of subdivision (f) of Section 33334.3, that is subject to a 15-year deed restriction shall count as one-third of a unit.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the

requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2), (3), and (4) of subdivision (a) of Section 33490.

(c) (1) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units, 45 years for home ownership units, and 15 years for mutual self-help housing units, as defined in subparagraph (C) of paragraph (1) of subdivision (f) of Section 33334.3, except as set forth in paragraph (2). Nothing in this paragraph precludes the agency and the developer of the mutual self-help housing units from agreeing to 45-year deed restrictions.

(2) Notwithstanding paragraph (1), the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period, and mutual self-help housing units prior to the expiration of the 15-year period, established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale pursuant to this paragraph of each home ownership or mutual self-help housing unit subject to a 45-year deed restriction, and every third mutual self-help housing unit subject to a 15-year deed restriction, expend funds to make affordable an equal number of units at the same or lowest income level as the unit or units sold pursuant to

this paragraph, for a period not less than the duration of the original deed restrictions. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(3) The requirements of this section shall be made enforceable in the same manner as provided in paragraph (7) of subdivision (f) of Section 33334.3.

(4) If land on which the dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(5) For each unit counted towards the requirements of subdivisions (a) and (b), the agency shall require the recording in the office of the county recorder of covenants or restrictions that ensure compliance with this subdivision. With respect to covenants or restrictions that are recorded on or after January 1, 2008, the agency shall comply with the requirements of paragraphs (3) and (4) of subdivision (f) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 3. Section 33418 of the Health and Safety Code is amended to read:

33418. (a) An agency shall monitor, on an ongoing basis, any housing affordable to persons and families of low or moderate income developed or otherwise made available pursuant to any provisions of this part. As part of this monitoring, an agency shall require owners or managers of the housing to submit an annual report to the agency. The annual reports shall include for each rental unit the rental rate and the income and family size of the occupants, and for each owner-occupied unit whether there was a change in ownership from the prior year and, if so, the income and family size of the new owners. The income information required by this section shall be supplied by the tenant in a certified statement on a form provided by the agency.

(b) The data specified in subdivision (a) shall be obtained by the agency from owners and managers of the housing specified therein and current data shall be included in any reports required by law to be submitted to the Department of Housing and Community Development or the Controller. The information on income and family size that is required to be reported by the owner or manager shall be supplied by the tenant and shall be the only information on income or family size that the owner or manager shall be required to submit on his or her annual report to the agency.

(c) (1) The agency shall compile and maintain a database of existing, new and substantially rehabilitated, housing units developed or otherwise assisted with moneys from the Low and Moderate Income Housing Fund, or otherwise counted towards the requirements of subdivision (a) or (b) of Section 33413. The database shall be made available to the public on the Internet and updated on an annual basis. The database shall require all of the following information for each owner-occupied unit or rental

unit, or for each group of units, if more than one unit is subject to the same covenant:

(A) The street address and assessor's parcel number of the property.

(B) The size of each unit, measured by the number of bedrooms.

(C) The year in which the construction or substantial rehabilitation of the unit was completed.

(D) The date of recordation and document number of the affordability covenants or restrictions required under subdivision (f) of Section 33334.3.

(E) The date on which the covenants or restrictions expire.

(F) For owner-occupied units that have changed ownership during the reporting year, as described in subdivision (a), the date and document number of the new affordability covenants or other documents recorded to assure that the affordability restriction is enforceable and continues to run with the land.

(2) Notwithstanding subparagraphs (A) and (D) of paragraph (1), the database shall omit any property used to confidentially house victims of domestic violence.

(3) Upon establishment of a database under this section, the agency shall provide reasonable notice to the community regarding the existence of the database.

(d) The agency shall adequately fund its monitoring activities as needed to insure compliance of applicable laws and agreements in relation to affordable units. For purposes of defraying the cost of complying with the requirements of this section and the changes in reporting requirements of Section 33080.4 enacted by the act enacting this section, an agency may establish and impose fees upon owners of properties monitored pursuant to this section.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 33334.3 of the Health and Safety Code proposed by both this bill and Assembly Bill 382. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 33334.3 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 382, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 33413 of the Health and Safety Code proposed by both this bill and Assembly Bill 382. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 33413 of the Health and Safety Code, and (3) this bill

is enacted after Assembly Bill 382, in which case Section 2 of this bill shall not become operative.

CHAPTER 691

An act to amend Section 17071.75 of the Education Code, relating to school facilities.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 17071.75 of the Education Code is amended to read:

17071.75. After a one-time initial report of existing school building capacity has been completed, the ongoing eligibility of a school district for new construction funding shall be determined by making all of the following calculations:

(a) A school district that applies to receive funding for new construction shall use the following methods to determine projected enrollment:

(1) A school district that has two or more schoolsites each with a pupil population density that is greater than 115 pupils per acre in kindergarten and grades 1 to 6, inclusive, or a schoolsite pupil population density that is greater than 90 pupils per acre in grades 7 to 12, inclusive, as determined by the Superintendent using enrollment data from the California Basic Educational Data System for the 2004–05 school year, may submit an application for funding for projects that will relieve overcrowded conditions. That school district may also submit an alternative enrollment projection for the fifth year beyond the fiscal year in which the application is made using a methodology other than the cohort survival enrollment projection method as defined by the board pursuant to paragraph (2), to be reviewed by the Demographic Research Unit of the Department of Finance, in consultation with the department and the Office of Public School Construction. If the Office of Public School Construction and the Demographic Research Unit of the Department of Finance jointly determine that the alternative enrollment projection provides a reasonable estimate of expected enrollment demand, a recommendation shall be forwarded to the board to approve or disapprove the application, in accordance with all of the following:

(A) Total funding for new construction projects using this method shall be limited to five hundred million dollars ($500,000,000), from the Kindergarten-University Public Education Facilities Bond Act of 2004.

(B) The eligibility amount for proposed projects that relieve overcrowding is the difference between the alternative enrollment projection method for the year the application is submitted and the cohort survival enrollment projection method, as defined by paragraph (2), for the same year, adjusted by the existing pupil capacity in excess of the projected enrollment according to the cohort survival enrollment projection method.

(C) The Office of Public School Construction shall determine whether each proposed project will relieve overcrowding, including, but not limited to, the elimination of the use of Concept 6 calendars, four track year-round calendars, or busing in excess of 40 minutes, and recommend approval to the board. The number of unhoused pupil grants requested in the application for funding from the eligibility determined pursuant to this paragraph shall be limited to the number of seats necessary to relieve overcrowding, including, but not limited to, the elimination of the use of Concept 6 calendars, four track year-round calendars, or busing in excess of 40 minutes, less the number of unhoused pupil grants attributed to that school as a source school in an approved application pursuant to Section 17078.24.

(D) A school district shall use the same alternative enrollment projection methodology for all applications submitted pursuant to this paragraph and shall calculate those projections in accordance with the same districtwide or high school attendance area used for the enrollment projection made pursuant to paragraph (2).

(2) A school district shall calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Projected enrollment shall be determined by utilizing the cohort survival enrollment projection system, as defined and approved by the board. The board may supplement the cohort survival enrollment projection with any of the following:

(A) The number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to approved and valid tentative subdivision maps.

(B) Modified weighting mechanisms, if the board determines that they best represent the enrollment trends of the district. Mechanisms pursuant to this subparagraph shall be developed and applied in consultation with the Demographic Research Unit of the Department of Finance.

(C) An adjustment to reflect the effects on kindergarten and first grade enrollment of changes in birth rates within the school district or high school attendance area boundaries.

(3) (A) A school district may submit an enrollment projection for either a 5th year or a 10th year beyond the fiscal year in which the application is made. A school district that bases its enrollment projection calculation on a high school attendance area may use pupil residence in that attendance area to calculate enrollment. A school district that utilizes pupil residence shall do so for all high school attendance areas within the district. A pupil shall not be included in a high school attendance area enrollment projection based on pupil residence unless that pupil was included in the California Basic Educational Data System (CBEDS) report of the district for the same enrollment year. The board may require a district to provide a reconciliation of the districtwide CBEDS and residency data. The board also may adopt regulations to specify the format and certification requirements for a school district that submits residency data.

(b) (1) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant school district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for whom facilities were provided from any state or local funding source after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10). For this purpose, the total number of pupils for whom facilities were provided shall be determined using the pupil loading formula set forth in Section 17071.25.

(2) Subtract from the number of pupils calculated in paragraph (1) the number of pupils that were housed in facilities to which the school district or county office of education relinquished title as the result of a transfer of a special education program between a school district and a county office of education or special education local plan area, if applicable. For this purpose, the total number of pupils that were housed in the facilities to which title was relinquished shall be determined using the pupil loading formula adopted by the board pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 17071.25. For purposes of this paragraph, title also includes any lease interest with a duration of greater than five years.

(c) Subtract the number of pupils pursuant to subdivision (b) from the number of pupils determined pursuant to paragraph (2) of subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

(e) Apply the increase or decrease resulting from the difference between the most recent report made pursuant to Section 42268, and the report used in determining the baseline capacity of the school district pursuant to subdivision (a) of Section 17071.25.

(f) For purposes of calculating projected enrollment pursuant to subdivision (a), the board may adopt regulations to ensure that the enrollment calculation of individuals with exceptional needs receiving special education services is adjusted in the enrollment reporting period in which the transfer occurs and three previous school years as a result of a transfer of a special education program between a school district and a county office of education or a special education local plan area. However, the projected enrollment calculation of a county office of education shall only be adjusted if a transfer of title for the special education program facilities has occurred. The regulations, if adopted, shall ensure that if a transfer of title to special education program facilities constructed with state funds occurs within 10 years after initial occupancy of the facility, the receiving school district or school districts shall remit to the state a proportionate share of any financial hardship assistance provided for the project pursuant to Section 17075.10, if applicable.

(g) For a school district with an enrollment of 2,500 or less, an adjustment in enrollment projections shall not result in a loss of ongoing eligibility to that school district for a period of three years from the date of the approval of eligibility by the board.

CHAPTER 692

An act to amend Section 53545.12 of the Health and Safety Code, relating to housing.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 53545.12 of the Health and Safety Code is amended to read:

53545.12. For the purposes of the grant program established in Section 53545.13, the following definitions apply:

(a) "Capital improvement project" means the construction, rehabilitation, demolition, relocation, preservation, acquisition, or other physical improvement of a capital asset, as defined in subdivision (a) of Section 16727 of the Government Code, that is an integral part of, or

necessary to facilitate the development of, a qualified infill project or qualified infill area. Capital improvement projects that may be funded under the grant program established by this act include, but are not limited to, those related to all of the following:

(1) The creation, development, or rehabilitation of parks or open space.

(2) Water, sewer, or other utility service improvements.

(3) Streets and roads, parking structures, or transit linkages and facilities, including, but not limited to, related access plazas or pathways, or bus and transit shelters.

(4) Facilities that support pedestrian or bicycle transit.

(5) Traffic mitigation.

(6) Qualifying infill project or qualifying infill area site preparation or demolition.

(7) Sidewalk or streetscape improvements, including, but not limited to, the reconstruction or resurfacing of sidewalks and streets or the installation of lighting, signage, or other related amenities.

(b) "Department" means the Department of Housing and Community Development.

(c) "Eligible applicant" means any of, or any combination of, the following:

(1) A nonprofit or for-profit developer of a qualifying infill project.

(2) A city, county, city and county, public housing authority, or redevelopment agency that has jurisdiction over a qualifying infill area.

(3) (A) A city, county, city and county, public housing authority, or redevelopment agency that has jurisdiction over a qualifying infill area and applies for funding jointly with an "owners' association," as defined in Section 36614.5 of the Streets and Highways Code, for a business or property improvement district that includes the qualifying infill area.

(B) Prior to receiving funding, but after being awarded a grant, the joint applicants described in subparagraph (A) shall submit to the department documentation from the local permitting authority demonstrating that the actual number of permitted housing units associated with the qualifying project is equal to or greater than the number of housing units in the grant application.

(d) "Qualifying infill area" means a contiguous area located within an urbanized area (1) that has been previously developed, or where at least 75 percent of the perimeter of the area adjoins parcels that are developed with urban uses, and (2) in which at least one development application has been approved or is pending approval for a residential or mixed-use residential project that meets the definition and criteria in this section for a qualified infill project.

(e) (1) "Qualifying infill project" means a residential or mixed-use residential project located within an urbanized area on a site that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.

(2) A property is adjoining the side of a project site if the property is separated from the project site only by an improved public right-of-way.

(f) "Urbanized area" means an incorporated city or an urbanized area or urban cluster as defined by the United States Census Bureau. For unincorporated areas outside of an urban area or urban cluster, the area must be within a designated urban service area that is designated in the local general plan for urban development and is served by the public sewer and water.

(g) "Urban uses" mean any residential, commercial, industrial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

CHAPTER 693

An act to amend Sections 14043.1, 14043.26, and 14043.65 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 14043.1 of the Welfare and Institutions Code is amended to read:

14043.1. As used in this article:

(a) "Abuse" means either of the following:

(1) Practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the federal Medicaid and Medicare programs, the Medi-Cal program, another state's medicaid program, or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state.

(2) Practices that are inconsistent with sound medical practices and result in reimbursement by the federal Medicaid and Medicare programs, the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state, for services that are unnecessary or for

substandard items or services that fail to meet professionally recognized standards for health care.

(b) "Applicant" means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, owners, managing employees, or agents thereof, that applies to the department for enrollment as a provider in the Medi-Cal program.

(c) "Application or application package" means a completed and signed application form, signed under penalty of perjury or notarized pursuant to Section 14043.25, a disclosure statement, a provider agreement, and all attachments or changes in the form, statement, or agreement.

(d) "Appropriate volume of business" means a volume that is consistent with the information provided in the application and any supplemental information provided by the applicant or provider, and is of a quality and type that would reasonably be expected based upon the size and type of business operated by the applicant or provider.

(e) "Business address" means the location where an applicant or provider provides services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary. A post office box or commercial box is not a business address. The business address for the location of a vehicle or vessel owned and operated by an applicant or provider enrolled in the Medi-Cal program and used to provide services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary shall either be the business address location listed on the provider's application as the location where similar services, goods, supplies, or merchandise would be provided or, the applicant's or provider's pay-to-address.

(f) "Convicted" means any of the following:

(1) A judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether there is a posttrial motion or an appeal pending or the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed.

(2) A federal, state, or local court has made a finding of guilt against an individual or entity.

(3) A federal, state, or local court has accepted a plea of guilty or nolo contendere by an individual or entity.

(4) An individual or entity has entered into participation in a first offender, deferred adjudication, or other program or arrangement where judgment of conviction has been withheld.

(g) "Debt due and owing" means 60 days have passed since a notice or demand for repayment of an overpayment or other amount resulting from an audit or examination, for a penalty assessment, or for any other

amount due the department was sent to the provider, regardless of whether the provider is an institutional provider or a noninstitutional provider and regardless of whether an appeal is pending.

(h) "Enrolled or enrollment in the Medi-Cal program" means authorized under any processes by the department or its agents or contractors to receive, directly or indirectly, reimbursement for the provision of services, goods, supplies, or merchandise to a Medi-Cal beneficiary.

(i) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(j) "Location" means a street, city, or rural route address or a site or place within a street, city, or rural route address, and the city, county, state, and nine digit ZIP Code.

(k) "Not currently enrolled at the location for which the application is submitted" means either of the following:

(1) The provider is changing location and moving to a different location than that for which the provider was issued a provider number.

(2) The provider is adding a business address.

(*l*) "Individual physician practice" means a physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board of California enrolled or enrolling in Medi-Cal as an individual provider who is sole proprietor of his or her practice or is a corporation owned solely by the individual physician and the only physician practitioner is the owner. An individual physician practice may include nonphysician medical practitioners employed and supervised by the physician.

(m) "Preenrollment period" or "preenrollment" includes the period of time during which an application package for enrollment, continued enrollment, or for the addition of or change in a location is pending.

(n) "Professionally recognized standards of health care" means statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue recognize as applying to those peers practicing or providing care within a state. When the United States Department of Health and Human Services has declared a treatment modality not to be safe and effective, practitioners that employ that treatment modality shall be deemed not to meet professionally recognized standards of health care. This subdivision shall not be construed to mean that all other treatments meet professionally recognized standards of care.

(o) "Provider" means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, owners, managing employees, or agents of any partnership, group association, corporation, institution, or entity, that provides services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary and that has been enrolled in the Medi-Cal program.

(p) "Unnecessary or substandard items or services" means those that are either of the following:

(1) Substantially in excess of the provider's usual charges or costs for the items or services.

(2) Furnished, or caused to be furnished, to patients, whether or not covered by Medicare, medicaid, or any of the state health care programs to which the definitions of applicant and provider apply, and which are substantially in excess of the patient's needs, or of a quality that fails to meet professionally recognized standards of health care. The department's determination that the items or services furnished were excessive or of unacceptable quality shall be made on the basis of information, including sanction reports, from the following sources:

(A) The professional review organization for the area served by the individual or entity.

(B) State or local licensing or certification authorities.

(C) Fiscal agents or contractors, or private insurance companies.

(D) State or local professional societies.

(E) Any other sources deemed appropriate by the department.

SEC. 2. Section 14043.26 of the Welfare and Institutions Code is amended to read:

14043.26. (a) (1) On and after January 1, 2004, an applicant that is not currently enrolled in the Medi-Cal program, or a provider applying for continued enrollment, upon written notification from the department that enrollment for continued participation of all providers in a specific provider of service category or subgroup of that category to which the provider belongs will occur, or, except as provided in subdivisions (b) and (e), a provider not currently enrolled at a location where the provider intends to provide services, goods, supplies, or merchandise to a Medi-Cal beneficiary, shall submit a complete application package for enrollment, continuing enrollment, or enrollment at a new location or a change in location.

(2) Clinics licensed by the department pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(3) Health facilities licensed by the department pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety

Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(4) Adult day health care providers licensed pursuant to Chapter 3.3 (commencing with Section 1570) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(5) Home health agencies licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(6) Hospices licensed pursuant to Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(b) A physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board of California practicing in an individual physician practice, who is enrolled and in good standing in the Medi-Cal program, and who is changing locations of that individual physician practice within the same county, shall be eligible to continue enrollment at the new location by filing a change of location form to be developed by the department. The form shall comply with all minimum federal requirements related to Medicaid provider enrollment. Filing this form shall be in lieu of submitting a complete application package pursuant to subdivision (a).

(c) (1) Except as provided in paragraph (2), within 30 days after receiving an application package submitted pursuant to subdivision (a), the department shall provide written notice that the application package has been received and, if applicable, that there is a moratorium on the enrollment of providers in the specific provider of service category or subgroup of the category to which the applicant or provider belongs. This moratorium shall bar further processing of the application package.

(2) Within 15 days after receiving an application package from a physician, or a group of physicians, licensed by the Medical Board of California or the Osteopathic Medical Board of California, or a change of location form pursuant to subdivision (b), the department shall provide written notice that the application package or the change of location form has been received.

(d) (1) If the applicant package submitted pursuant to subdivision (a) is from an applicant or provider who meets the criteria listed in paragraph (2), the applicant or provider shall be considered a preferred provider and shall be granted preferred provisional provider status pursuant to this section and for a period of no longer than 18 months, effective from the date on the notice from the department. The ability

to request consideration as a preferred provider and the criteria necessary for the consideration shall be publicized to all applicants and providers. An applicant or provider who desires consideration as a preferred provider pursuant to this subdivision shall request consideration from the department by making a notation to that effect on the application package, by cover letter, or by other means identified by the department in a provider bulletin. Request for consideration as a preferred provider shall be made with each application package submitted in order for the department to grant the consideration. An applicant or provider who requests consideration as a preferred provider shall be notified within 60 days whether the applicant or provider meets or does not meet the criteria listed in paragraph (2). If an applicant or provider is notified that the applicant or provider does not meet the criteria for a preferred provider, the application package submitted shall be processed in accordance with the remainder of this section.

(2) To be considered a preferred provider, the applicant or provider shall meet all of the following criteria:

(A) Hold a current license as a physician and surgeon issued by the Medical Board of California or the Osteopathic Medical Board of California, which license shall not have been revoked, whether stayed or not, suspended, placed on probation, or subject to other limitation.

(B) Be a current faculty member of a teaching hospital or a children's hospital, as defined in Section 10727, accredited by the Joint Commission for Accreditation of Healthcare Organizations or the American Osteopathic Association, or be credentialed by a health care service plan that is licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) or county organized health system, or be a current member in good standing of a group that is credentialed by a health care service plan that is licensed under the Knox-Keene Act.

(C) Have full, current, unrevoked, and unsuspended privileges at a Joint Commission for Accreditation of Healthcare Organizations or American Osteopathic Association accredited general acute care hospital.

(D) Not have any adverse entries in the Healthcare Integrity and Protection Databank.

(3) The department may recognize other providers as qualifying as preferred providers if criteria similar to those set forth in paragraph (2) are identified for the other providers. The department shall consult with interested parties and appropriate stakeholders to identify similar criteria for other providers so that they may be considered as preferred providers.

(e) (1) If a Medi-Cal applicant meets the criteria listed in paragraph (2), the applicant shall be enrolled in the Medi-Cal program after submission and review of a short form application to be developed by

the department. The form shall comply with all minimum federal requirements related to Medicaid provider enrollment. The department shall notify the applicant that the department has received the application within 15 days of receipt of the application. The department shall issue the applicant a provider number or notify the applicant that the applicant does not meet the criteria listed in paragraph (2) within 90 days of receipt of the application.

(2) Notwithstanding any other provision of law, any applicant or provider who meets all of the following criteria shall be eligible for enrollment in the Medi-Cal program pursuant to this subdivision, after submission and review of a short form application:

(A) The applicant's or provider's practice is based in one or more of the following: a general acute care hospital, a rural general acute care hospital, or an acute psychiatric hospital, as defined in subdivisions (a) and (b) of Section 1250 of the Health and Safety Code.

(B) The applicant or provider holds a current, unrevoked, or unsuspended license as a physician and surgeon issued by the Medical Board of California or the Osteopathic Medical Board of California. An applicant or provider shall not be in compliance with this subparagraph if a license revocation has been stayed, the licensee has been placed on probation, or the license is subject to any other limitation.

(C) The applicant or provider does not have an adverse entry in the Healthcare Integrity and Protection Databank.

(3) An applicant shall be granted provisional provider status under this subdivision for a period of 12 months.

(f) Except as provided in subdivision (g), within 180 days after receiving an application package submitted pursuant to subdivision (a), or from the date of the notice to an applicant or provider that the applicant or provider does not qualify as a preferred provider under subdivision (d), the department shall give written notice to the applicant or provider that any of the following applies, or shall on the 181st day grant the applicant or provider provisional provider status pursuant to this section for a period no longer than 12 months, effective from the 181st day:

(1) The applicant or provider is being granted provisional provider status for a period of 12 months, effective from the date on the notice.

(2) The application package is incomplete. The notice shall identify any additional information or documentation that is needed to complete the application package.

(3) The department is exercising its authority under Section 14043.37, 14043.4, or 14043.7, and is conducting background checks, preenrollment inspections, or unannounced visits.

(4) The application package is denied for any of the following reasons:

(A) Pursuant to Section 14043.2 or 14043.36.

(B) For lack of a license necessary to perform the health care services or to provide the goods, supplies, or merchandise directly or indirectly to a Medi-Cal beneficiary, within the applicable provider of service category or subgroup of that category.

(C) The period of time during which an applicant or provider has been barred from reapplying has not passed.

(D) For other stated reasons authorized by law.

(g) Notwithstanding subdivision (f), within 90 days after receiving an application package submitted pursuant to subdivision (a) from a physician or physician group licensed by the Medical Board of California or the Osteopathic Medical Board of California, or from the date of the notice to that physician or physician group that does not qualify as a preferred provider under subdivision (d), or within 90 days after receiving a change of location form submitted pursuant to subdivision (b), the department shall give written notice to the applicant or provider that either paragraph (1), (2), (3), or (4) of subdivision (f) applies, or shall on the 91st day grant the applicant or provider provisional provider status pursuant to this section for a period no longer than 12 months, effective from the 91st day.

(h) (1) If the application package that was noticed as incomplete under paragraph (2) of subdivision (f) is resubmitted with all requested information and documentation, and received by the department within 60 days of the date on the notice, the department shall, within 60 days of the resubmission, send a notice that any of the following applies:

(A) The applicant or provider is being granted provisional provider status for a period of 12 months, effective from the date on the notice.

(B) The application package is denied for any other reasons provided for in paragraph (4) of subdivision (f).

(C) The department is exercising its authority under Section 14043.37, 14043.4, or 14043.7 to conduct background checks, preenrollment inspections, or unannounced visits.

(2) (A) If the application package that was noticed as incomplete under paragraph (2) of subdivision (f) is not resubmitted with all requested information and documentation and received by the department within 60 days of the date on the notice, the application package shall be denied by operation of law. The applicant or provider may reapply by submitting a new application package that shall be reviewed de novo.

(B) If the failure to resubmit is by a provider applying for continued enrollment, the failure shall make the provider also subject to deactivation of the provider's number and all of the business addresses used by the provider to provide services, goods, supplies, or merchandise to Medi-Cal beneficiaries.

(C) Notwithstanding subparagraph (A), if the notice of an incomplete application package included a request for information or documentation related to grounds for denial under Section 14043.2 or 14043.36, the applicant or provider may not reapply for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors for a period of three years.

(i) (1) If the department exercises its authority under Section 14043.37, 14043.4, or 14043.7 to conduct background checks, preenrollment inspections, or unannounced visits, the applicant or provider shall receive notice, from the department, after the conclusion of the background check, preenrollment inspections, or unannounced visit of either of the following:

(A) The applicant or provider is granted provisional provider status for a period of 12 months, effective from the date on the notice.

(B) Discrepancies or failure to meet program requirements, as prescribed by the department, have been found to exist during the preenrollment period.

(2) (A) The notice shall identify the discrepancies or failures, and whether remediation can be made or not, and if so, the time period within which remediation must be accomplished. Failure to remediate discrepancies and failures as prescribed by the department, or notification that remediation is not available, shall result in denial of the application by operation of law. The applicant or provider may reapply by submitting a new application package that shall be reviewed de novo.

(B) If the failure to remediate is by a provider applying for continued enrollment, the failure shall make the provider also subject to deactivation of the provider's number and all of the business addresses used by the provider to provide services, goods, supplies, or merchandise to Medi-Cal beneficiaries.

(C) Notwithstanding subparagraph (A), if the discrepancies or failure to meet program requirements, as prescribed by the director, included in the notice were related to grounds for denial under Section 14043.2 or 14043.36, the applicant or provider may not reapply for three years.

(j) If provisional provider status or preferred provisional provider status is granted pursuant to this section, a provider number shall be used by the provider for each business address for which an application package has been approved. This provider number shall be used exclusively for the locations for which it is issued, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered at locations other than the provider's business address and this practice or delivery of services, goods, supplies, or

merchandise has been disclosed in the application package approved by the department when the provisional provider status or preferred provisional provider status was granted.

(k) Except for providers subject to subdivision (c) of Section 14043.47, a provider currently enrolled in the Medi-Cal program at one or more locations who has submitted an application package for enrollment at a new location or a change in location pursuant to subdivision (a) may, or filed a change of location form pursuant to subdivision (b), submit claims for services, goods, supplies, or merchandise rendered at the new location until the application package or change of location form is approved or denied under this section, and shall not be subject, during that period, to deactivation, or be subject to any delay or nonpayment of claims as a result of billing for services rendered at the new location as herein authorized. However, the provider shall be considered during that period to have been granted provisional provider status or preferred provisional provider status and be subject to termination of that status pursuant to Section 14043.27. A provider that is subject to subdivision (c) of Section 14043.47 may come within the scope of this subdivision upon submitting documentation in the application package that identifies the physician providing supervision for every three locations. If a provider submits claims for services rendered at a new location before the application for that location is received by the department, the department may deny the claim.

(*l*) An applicant or a provider whose application for enrollment, continued enrollment, or a new location or change in location has been denied pursuant to this section, may appeal the denial in accordance with Section 14043.65.

(m) (1) Upon receipt of a complete and accurate claim for an individual nurse provider, the department shall adjudicate the claim within an average of 30 days.

(2) During the budget proceedings of the 2006–07 fiscal year, and each fiscal year thereafter, the department shall provide data to the Legislature specifying the timeframe under which it has processed and approved the provider applications submitted by individual nurse providers.

(3) For purposes of this subdivision, "individual nurse providers" are providers authorized under certain home- and community-based waivers and under the state plan to provide nursing services to Medi-Cal recipients in the recipients' own homes rather than in institutional settings.

(n) The amendments to subdivision (b), which implement a change of location form, and the addition of paragraph (2) to subdivision (c), the amendments to subdivision (e), and the addition of subdivision (g),

which prescribe different processing timeframes for physicians and physician groups, as contained in the act adding this subdivision, shall become operative on July 1, 2008.

SEC. 3. Section 14043.65 of the Welfare and Institutions Code is amended to read:

14043.65. (a) Notwithstanding any other provision of law, any applicant whose application for enrollment as a provider or whose certification is denied; or any provider who is denied continued enrollment or certification, or denied enrollment for a new location, who has been temporarily suspended, who has had payments withheld, who has had one or more business addresses used to obtain reimbursement from the Medi-Cal program deactivated, or whose provisional provider status or preferred provisional provider status has been terminated pursuant to this article or Section 14107.11, or Section 100185.5 of the Health and Safety Code, or who has had a civil penalty imposed pursuant to subdivision (a) of Section 14123.25; or any billing agent, as defined in Section 14040, when the billing agent's registration has been denied pursuant to subdivision (e) of Section 14040.5, may appeal this action by submitting a written appeal, including any supporting evidence, to the director or the director's designee. Where the appeal is of a withholding of payment pursuant to Section 14107.11, the appeal to the director or the director's designee shall be limited to the issue of the reliability of the evidence supporting the withhold and shall not encompass fraud or abuse. The appeal procedure shall not include a formal administrative hearing under the Administrative Procedure Act and shall not result in reactivation of any deactivated provider numbers during appeal. An applicant, provider, or billing agent that files an appeal pursuant to this section shall submit the written appeal along with all pertinent documents and all other relevant evidence to the director or to the director's designee within 60 days of the date of notification of the department's action. The director or the director's designee shall review all of the relevant materials submitted and shall issue a decision within 90 days of the receipt of the appeal. The decision may provide that the action taken should be upheld, continued, or reversed, in whole or in part. The decision of the director or the director's designee shall be final. Any further appeal shall be required to be filed in accordance with Section 1085 of the Code of Civil Procedure.

(b) No applicant whose application for enrollment as a provider has been denied pursuant to Section 14043.2, 14043.36, or 14043.4 may reapply for a period of three years from the date the application is denied. The three-year period shall commence upon the date of the denial notice.

CHAPTER 694

An act to add and repeal Section 45272.5 of the Education Code, relating to school employees.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 45272.5 is added to the Education Code, to read:

45272.5. (a) Notwithstanding subdivision (a) of Section 45272, in a school district with a pupil population over 400,000, an appointment for an open, entry-level, school-based position, as described in subdivision (b), may be made from any rank on the eligibility list. However, in making appointments pursuant to this section, at least three eligible candidates from the list, if available, shall be considered, and appointing authorities shall consider job-related background and training that are related to successful job performance, placement on the eligibility lists, and seniority, prior to making a job offer.

(b) This section is limited to the following classes:

(1) Clerk/Office Technician.

(2) Information Systems Support Assistant I.

(3) Library Aide.

(c) A school district that makes an appointment pursuant to this section shall study the effectiveness of this selection method, vacancy rates for each class, and length of time to hire for each class, and submit a report on the study to the affected labor unions.

(d) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

CHAPTER 695

An act relating to water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The City of Soledad's existing wastewater treatment facilities, as designed and constructed, are inadequate to continue to treat and dispose of, in accordance with regional water quality control board requirements, the current volume of wastewater now being generated.

(b) The City of Soledad is making every effort to reduce the disastrous effects of this situation, including enacting a building moratorium in the city that began in October 2004.

(c) The City of Soledad currently leases property from the state that contains a wastewater treatment facility that was previously operated by the Salinas Valley State Prison. This facility, along with the city's other wastewater treatment facilities, are reaching capacity quickly, and the city is in urgent need of expanding its entire wastewater treatment system to meet current and projected flows.

(d) California is in crucial need of more prison beds to meet projected inmate populations. Under Assembly Bill 900 (Chapter 7 of the Statutes of 2007), the Salinas Valley State Prison is scheduled for an expansion of its facilities to help meet the growing prison bed need in California.

(e) Given the pending wastewater treatment situation in the City of Soledad and the looming expansion of the Salinas Valley State Prison, it is urgent for the state to respond quickly and address this issue by transferring property currently owned by the state to the city in order for the city to expand its wastewater treatment facility to protect the health and safety of the prison inmates and the residents of the City of Soledad. This situation is at a very crucial point and without a transfer of property the City of Soledad will be faced with tough decisions on how to handle the need for increased capacity on its wastewater system.

(f) Due to the urgent nature of the situation in the City of Soledad, it is necessary to have this sale of surplus property occur independently of other sales of surplus property so that it may take effect immediately.

SEC. 2. It is the intent of the Legislature to authorize the sale or transfer, as specified in Section 3 of this act, of the wastewater treatment facilities located in the Salinas Valley State Prison, to the City of Soledad.

SEC. 3. (a) The Director of General Services may sell, lease, convey, or exchange at fair market value to the City of Soledad, 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:

Approximately 33.5 acres of the facility known as the California Department of Corrections and Rehabilitation Correctional Training

Facility, Soledad, Monterey County Assessor Parcel Numbers 257-041-020 and 257-041-021.

(b) The net proceeds of any moneys received from the disposition of the property described in subdivision (a) shall be paid into the Deficit Recovery Bond Retirement Sinking Fund Subaccount, as established by subdivision (f) of Section 20 of Article XVI of the California Constitution.

(c) In implementing this act, 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.

(d) The Department of General Services shall be reimbursed for any cost or expenses incurred in the disposition of the property described in subdivision (a) from the net proceeds of the disposition.

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 assure proper wastewater treatment and water quality for treated wastewater from the City of Soledad and the Salinas Valley State Prison, it is necessary for this act to take effect immediately.

CHAPTER 696

An act to amend Section 65588 of, and to add and repeal Section 65584.7, the Government Code, relating to local planning.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 65584.7 is added to the Government Code, to read:

65584.7. (a) The Legislature finds and declares all of the following:

(1) Accurate and current data to estimate housing needs is necessary to ensure that state, regional, and local agencies plan effectively.

(2) The Department of Finance, which is charged with providing demographic data to aid effective state and local planning and policymaking, released updated population projections for the state on July 9, 2007.

(3) The updated projections released by the Department of Finance represent a decline of over 30 percent from the prior projection in the near-term population growth for the area within the regional jurisdiction of the Sacramento Area Council of Governments.

(4) Authorizing the department to adjust its regional housing needs determination for the Sacramento Area Council of Governments region is allowed only because a substantially different projection was released by the Department of Finance prior to the adoption of the Sacramento Area Council of Governments' final regional housing need allocation plan, and will not alter the schedule for its adoption.

(b) (1) Consistent with the revised population projections released by the Department of Finance on July 9, 2007, the department, for the fourth revision of the housing element pursuant to Section 65588, and prior to the adoption of the final regional housing need allocation plan by the Sacramento Area Council of Governments, may revise its regional housing need determination for the Sacramento Area Council of Governments. The revised determination by the department shall be consistent with the current population projections of the Department of Finance and with the methodology used for the initial determination for the region.

(2) The revision of the regional housing need determination shall not extend the time for, or reinstate any right to, an appeal, request for revision, or public comment or consultation period established pursuant to this article with respect to the determination of the regional housing need and the allocation to local government members of the Sacramento Area Council of Governments.

(3) This section does not change or modify the deadline established in Section 65588 by which local governments within Sacramento Area Council of Governments are required to adopt revised housing elements.

(c) This section is not intended to change or modify the deadlines in Sections 65584.01 to 65584.08, inclusive.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 2. Section 65588 of the Government Code is amended to read:

65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every five years, to reflect the results of this periodic review.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding subdivision (b) or the date of adoption of the housing elements previously in existence, each city, county, and city and county shall revise its housing element according to the following schedule:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: June 30, 2006, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2007, for the fourth revision.

(3) 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, 2002, for the third revision, and June 30, 2008, for the fourth revision.

(4) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2002, for the third revision, and June 30, 2009, for the fourth revision.

(5) Local governments within the regional jurisdiction of the San Diego Association of Governments: June 30, 2005, for the fourth revision.

(6) All other local governments: December 31, 2003, for the third revision, and June 30, 2009, for the fourth revision.

(7) Subsequent revisions shall be completed not less often than at five-year intervals following the fourth revision.

CHAPTER 697

An act to amend Section 5307.1 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 5307.1 of the Labor Code is amended to read:

5307.1. (a) The administrative director, after public hearings, shall adopt and revise periodically an official medical fee schedule that shall establish reasonable maximum fees paid for medical services other than physician services, drugs and pharmacy services, health care facility fees, home health care, and all other treatment, care, services, and goods described in Section 4600 and provided pursuant to this section. Except for physician services, all fees shall be in accordance with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems, provided that employer liability for medical treatment, including issues of reasonableness, necessity, frequency, and duration, shall be determined in accordance with Section 4600. Commencing January 1, 2004, and continuing until the time the administrative director has adopted an official medical fee schedule in accordance with the fee-related structure and rules of the relevant Medicare payment systems, except for the components listed in subdivision (j), maximum reasonable fees shall be 120 percent of the estimated aggregate fees prescribed in the relevant Medicare payment system for the same class of services before application of the inflation factors provided in subdivision (g), except that for pharmacy services and drugs that are not otherwise covered by a Medicare fee schedule payment for facility services, the maximum reasonable fees shall be 100 percent of fees prescribed in the relevant Medi-Cal payment system. Upon adoption by the administrative director of an official medical fee schedule pursuant to this section, the

maximum reasonable fees paid shall not exceed 120 percent of estimated aggregate fees prescribed in the Medicare payment system for the same class of services before application of the inflation factors provided in subdivision (g). Pharmacy services and drugs shall be subject to the requirements of this section, whether furnished through a pharmacy or dispensed directly by the practitioner pursuant to subdivision (b) of Section 4024 of the Business and Professions Code.

(b) In order to comply with the standards specified in subdivision (f), the administrative director may adopt different conversion factors, diagnostic related group weights, and other factors affecting payment amounts from those used in the Medicare payment system, provided estimated aggregate fees do not exceed 120 percent of the estimated aggregate fees paid for the same class of services in the relevant Medicare payment system.

(c) Notwithstanding subdivisions (a) and (d), the maximum facility fee for services performed in an ambulatory surgical center, or in a hospital outpatient department, may not exceed 120 percent of the fee paid by Medicare for the same services performed in a hospital outpatient department.

(d) If the administrative director determines that a medical treatment, facility use, product, or service is not covered by a Medicare payment system, the administrative director shall establish maximum fees for that item, provided that the maximum fee paid shall not exceed 120 percent of the fees paid by Medicare for services that require comparable resources. If the administrative director determines that a pharmacy service or drug is not covered by a Medi-Cal payment system, the administrative director shall establish maximum fees for that item. However, the maximum fee paid shall not exceed 100 percent of the fees paid by Medi-Cal for pharmacy services or drugs that require comparable resources.

(e) Prior to the adoption by the administrative director of a medical fee schedule pursuant to this section, for any treatment, facility use, product, or service not covered by a Medicare payment system, including acupuncture services, or, with regard to pharmacy services and drugs, for a pharmacy service or drug that is not covered by a Medi-Cal payment system, the maximum reasonable fee paid shall not exceed the fee specified in the official medical fee schedule in effect on December 31, 2003.

(f) Within the limits provided by this section, the rates or fees established shall be adequate to ensure a reasonable standard of services and care for injured employees.

(g) (1) (A) Notwithstanding any other provision of law, the official medical fee schedule shall be adjusted to conform to any relevant changes

in the Medicare and Medi-Cal payment systems no later than 60 days after the effective date of those changes, provided that both of the following conditions are met:

(i) The annual inflation adjustment for facility fees for inpatient hospital services provided by acute care hospitals and for hospital outpatient services shall be determined solely by the estimated increase in the hospital market basket for the 12 months beginning October 1 of the preceding calendar year.

(ii) The annual update in the operating standardized amount and capital standard rate for inpatient hospital services provided by hospitals excluded from the Medicare prospective payment system for acute care hospitals and the conversion factor for hospital outpatient services shall be determined solely by the estimated increase in the hospital market basket for excluded hospitals for the 12 months beginning October 1 of the preceding calendar year.

(B) The update factors contained in clauses (i) and (ii) of subparagraph (A) shall be applied beginning with the first update in the Medicare fee schedule payment amounts after December 31, 2003.

(2) The administrative director shall determine the effective date of the changes, and shall issue an order, exempt from Sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), informing the public of the changes and their effective date. All orders issued pursuant to this paragraph shall be published on the Internet Web site of the Division of Workers' Compensation.

(3) For the purposes of this subdivision, the following definitions apply:

(A) "Medicare Economic Index" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of a providing physician and other services paid under the resource-based relative value scale.

(B) "Hospital market basket" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient hospital services provided by acute care hospitals that are included in the Medicare prospective payment system.

(C) "Hospital market basket for excluded hospitals" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient services by hospitals that are excluded from the Medicare prospective payment system.

(h) Nothing in this section shall prohibit an employer or insurer from contracting with a medical provider for reimbursement rates different from those prescribed in the official medical fee schedule.

(i) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses, as that term is defined by Section 4620.

(j) The following Medicare payment system components may not become part of the official medical fee schedule until January 1, 2005:

(1) Inpatient skilled nursing facility care.

(2) Home health agency services.

(3) Inpatient services furnished by hospitals that are exempt from the prospective payment system for general acute care hospitals.

(4) Outpatient renal dialysis services.

(k) Notwithstanding subdivision (a), for the calendar years 2004 and 2005, the existing official medical fee schedule rates for physician services shall remain in effect, but these rates shall be reduced by 5 percent. The administrative director may reduce fees of individual procedures by different amounts, but in no event shall the administrative director reduce the fee for a procedure that is currently reimbursed at a rate at or below the Medicare rate for the same procedure.

(*l*) Notwithstanding subdivision (a), the administrative director, commencing January 1, 2006, shall have the authority, after public hearings, to adopt and revise, no less frequently than biennially, an official medical fee schedule for physician services. If the administrative director fails to adopt an official medical fee schedule for physician services by January 1, 2006, the existing official medical fee schedule rates for physician services shall remain in effect until a new schedule is adopted or the existing schedule is revised.

(m) (1) Notwithstanding subdivisions (a), (b), (f), and (g), commencing January 1, 2008, the administrative director, after public hearings, may adopt and revise, no less frequently than biennially, an official medical fee schedule for inpatient facility fees for burn cases in accordance with this subdivision. Until the date that the administrative director adopts a fee schedule pursuant to this subdivision, the inpatient fee schedule adopted and revised in accordance with subdivisions (a) and (g) shall continue to apply to inpatient facility fees for burn cases.

(2) In order to establish inpatient facility fees for burn cases that are adequate to ensure a reasonable standard of services and care, the administrative director may do any of the following:

(A) Adopt a fee schedule in accordance with the Medicare payment system, or adopt different conversion factors, diagnostic related group weights, and other factors affecting payment amounts from those used in the Medicare payment system.

(B) Adopt a fee schedule utilizing payment methodologies other than those utilized by the Medicare payment system.

(C) Adopt a fee schedule that utilizes both Medicare and non-Medicare methodologies.

(3) Inpatient facility fees for burn cases may exceed 120 percent, but in no case shall exceed 180 percent, of the fees paid by Medicare. Inpatient facility fees for burn cases shall be excluded from the calculation of estimated aggregate fees for purposes of other subdivisions of this section.

(4) The changes to this section made by this subdivision shall remain in effect only until January 1, 2011.

CHAPTER 698

An act to add Section 22854.5 to the Government Code, relating to public employee health benefits.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 22854.5 is added to the Government Code, to read:

22854.5. (a) A health benefit plan or contractor, or an entity offering services relating to the administration of health benefit plans to members and annuitants, shall disclose to the board, staff, and any contractor or consultant of the system, the cost, utilization, actual claim payments, and contract allowance amounts for health care services rendered by participating hospitals to each member and annuitant.

(b) The information specified in subdivision (a) shall be deemed confidential information and protected in accordance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg), the final regulations issued pursuant to the act by the United States Department of Health and Human Services (45 C.F.R. Parts 160 and 164), and the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code). Information provided to the board, staff, and any contractor or consultant of the system shall not include individual member or annuitant identifying information.

(c) The information specified in subdivision (a) shall be deemed to be confidential trade secret information in accordance with subdivision

(d) of Section 3426.1 of the Civil Code and Section 1060 of the Evidence Code.

(d) The board shall not disclose the information specified in subdivision (a) in either individual or aggregated form to any other health care service plan or insurer or any entity offering services relating to the administration of health benefit plans, and shall not make this information available to the public, including, but not limited to, any summaries, compilations, or rankings derived from this information. This information shall be used only to make decisions that materially affect the members and annuitants of the health benefits program established by the board.

(e) Any staff, contractor, or consultant to whom information is disclosed pursuant to subdivision (a) shall be subject to all the restrictions in this section regarding the confidentiality and nondisclosure of that information.

(f) The information specified in subdivision (a), in either individual or aggregated form, shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) pursuant to subdivision (k) of Section 6254.

(g) Upon request from a hospital, the board shall, on an annual basis, provide the hospital a reasonable opportunity to validate the data that has been provided to the board by a health insurer, health care service plan, or entity pursuant to subdivision (a).

(h) For purposes of this section:

(1) "Actual claim payment" means the actual amount paid by the health care plan or administrator to the participating hospital for a health care service rendered to a member or annuitant, exclusive of member or annuitant cost sharing and any other payment adjustments.

(2) "Contract allowance amounts" means the negotiated rate that the participating hospital agrees to accept as payment for a health care service rendered to a member or annuitant under the provider agreement between the health plan or administrator and the participating hospital.

(3) "Cost" means the full amount billed by the participating hospital for a health care service rendered to a member or annuitant.

CHAPTER 699

An act to amend Sections 56.06 and 1785.11.2 of, and to repeal and amend Sections 1798.29 and 1798.82 of, the Civil Code, relating to personal information.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 56.06 of the Civil Code is amended to read:

56.06. (a) Any business organized for the purpose of maintaining medical information in order to make the information available to an individual or to a provider of health care at the request of the individual or a provider of health care, for purposes of allowing the individual to manage his or her information, or for the diagnosis and treatment of the individual, shall be deemed to be a provider of health care subject to the requirements of this part. However, nothing in this section shall be construed to make a business specified in this subdivision a provider of health care for purposes of any law other than this part, including laws that specifically incorporate by reference the definitions of this part.

(b) Any business described in subdivision (a) shall maintain the same standards of confidentiality required of a provider of health care with respect to medical information disclosed to the business.

(c) Any business described in subdivision (a) shall be subject to the penalties for improper use and disclosure of medical information prescribed in this part.

SEC. 2. Section 1785.11.2 of the Civil Code is amended to read:

1785.11.2. (a) A consumer may elect to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. "Security freeze" means a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer. This subdivision does not prevent a consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer credit reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer credit reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days and shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place,

he or she shall contact the consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(e) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d) shall comply with the request no later than three business days after receiving the request.

(f) A consumer credit reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d) in an expedited manner.

(g) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon consumer request, pursuant to subdivision (d) or (j).

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze, the consumer credit reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific party or period of time while the freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer credit reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(k) A consumer credit reporting agency shall require proper identification, as defined in subdivision (c) of Section 1785.15, of the person making a request to place or remove a security freeze.

(*l*) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subdivision (d) of Section 1785.11.2 for purposes of facilitating the extension of credit or other permissible use.

(3) Any state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena.

(4) A child support agency acting pursuant to Chapter 2 of Division 17 of the Family Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).

(5) The State Department of Health Services or its agents or assigns acting to investigate Medi-Cal fraud.

(6) The Franchise Tax Board or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(7) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

(8) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(9) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(m) This act does not prevent a consumer credit reporting agency from charging a fee of no more than ten dollars ($10) to a consumer for each freeze, removal of the freeze, or temporary lift of the freeze for a period of time, or a fee of no more than twelve dollars ($12) for a temporary lift of a freeze for a specific party, regarding access to a consumer credit report, except that a consumer credit reporting agency may not charge a fee to a victim of identity theft who has submitted a valid police report or valid Department of Motor Vehicles investigative report that alleges a violation of Section 530.5 of the Penal Code.

(n) Regardless of the existence of a security freeze, a consumer reporting agency may disclose public record information lawfully obtained by, or for, the consumer reporting agency from an open public record to the extent otherwise permitted by law. This subdivision does not prohibit a consumer reporting agency from electing to apply a valid security freeze to the entire contents of a credit report.

SEC. 3. Section 1798.29 of the Civil Code, as added by Section 2 of Chapter 915 of the Statutes of 2002, is repealed.

SEC. 4. Section 1798.29 of the Civil Code, as added by Section 2 of Chapter 1054 of the Statutes of 2002, is amended to read:

1798.29. (a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information

by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California Identification Card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(4) Medical information.

(5) Health insurance information.

(f) (1) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(2) For purposes of this section, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

(3) For purposes of this section, "health insurance information" means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual's application and claims history, including any appeals records.

(g) For purposes of this section, "notice" may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the agency has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the agency's Web site page, if the agency maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), an agency that maintains its own notification procedures as part of an information security policy for the

treatment of personal information and is otherwise consistent with the timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

SEC. 4.5. Section 1798.29 of the Civil Code, as added by Section 2 of Chapter 1054 of the Statutes of 2002, is amended to read:

1798.29. (a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California identification card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(4) Medical information.

(5) Health insurance information.

(f) (1) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(2) For purposes of this section, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

(3) For purposes of this section, "health insurance information" means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual's application and claims history, including any appeals records.

(g) For purposes of this section, "notice" may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the agency has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the agency's Internet Web site page, if the agency maintains one.

(C) Notification to major statewide media and the Office of Privacy Protection.

(h) Notwithstanding subdivision (g), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

SEC. 5. Section 1798.82 of the Civil Code, as added by Section 4 of Chapter 915 of the Statutes of 2002, is repealed.

SEC. 6. Section 1798.82 of the Civil Code, as added by Section 4 of Chapter 1054 of the Statutes of 2002, is amended to read:

1798.82. (a) Any person or business that conducts business in California, and that owns or licenses computerized data that includes

personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California Identification Card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(4) Medical information.

(5) Health insurance information.

(f) (1) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(2) For purposes of this section, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

(3) For purposes of this section, "health insurance information" means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual's application and claims history, including any appeals records.

(g) For purposes of this section, "notice" may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the person or business has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the Web site page of the person or business, if the person or business maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part, shall be deemed to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

SEC. 6.5. Section 1798.82 of the Civil Code, as added by Section 4 of Chapter 1054 of the Statutes of 2002, is amended to read:

1798.82. (a) Any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or

any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California identification card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(4) Medical information.

(5) Health insurance information.

(f) (1) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(2) For purposes of this section, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

(3) For purposes of this section, "health insurance information" means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual's application and claims history, including any appeals records.

(g) For purposes of this section, "notice" may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the person or business has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the Internet Web site page of the person or business, if the person or business maintains one.

(C) Notification to major statewide media and the Office of Privacy Protection.

(h) Notwithstanding subdivision (g), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part, shall be deemed to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

SEC. 6.7. (a) Section 4.5 of this bill incorporates amendments to Section 1798.29 of the Civil Code proposed by both this bill and AB 779. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1798.29 of the Civil Code, and (3) this bill is enacted after AB 779, in which case Section 4 of this bill shall not become operative.

(b) Section 6.5 of this bill incorporates amendments to Section 1798.82 of the Civil Code proposed by both this bill and AB 779. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1798.82 of the Civil Code, and (3) this bill is enacted after AB 779, in which case Section 6 of this bill shall not become operative.

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

definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 700

An act to amend Sections 130311.5, 130316, and 130317 of the Health and Safety Code, relating to health care.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 130311.5 of the Health and Safety Code is amended to read:

130311.5. (a) The office shall assume statewide leadership, coordination, direction, and oversight responsibilities for determining which provisions of state law concerning personal medical information are preempted by HIPAA pursuant to Section 160.203 of Title 45 of the Code of Federal Regulations. State entities impacted by HIPAA shall, at the direction of the office, do the following:

(1) Assist in determining which state laws concerning personal medical information are preempted by HIPAA.

(2) Conform to all determinations made by the office concerning HIPAA preemption issues.

(b) Any provision of state law concerning personal medical information that is determined by the office to be preempted by HIPAA pursuant to Section 160.203 of Title 45 of the Code of Federal Regulations, shall not be applicable to the extent of that preemption. The remainder of the provisions of state law concerning personal medical information shall remain in full force and effect.

SEC. 2. Section 130316 of the Health and Safety Code is amended to read:

130316. Any funds appropriated for the purpose of this division that remain unexpended or unencumbered on July 1, 2010, shall revert to the General Fund on that date unless a statute that is enacted before July 1, 2010, extends the provisions of this division.

SEC. 3. Section 130317 of the Health and Safety Code is amended to read:

130317. This division shall become inoperative on July 1, 2010, and as of January 1, 2011, is repealed, unless a later enacted statute, that is

enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 701

An act to amend Sections 5371.5, 5386, and 5413.5 of, to add Section 5371.6 to, and to repeal Section 5386.1 of, the Public Utilities Code, relating to charter-party carriers.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 5371.5 of the Public Utilities Code is amended to read:

5371.5. (a) Upon receipt of a complaint containing sufficient information to warrant conducting an investigation, the commission shall investigate any business that advertises limousine-for-hire or passenger charter transportation service for compensation in motor vehicles. The commission shall, in a rulemaking or other appropriate procedure, adopt criteria that establishes the type of information, if contained in a complaint, that is sufficient to warrant an investigation. Pursuant to this investigation, the commission shall do all of the following:

(1) Determine which businesses, if any, are required to have in effect a passenger charter-party carrier certificate or permit pursuant to Section 5371 but do not have the required certificate or permit.

(2) Inform any business not having a required certificate or permit that it is in violation of law.

(3) Within 60 days of informing the business pursuant to paragraph (2), institute civil or criminal proceedings, or both, pursuant to Article 6 (commencing with Section 5411) or any other applicable law.

(b) For the purposes of this section, "advertises" includes the undertaking of any action described in subdivision (b) of Section 5386.

SEC. 2. Section 5371.6 is added to the Public Utilities Code, to read:

5371.6. (a) The Legislature finds and declares that advertising and use of telephone service is essential for charter-party carriers of passengers to obtain business and to conduct intrastate passenger transportation services. Unlawful advertisements by unlicensed charter-party carriers of passengers has resulted in properly licensed and regulated charter-party carriers of passengers competing with unlicensed charter-party carriers of passengers using unfair business practices.

Unlicensed charter-party carriers of passengers have also exposed citizens of the state to unscrupulous persons who portray themselves as properly licensed, qualified, and insured charter-party carriers of passengers. Many of these unlicensed charter-party carriers of passengers have been found to have operated their vehicles without insurance or in an unsafe manner, placing the citizens of the state at risk.

(b) (1) The Legislature finds and declares that the termination of telephone service utilized by unlicensed charter-party carriers of passengers is essential to ensure the public safety and welfare. Therefore, the commission should take enforcement action as specified in this section to disconnect telephone service of unlicensed charter-party carriers of passengers who unlawfully advertise passenger transportation services in yellow page directories and other publications. The enforcement actions provided for by this section are consistent with the decision of the California Supreme Court in Goldin v. Public Utilities Commission (1979) 23 Cal.3d 638.

(2) For purposes of this section, a telephone corporation or telegraph corporation, or a corporation that holds a controlling interest in the telephone or telegraph corporation, or any business that is a subsidiary or affiliate of the telephone or telegraph corporation, that has the name and address of the subscriber to a telephone number being used by an unlicensed charter-party carrier of passengers shall provide the commission, or an authorized officer or employee of the commission, upon demand, and the order of a magistrate, access to this information. A magistrate may only issue an order, for the purposes of this subdivision, if the magistrate has made the findings required by subdivision (c).

(c) A telephone or telegraph corporation shall refuse telephone service to a new subscriber and shall disconnect telephone service of an existing subscriber only after it is shown that other available enforcement remedies of the commission have failed to terminate unlawful activities detrimental to the public welfare and safety, and upon receipt from any authorized officer or employee of the commission of a writing, signed by a magistrate, as defined by Sections 807 and 808 of the Penal Code, finding that probable cause exists to believe that the subscriber is advertising or holding out to the public to perform, or is performing, charter-party carrier of passengers transportation services without having in force a permit or certificate issued by the commission authorizing those services, or that the telephone service otherwise is being used or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the laws requiring a charter-party carrier of passengers permit or certificate. Included in the writing of the magistrate shall be a finding that there is probable cause to believe that the subject telephone facilities have been or are to be used in the commission or

facilitation of holding out to the public to perform, or in performing, charter-party carrier of passengers transportation services without having in force a permit or certificate issued by the commission authorizing those services, and that, absent immediate and summary action, a danger to public welfare or safety will result.

(d) Any person aggrieved by any action taken pursuant to this section shall have the right to file a complaint with the commission and may include therein a request for interim relief. The commission shall schedule a public hearing on the complaint to be held within 21 calendar days of the filing and assignment of a docket number to the complaint. The remedy provided by this section shall be exclusive. No other action at law or in equity shall accrue against any telephone or telegraph corporation because of, or as a result of, any matter or thing done or threatened to be done pursuant to this section.

(e) At any hearing held on a complaint filed with the commission pursuant to subdivision (d), the commission staff shall have the right to participate, including the right to present evidence and argument and to present and cross-examine witnesses. The commission staff shall have both the burden of providing that the use made or to be made of the telephone service is to hold out to the public to perform, or to assist in performing, services as a charter-party carrier of passengers, or that the telephone service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the certification or permitting requirements applicable to charter-party carriers of passengers and that the character of the acts are such that, absent immediate and summary action, a danger to public welfare or safety will result, and the burden of persuading the commission that the telephone services should be refused or should not be restored.

(f) The telephone or telegraph corporation, immediately upon refusal or disconnection of service in accordance with subdivision (c), shall notify the subscriber in writing that the refusal or disconnection of telephone service has been made pursuant to a request of the commission and the writing of a magistrate, and shall include with the notice a copy of this section, a copy of the writing of the magistrate, and a statement that the customer or subscriber may request information from the commission at its San Francisco or Los Angeles office concerning any provision of this section and the manner in which a complaint may be filed.

(g) The provisions of this section are an implied term of every contract for telephone service. The provisions of this section are a part of any application for telephone service. Applicants for, and subscribers and customers of, telephone service have, as a matter of law, consented to

the provisions of this section as a consideration for the furnishing of the telephone service.

(h) As used in this section, the terms "person," "customer," and "subscriber" include a subscriber to telephone service, any person using the telephone service of a subscriber, an applicant for telephone service, a corporation, as defined in Section 204, a "person" as defined in Section 205, a limited liability company, a partnership, an association, and includes their lessees and assigns.

(i) (1) As used in this section, "telephone corporation" means a "telephone corporation" as defined in Section 234.

(2) As used in this section, "telegraph corporation" means a "telegraph corporation" as defined in Section 236.

(j) As used in this section, "authorized officer or employee of the commission" includes the executive director of the commission or any commission employee designated pursuant to paragraph (5) of subdivision (a) of Section 830.11 of the Penal Code.

SEC. 3. Section 5386 of the Public Utilities Code is amended to read:

5386. (a) Every charter-party carrier of passengers, including a charter-party carrier that operates a limousine, shall include the number of its permit or certificate in every written or oral advertisement of the services it offers.

(b) For the purposes of this subdivision, "advertisement" includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing the placement of any sign or marking on or in any building or structure, or in any media form, including newspaper, magazine, radiowave, satellite signal, or any electronic transmission, or in any directory soliciting charter-party transportation services subject to this chapter.

SEC. 4. Section 5386.1 of the Public Utilities Code is repealed.

SEC. 5. Section 5413.5 of the Public Utilities Code is amended to read:

5413.5. (a) Whenever the commission, after hearing, finds that any person or corporation is operating as a charter-party carrier of passengers, including a charter-party carrier operating a limousine, without a valid certificate or permit, or fails to include in any written or oral advertisement the number of the certificate or permit required by Section 5386, the commission may impose a fine of not more than five thousand dollars ($5,000) for each violation. The commission may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the commission. The commission may assess interest on any fine or assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent.

All fines, assessments, and interest collected shall be deposited at least once each month in the General Fund.

(b) Whenever the commission, after hearing, finds that any person or corporation is operating a charter-party carrier of passengers as a taxicab without a valid certificate or permit in violation of an ordinance or resolution of a city, county, or city and county, the commission may impose a fine of not more than five thousand dollars ($5,000) for each violation. The commission may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the commission. The commission may assess interest on any fine or assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in the General Fund.

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 702

An act to amend Section 1371.8 of the Health and Safety Code, and to amend Section 796.04 of the Insurance Code, relating to health care coverage.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 1371.8 of the Health and Safety Code is amended to read:

1371.8. A health care service plan that authorizes a specific type of treatment by a provider shall not rescind or modify this authorization after the provider renders the health care service in good faith and pursuant to the authorization for any reason, including, but not limited to, the plan's subsequent rescission, cancellation, or modification of the enrollee's or subscriber's contract or the plan's subsequent determination

that it did not make an accurate determination of the enrollee's or subscriber's eligibility. This section shall not be construed to expand or alter the benefits available to the enrollee or subscriber under a plan. The Legislature finds and declares that by adopting the amendments made to this section by Assembly Bill 1324 of the 2007–08 Regular Session it does not intend to instruct a court as to whether or not the amendments are existing law.

SEC. 2. Section 796.04 of the Insurance Code is amended to read:

796.04. A health insurer that provides coverage for hospital, medical, or surgical expenses that authorizes a specific type of treatment for services covered under a policyholder's contract or plan by a provider shall not rescind or modify this authorization after the provider renders the health care service in good faith and pursuant to the authorization for any reason, including, but not limited to, the insurer's subsequent rescission, cancellation, or modification of the insured's or policyholder's contract or the insurer's subsequent determination that it did not make an accurate determination of the insured's eligibility. This section shall not be construed to expand or alter the benefits available or the terms and conditions of the contract as may be agreed upon between a policyholder, certificate holder, or trust, and the insurer. The Legislature finds and declares that by adopting the amendments made to this section by Assembly Bill 1324 of the 2007–08 Regular Session it does not intend to instruct a court as to whether or not the amendments are existing law.

CHAPTER 703

An act to add Chapter 9 (commencing with Section 122350) to Part 6 of Division 105 of the Health and Safety Code, relating to pets.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(a) It is the intent of the Legislature to establish standards of care for animals in pet stores.

(b) Standards of care for animals in pet stores are essential to ensure the humane treatment of the animals and safeguard the public interest.

(c) The Legislature does not intend, by this act, to regulate the care or handling of animals in or on farms, ranches, livestock or horse

auctions, livestock markets, slaughtering facilities, or any place other than pet stores.

(d) The Legislature does not intend, by regulating pet stores, to classify as a pet store a person who breeds and sells animals directly to the public.

SEC. 2. This chapter shall be known, and may be cited, as the Pet Store Animal Care Act.

SEC. 3. Chapter 9 (commencing with Section 122350) is added to Part 6 of Division 105 of the Health and Safety Code, to read:

Chapter 9. Pet Store Animal Care

122350. As used in this act, the following definitions apply:

(a) "Adequate space" means sufficient height and sufficient floorspace for the animals to stand up, sit down and turn about freely using normal body movements without the head touching the top of the primary enclosure; lie down with limbs outstretched and exercise normal postural movement, and move about freely as appropriate for the species, age, size, and condition of the animal, and when appropriate, to experience socialization with other animals, if any, in the primary enclosure. However, when freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal in a humane manner is permitted.

(b) "Animal" means any nonhuman vertebrate species housed, offered for sale or adoption, or both, in the pet store, including, but not limited to, mammals, birds, reptiles, amphibians, fish, and also invertebrates housed, sold, or adopted as pets.

(c) "Disposition" means the transfer of an animal from a pet store to another location, including the sale or adoption of the animal, the return of the animal to the person who supplied the animal to the pet store, or removal from the pet store of any animal that is deceased for any reason, including euthanasia.

(d) "Enrichment" means providing objects or activities, appropriate with the needs of the species, as well as the age, size, and condition of the animal, that stimulate the animal and promote the animal's well-being.

(e) "Euthanasia" or "euthanize" means the humane destruction of an animal in compliance with the requirements set forth in paragraph (5) of subdivision (b) of Section 122354.

(f) "Impervious to moisture" means a surface that prevents the absorption of fluids and that can be thoroughly and repeatedly sanitized, will not retain odors, and from which fluids bead up and run off or can be removed without being absorbed into the surface material.

(g) "Intact" means an animal that retains its sexual organs or ability to procreate and has not been sterilized.

(h) "Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity.

(i) "Pet store" means a retail establishment open to the public and selling or offering for sale animals. Any person who sells, exchanges, or otherwise transfers only animals that were bred or raised, or both, by the person, or sells or otherwise transfers only animals kept primarily for reproduction, shall be considered a breeder and not a pet store.

(j) "Pet store operator" or "operator" means a person who owns or operates a pet store, or both.

(k) "Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, aquarium, terrarium, habitat compartment or hutch, where the animal or animals reside until their sale, transfer, or other disposition.

(*l*) "Rodent" means an animal of the order Rodentia, such as a guinea pig, rat, mouse, chinchilla, or hamster.

(m) "Sanitize" means to make physically clean and to destroy, to the extent practical, agents injurious to health.

(n) "Temporary enclosure" means a confined space used by the pet store to house an animal when the animal is not in its primary enclosure for a period not to exceed four consecutive hours. The temporary enclosure shall allow the animals to stand up, lie down, and turn around. Any enclosure used by the pet store to house an animal for longer than four consecutive hours shall meet the requirements of a primary enclosure.

(o) "Time of sale" means the calendar date the retail purchaser removes the animal from the premises of the pet store following the retail sale of that animal.

(p) "Transfer" means the release of an animal by its owner to another person by sale, gift, adoption, or other disposition, including the exchange of animals between pet stores.

(q) "Veterinary treatment" means treatment by or at the direction of a California-licensed veterinarian.

122351. Each pet store operator shall be responsible for all of the following:

(a) Maintaining the entire pet store facility in good repair.

(b) Restricting the entry of pests from outside, ensuring the containment of animals within the pet store, and, in the event that animals escape, being responsible for reporting this fact, as necessary, to local authorities and making reasonable efforts to capture the animals that have escaped.

(c) Ensuring that the pet store's interior building surfaces, including walls and floors, are constructed in a manner that permits them to be readily cleaned and maintained.

(d) Uniformly distributing light, by natural or artificial means, in a manner that permits routine inspection and cleaning, and the proper care and maintenance of the animals.

(e) When dog or cat grooming services are offered by a pet store, separating the grooming work area from the store's primary animal enclosures, animal food storage areas, and isolation areas for housing sick animals. The grooming area shall be cleaned and maintained at least once daily.

(f) With respect to dogs, complying with all of the requirements of Section 122155. Sections 122356 and 122358 do not apply to a violation of Section 122155.

122352. (a) Primary enclosures shall comply with all of the following structural standards:

(1) Primary and temporary enclosures shall be structurally sound and maintained in good repair to protect the animals from injury, to contain the animals, to keep other animals out, and to promote the health and well-being of the enclosed animals. Primary enclosures shall be constructed so they can be routinely maintained to allow animals to stay clean.

(2) The floor of the primary enclosure shall be constructed to prevent injury. A solid surface, platform, or shelf shall be provided when a grid-flooring system is used.

(3) Primary enclosures shall be constructed of materials that are impervious to moisture and can be sanitized.

(4) All primary enclosures shall provide adequate space for the animal or animals housed in the enclosure.

(5) Each primary enclosure shall provide animals with an enrichment device or devices appropriate for the species, age, size, and condition of the animal.

(b) In addition to the requirements set forth in subdivision (a), primary enclosures for cats shall provide an elevated platform as appropriate for the size of the cat.

(c) In addition to the requirements set forth in subdivision (a), primary enclosures for birds shall be designed to ensure all of the following:

(1) A bird can fully extend both of its wings at the same time without contacting the sides of the enclosure.

(2) Perches are provided in a diameter that is appropriate for the species, age, size, and condition of the bird, and for the size of the enclosure.

(3) There is sufficient space to enable each bird to fully extend its wings in every direction while all birds are simultaneously perched.

(d) Primary enclosures for prey species shall be located where they cannot be directly seen by predator animals for that species.

122353. (a) When a primary or temporary enclosure is being cleaned in a manner, or with a substance, that is or may be harmful to the animals within the enclosure, those animals shall be removed from the enclosure.

(b) Primary enclosures shall be observed at least once daily, and animal and food wastes, used bedding, debris, and any other organic wastes shall be removed as necessary to prevent contamination of the animals and to reduce disease hazards and odors.

(c) Pest control measures shall be implemented to effectively control infestation of vermin, insects, or other pests.

122354. (a) The pet store operator or at least one of his or her employees shall be present in the store at least once daily, regardless of whether the store is open, for care and maintenance of the animals in the pet store.

(b) A pet store operator shall comply with the following animal care requirements:

(1) House only compatible animals in the same enclosure.

(2) Observe each animal at regular intervals, at least once a day, in order to recognize and evaluate general symptoms of sickness, injury, or abnormal behavior.

(3) Take reasonable measures to house intact mammals that have reached sexual maturity in a manner to prevent unplanned reproduction.

(4) (A) Maintain and abide by written animal husbandry procedures that address animal care, management and safe handling, disease prevention and control, routine care, preventative care, emergency care, veterinary treatment, euthanasia, and disaster planning, evacuation, and recovery that is applicable to the location of the pet store. These procedures shall be reviewed with employees who provide animal care and shall be present in writing, either electronically or physically, in the store and made available to all store employees.

(B) Sections 122356 and 122358 do not apply to subparagraph (A) where there are other local, state, or federal laws that apply to those procedures.

(5) (A) If there is a determination that an animal may need to be euthanized, ensure that veterinary treatment is provided without delay.

(B) Notwithstanding subparagraph (A), an animal intended as food for another animal may be destroyed using a method or methods of euthanasia that are humane, involve painless loss of consciousness and immediate death as specified in Appendix 2 of the American Veterinary Medical Association (AVMA) 2000 Report of the AVMA Panel on

Euthanasia, and as authorized for the species in the documented program prescribed in paragraph (7).

(C) Each employee who performs euthanasia shall receive adequate training in the method or methods used and proof of successful completion of such training shall be documented in writing and retained by the pet store. All training records shall be maintained by the pet store for two years, and shall be made available, upon request, to appropriate law enforcement officers exercising authority pursuant to Section 122356.

(D) Subparagraphs (A) to (C), inclusive, shall be implemented in a manner consistent with California law and in accordance with Chapter 11 (commencing with Section 4800) of Division 2 of the Business and Professions Code.

(6) Isolate and not offer for sale those animals that have or are suspected of having a contagious condition. This paragraph shall not apply to those animals that are effectively isolated by their primary enclosure, including, but not limited to fish, provided that a sign is posted on the enclosure that indicates that these animals are not for sale, or otherwise marked in a manner to prevent their sale to customers during their treatment for the contagious condition.

(7) Have a documented program of routine care, preventative care, and emergency care, disease control and prevention, veterinary treatment and euthanasia, as outlined in paragraph (5) that is established and maintained by the pet store in consultation with a licensed veterinarian employed by the pet store or a California-licensed veterinarian, to ensure adherence to the program with respect to each animal. The program shall also include a documented onsite visit to the pet store premises by a California-licensed veterinarian at least once a year.

(8) Ensure that each diseased, ill, or injured animal is evaluated and treated without delay. If necessary for the humane care and treatment of the animal, the animal shall be provided with veterinary treatment without delay.

(9) In the event of a natural disaster, an emergency evacuation, or other similar occurrence, the humane care and treatment of each animal is provided for, as required by this chapter, to the extent access to the animal is reasonably available.

(c) Subdivisions (a) and (b) shall be implemented to the extent consistent with California law.

122355. (a) Each pet store operator shall ensure that records of all veterinary visits to the pet store are documented in writing. Veterinary treatment records shall be kept for each animal or group of animals that receives medications or immunizations while in the care of the pet store. These records shall include summaries of direction received orally from

veterinarians, and shall include all of the following, to the extent it is provided by the veterinarian:

(1) Identification of the animal or group of animals receiving medical treatment.

(2) Name of the medication or immunization used.

(3) Amount of medication used.

(4) Time and date on which the medication or immunization was administered.

(b) Records required by subdivision (a) shall be made available, upon request, to a person who purchases a cat or dog, or any individually housed animal.

(c) The pet store shall provide to the purchaser of an animal at the time of sale information concerning the store's animal return policy, which shall be made available to customers either through in-store signs or handouts to customers. The pet store shall also provide to purchasers of cats, dogs, and all individually housed animals all of the following information:

(1) Spay or neuter procedures performed on the animal.

(2) Vaccinations, medical treatment, and veterinary treatment administered to the animal during its stay in the store.

(3) Any identification device on the animal.

(4) With respect to dogs and cats, all information required to be disclosed under Section 122140. Sections 122356 and 122358 do not apply to a violation of Section 122140.

(5) With respect to dogs, all information required to be disclosed under Sections 122190 and 122310. This information shall be contained in separate documents. Sections 122356 and 122358 do not apply to a violation of Section 122190 or 122310.

(6) With respect to birds, all information required to be disclosed under Section 122321. Section 122356 and Section 122358 do not apply to a violation of Section 122321.

(d) Each pet store operator shall maintain records for identification purposes of the person from whom the animals in the pet store were acquired, including that person's name, address, and telephone number, and the date the animal was acquired.

(e) All records required by this section shall be maintained by the pet store for two years from the date of disposition of the animal, and shall be made available upon request to appropriate enforcement officers exercising authority pursuant to Section 122356.

122356. (a) An animal control officer, as defined in Section 830.9 of the Penal Code, a humane officer qualified pursuant to Section 14502 or 14503 of the Corporations Code, or a peace officer who detects a violation of Section 122351, subdivision (b) or (c) of Section 122353,

paragraphs (3) or (4) of subdivision (b) of Section 122354, or Section 122355 shall issue a single notice to correct, which shall contain all of the following information:

(1) Specify each violation of this chapter found in the inspection.

(2) Identify the corrective action for each violation.

(3) Include a specific period of time during which the listed violation or violations must be corrected.

(b) After issuing a notice to correct pursuant to this section, the officer or another qualified officer of the issuing agency shall verify compliance with this chapter by conducting a subsequent investigation of the pet store in violation of this chapter within a reasonable period of time.

(c) An exact, legible copy of the notice to correct shall be delivered to the pet store operator at the time he or she signs the notice. In the alternative, the issuing agency may personally deliver the notice to the pet store operator within 48 hours of its issuance, excluding holidays and weekends. The signing of the notice is an acknowledgment of receipt, and does not constitute an admission of guilt.

(d) A pet store operator who fails to comply with a notice to correct is guilty of an infraction.

(e) A pet store operator who violates the same provision of this chapter on more than one occasion within a 12-month period, at the same location, is not eligible to receive a notice to correct, and is guilty of an infraction on the second violation, and is guilty of a misdemeanor on the third or subsequent violation.

(f) Notwithstanding subdivision (a), a pet store operator is guilty of a misdemeanor if the pet store operator violates any provision listed in subdivision (a), and by doing so, the pet store operator causes or allows harm or injury to an animal, or allows an animal to be subject to an unreasonable risk of harm or injury.

122357. A pet store operator who violates any provision of this chapter not specified in subdivision (a) of Section 122356 is guilty of a misdemeanor.

122358. An infraction is punishable by a fine not to exceed two hundred fifty dollars ($250) per violation. A misdemeanor is punishable by a fine not to exceed one thousand dollars ($1,000) per violation. The court shall weigh the gravity of the offense in setting the penalty.

122359. (a) Except as otherwise provided in Section 599 of the Penal Code, a pet store shall not offer any live animal as a prize or give away any animal as an inducement to enter any contest, game, or other competition.

(b) Except as otherwise provided in Section 597z of the Penal Code, a pet store shall not sell, offer for sale, trade, or barter any dog or cat that is under eight weeks of age. Except as otherwise provided in any

other provision of law, dogs or cats over eight weeks of age may be sold, offered for sale, traded, or bartered only if the animal is weaned. Pet stores shall not sell any animal before it is weaned, except for animals intended to be used as food for other animals.

122360. (a) Nothing in this chapter shall be construed to in any way limit or affect the application or enforcement of any other law that protects animals or the rights of consumers, including, but not limited to, the Lockyer-Polanco-Farr Pet Protection Act contained in Article 2 (commencing with Section 122125) of Chapter 5 of Part 6 of Division 105, or Sections 597 and 5971 of the Penal Code.

(b) Nothing in this chapter limits or authorizes any act or omission that violates Section 597 or 5971 of the Penal Code, or any other local, state, or federal law. The procedures set forth in this chapter shall not apply to any civil violation of any other local, state, or federal law that protects animals or the rights of consumers, or to a violation of Section 597 or 5971 of the Penal Code, which is cited or prosecuted pursuant to one or both of those sections, or to a violation of any other local, state, or federal law that is cited or prosecuted pursuant to that law.

122361. This chapter shall become operative on January 1, 2009.

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 704

An act to amend Section 25250.19 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 25250.19 of the Health and Safety Code is amended to read:

25250.19. (a) (1) A used oil recycler shall test all recycled oil in accordance with paragraph (2), prior to transportation from the recycling

facility, pursuant to applicable methods in the Environmental Protection Agency Document No. Solid Waste 846 or an equivalent alternative method approved or required by the department, and shall ensure and certify the oil as being in compliance with the standards specified in paragraph (3) of subdivision (a) of Section 25250.1.

(2) The used oil recycler shall test the recycled oil for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1, and for any other hazardous characteristics or constituents for which testing is required in the permit issued by the department for the used oil recycling facility. The permit shall require testing for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1. The permit may also require testing for other hazardous characteristics and constituents only if the department finds, based upon evidence in the record, all of the following:

(A) There is a reasonable expectation that the recycled oil may exhibit the hazardous characteristic or contain the hazardous constituent at a level that would cause it to be hazardous waste if the recycled oil were a waste, taking into consideration at least all of the following factors:

(i) The conditions included in the facility's permit limiting the wastes that may be accepted at the facility and the conditions requiring testing of the wastes accepted at the facility.

(ii) The types of wastes that historically have been accepted by the facility or similar facilities and the types of wastes that the facility can reasonably be expected to accept in the future, including any new products or constituents.

(iii) Previous test results of recycled oil produced by the facility indicating the presence, or lack of the presence, of the constituent or characteristic at a level that would cause it to be hazardous waste if the recycled oil were a waste.

(iv) The treatment technologies and methods authorized in the facility's permit for production of the recycled oil and the extent to which those treatment technologies and methods remove or reduce the constituents or characteristics from the wastes accepted by the facility; and

(B) The hazardous characteristic or constituent cannot reasonably be expected to be present in products produced from crude oil similar to the recycled oil products produced by the facility at levels that would cause the product produced from crude oil to be a hazardous waste if it were a waste.

(3) Records of tests performed pursuant to this subdivision and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department

or the board. The department shall perform an audit and verification on a periodic basis. The department may charge a reasonable fee for this activity.

(b) (1) A generator claiming that used oil is exempted from regulation pursuant to paragraph (1) of subdivision (b) of Section 25250.1 shall ensure that all used oil for which the exemption is claimed has been tested and certified as being in compliance with the standards specified in paragraph (1) of subdivision (b) of Section 25250.1, prior to transportation from the generator location. A generator lawfully recycling its own oil shall ensure that all recycled oil has been tested and certified as being in compliance with the requirements specified in paragraph (2) of subdivision (b) of Section 25250.1. Records of tests performed and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department, the unified program agency, or the board.

(2) Testing to meet the requirements in subparagraph (B) of paragraph (1) of subdivision (b) of Section 25250.1 is not required for dielectric fluid, derived from highly refined petroleum mineral oil, from oil-filled electrical equipment if the generator of the dielectric fluid has certified based on prior test results that the dielectric fluid from similar equipment subject to similar operating conditions did not exhibit the characteristic of toxicity as set forth in Section 66261.24 of Title 22 of the California Code of Regulations. A certification statement shall accompany each shipment of used oil that the generator claims is exempted. Records of prior tests on which the certification is based shall be maintained with the certification by the generator and are subject to audit and verification by the department, the unified program agency, or the board.

(c) Used oil recyclers identified in subdivision (a) and generators identified in subdivision (b) shall record in an operating log and retain for three years the information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25250.18 on each shipment of recycled or exempted oil.

(d) Operating logs required in subdivision (c) are subject to audit and verification by the department, the unified program agency, or the board.

(e) (1) If oil produced at a used oil recycling facility in this state meets the standards of purity set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 and is not hazardous due to the presence of a characteristic or constituent for which the department has made a finding required by subparagraphs (A) and (B) of paragraph (2) of subdivision (a), but the oil is hazardous due to the presence of another constituent or characteristic, the facility operator shall not be subject to a penalty pursuant to this chapter for failing to manage the oil as a hazardous waste, unless both of the following apply:

(A) While the oil was onsite at the facility, the operator of the facility knew, or reasonably should have known, that the oil failed to meet those criteria.

(B) The facility operator failed to take action to manage the oil as a hazardous waste when the oil was determined to be hazardous.

(2) The department may exercise its authority, including, but not limited to, the issuance of an order, to a used oil recycling facility pursuant to Section 25187, to ensure that oil subject to this subdivision is managed as a hazardous waste pursuant to this chapter.

CHAPTER 705

An act to amend Sections 25189 and 25189.2 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 25189 of the Health and Safety Code is amended to read:

25189. (a) A person who intentionally or negligently makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this chapter, shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation or, for continuing violations, for each day that violation continues.

(b) Except as provided in subdivision (c), (d), or (e), a person who intentionally or negligently violates a provision of this chapter or a permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this chapter, shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of a separate provision or, for continuing violations, for each day that violation continues.

(c) A person who intentionally disposes or causes the disposal of a hazardous or extremely hazardous waste at a point that is not authorized according to the provisions of this chapter shall be subject to a civil penalty of not less than one thousand dollars ($1,000) or more than twenty-five thousand dollars ($25,000) for each violation and may be ordered to disclose the fact of this violation or these violations to those persons as the court may direct. Each day on which the deposit remains

and the person has knowledge thereof is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with an order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

(d) A person who negligently disposes or causes the disposal of a hazardous or extremely hazardous waste at a point which is not authorized according to the provisions of this chapter shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation and may be ordered to disclose the fact of this violation or these violations to those persons as the court may direct. Each day on which the deposit remains and the person had knowledge thereof is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with an order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

(e) A person who intentionally or negligently treats or stores, or causes the treatment or storage of, a hazardous waste at a point that is not authorized according to this chapter, shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation or, for continuing violations, for each day that the violation continues.

(f) Each civil penalty imposed for a separate violation pursuant to this section shall be separate and in addition to any other civil penalty imposed pursuant to this section or any other provision of law.

(g) A person shall not be liable for a civil penalty imposed under this section and for a civil penalty imposed under Section 25189.2 for the same act or failure to act.

SEC. 2. Section 25189.2 of the Health and Safety Code is amended to read:

25189.2. (a) A person who makes a false statement or representation in an application, label, manifest, record, report, permit, or other document, filed, maintained, or used for purposes of compliance with this chapter, is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation or, for continuing violations, for each day that the violation continues.

(b) Except as provided in subdivision (c) or (d), a person who violates a provision of this chapter or a permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(c) A person who disposes, or causes the disposal of, a hazardous or extremely hazardous waste at a point that is not authorized according to the provisions of this chapter is liable for a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation and may be ordered to disclose the fact of this violation or these violations to those persons as the court or, in the case of an administrative action, a hearing officer, may direct. Each day on which the deposit remains is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with an order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

(d) A person who treats or stores, or causes the treatment or storage of, a hazardous waste at a point that is not authorized according to this chapter, shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation or, for continuing violations, for each day that the violation continues.

(e) For purposes of subdivisions (c) and (d), a person who offers hazardous waste to a transporter that is registered pursuant to Section 25163 or to a storage, treatment, transfer, resource recovery, or disposal facility that holds a valid hazardous waste facilities permit or other grant of authorization from the department that authorizes the facility to accept the waste being offered shall not be considered to have caused disposal, treatment, or storage of hazardous waste at an unauthorized point solely on the basis of having offered that person's waste, provided the person has taken reasonable steps to determine that the transporter is registered or the facility is authorized by the department to accept the hazardous waste being offered.

(f) A person shall not be liable for a civil penalty imposed under this section and for a civil penalty imposed under Section 25189 for the same act or failure to act.

(g) Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Section 25187.

CHAPTER 706

An act to add Chapter 5 (commencing with Section 3430) to Title 2 of Part 3 of the Penal Code, relating to inmates.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Chapter 5 (commencing with Section 3430) is added to Title 2 of Part 3 of the Penal Code, to read:

Chapter 5. Gender Responsive Programs

3430. The Department of Corrections and Rehabilitation shall do all of the following:

(a) Create a Female Offender Reform Master Plan, and shall present this plan to the Legislature by March 1, 2008.

(b) Create policies and operational practices that are designed to ensure a safe and productive institutional environment for female offenders.

(c) Contract with nationally recognized gender responsive experts in prison operational practices staffing, classification, substance abuse, trauma treatment services, mental health services, transitional services, and community corrections to do both of the following:

(1) Conduct a staffing analysis of all current job classifications assigned to each prison that houses only females. The department shall provide a plan to the Legislature by March 1, 2009, that incorporates those recommendations and details the changes that are needed to address any identified unmet needs of female inmates.

(2) Develop programs and training for department staff in correctional facilities.

(d) Create a gender responsive female classification system.

(e) Create a gender responsive staffing pattern for female institutions and community-based offender beds.

(f) Create a needs-based case and risk management tool designed specifically for female offenders. This tool shall include, but not be limited to, an assessment upon intake, and annually thereafter, that gauges an inmate's educational and vocational needs, including reading, writing, communication, and arithmetic skills, health care needs, mental health needs, substance abuse needs, and trauma-treatment needs. The initial assessment shall include projections for academic, vocational, health care, mental health, substance abuse, and trauma-treatment needs, and shall be used to determine appropriate programming and as a measure of progress in subsequent assessments of development.

(g) Design and implement evidence-based gender specific rehabilitative programs, including "wraparound" educational, health care, mental health, vocational, substance abuse and trauma treatment programs that are designed to reduce female offender recidivism. These programs shall include, but not be limited to, educational programs that

include academic preparation in the areas of verbal communication skills, reading, writing, arithmetic, and the acquisition of high school diplomas and GEDs, and vocational preparation, including counseling and training in marketable skills, and job placement information.

(h) Build and strengthen systems of family support and family involvement during the period of the female's incarceration.

(i) Establish a family service coordinator at each prison that houses only females.

SEC. 2. (a) The Department of Corrections and Rehabilitation shall not convert any of the following facilities that most recently have been used to house female inmates into a facility used to house male inmates, without first obtaining legislative approval: Valley State Prison for Women in Chowchilla, the Central California Women's Facility in Chowchilla, and the California Institution for Women in Corona.

(b) In considering whether or not to approve a proposed conversion, the Legislature shall take into account the institution's proximity to urban areas and access to community involvement and volunteer services, among other relevant criteria.

SEC. 3. It is the intent of the Legislature in adopting this measure to do all of the following:

(a) Reduce crime and recidivism.

(b) Improve access to rehabilitative programs.

(c) Break the intergenerational cycle of incarceration.

(d) Create a therapeutic environment within existing women's institutions.

(e) Dedicate adequate space for educational and vocational programming needs.

CHAPTER 707

An act to amend Section 121349.3 of, and to add Chapter 1.5 (commencing with Section 120780) to Part 4 of Division 105 of, the Health and Safety Code, relating to the use of state HIV prevention and education funds for distribution of needles and syringes.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(a) The continuing spread of the acquired immunodeficiency syndrome (AIDS) epidemic and the spread of blood-borne hepatitis pose two of the gravest public health threats in California.

(b) Injection drug users are the second largest group at risk of becoming infected with the human immunodeficiency virus (HIV) and developing AIDS, and they have been the primary source of heterosexual, female, and perinatal transmission in California, the United States, and Europe.

(c) According to the Office of AIDS within the State Department of Public Health, injection drug use continues to be one of the most prevalent risk factors for new HIV and AIDS cases in California. Injection drug users continue to be at high risk of HIV/AIDS and hepatitis infection in California. According to an annual report issued by the Office of AIDS, sharing of contaminated syringes and other injection equipment is linked to 20 percent of all reported AIDS cases in the state through 2003. State data suggests that over 1,500 new syringe-sharing HIV infections occur annually. According to recent studies, researchers estimate that an American infected with HIV can expect to live about 24 years, on average, and that the cost of his or her health care during this time period is more than $600,000.

(d) Injection drug users are also highly likely to become infected with hepatitis as a result of hypodermic needle and syringe sharing practices.

(e) The Legislature has responded to the spread of HIV and hepatitis among injection drug users by adopting Assembly Bill 136 (Ch. 762, Stats. 1999), that permits localities to determine whether or not to operate clean needle and syringe exchange programs. As a result of that legislation, many localities are now operating these programs.

(f) These programs have been shown to significantly reduce the transmission of HIV and hepatitis among injection drug users, their sexual partners, and children. Moreover, these programs have been effective in moving individuals into substance abuse treatment programs and in reducing the number of used hypodermic needles and syringes disposed of in public places, which pose a threat to public health and safety.

(g) The United States government prohibits the use of federal funds to support the purchase of sterile hypodermic needles and syringes by clean needle and syringe exchange programs. Moreover, the state has not heretofore permitted the use of its funds for the purchase of sterile hypodermic needles and syringes, although current state policy allows state HIV prevention and education funds to be used for costs associated with authorized clean needle and syringe exchange programs, except for the purchase of sterile hypodermic needles and syringes.

(h) The ability of clean needle and syringe exchange programs to purchase an adequate supply of sterile hypodermic needles and syringes is essential to California's ability to further reduce the transmission of HIV and hepatitis and to relieve the public cost for the care and treatment of HIV disease and hepatitis.

SEC. 2. Chapter 1.5 (commencing with Section 120780) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

Chapter 1.5. State HIV Prevention and Education Funds

120780. For purposes of this chapter, "public entity" includes the state, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

120780.1. A public entity that receives General Fund money from the State Department of Public Health for HIV prevention and education may use that money to support clean needle and syringe exchange programs authorized pursuant to existing law. The money may be used for, but is not limited to, the purchase of sterile hypodermic needles and syringes as part of a clean needle and syringe exchange program only if all of the following conditions are met:

(a) The General Fund money used for purchasing the sterile hypodermic needles and syringes does not supplant any other public or private funds or other resources for this purpose.

(b) The amount of the General Fund money used for purchasing the sterile hypodermic needles and syringes does not exceed 7.5 percent of the total amount of the General Fund money received by the public entity for HIV prevention and education.

(c) Each dollar of General Fund money used for purchasing the sterile hypodermic needles and syringes is matched by forty-three cents ($0.43) of moneys from nonstate public funds or private funds.

(d) The allocation of General Fund money for the purchase of sterile hypodermic needles and syringes is based upon epidemiological data as reported by the health jurisdiction in its local HIV prevention plan submitted to the Office of AIDS within the department.

SEC. 3. Section 121349.3 of the Health and Safety Code is amended to read:

121349.3. The health officer of the participating jurisdiction shall present annually at an open meeting of the board of supervisors or city council a report detailing the status of clean needle and syringe exchange programs including, but not limited to, relevant statistics on blood-borne infections associated with needle sharing activity and the use of public funds for these programs. Law enforcement, administrators of alcohol and drug treatment programs, other stakeholders, and the public shall

be afforded ample opportunity to comment at this annual meeting. The notice to the public shall be sufficient to assure adequate participation in the meeting by the public. This meeting shall be noticed in accordance with all state and local open meeting laws and ordinances, and as local officials deem appropriate.

CHAPTER 708

An act to amend Section 85703 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 85703 of the Government Code is amended to read:

85703. (a) Nothing in this act shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with the provisions of Section 85312.

(b) Limitations and prohibitions imposed by a local jurisdiction on payments for a member communication, as defined in subdivision (c), that conflict with Section 85312 and which are thereby prohibited by subdivision (a) include, but are not limited to, any of the following:

(1) Source restrictions on payments for member communications that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.

(2) Limitations on payments to a political party committee for a member communication that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.

(3) Limitations on the scope of payments considered directly related to the making of a member communication, including costs associated with the formulation, design, production, and distribution of the communication such as surveys, list acquisition, and consulting fees that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.

(c) For purposes of this section, "member communication" means a communication, within the meaning of Section 85312, to members, employees, shareholders, or families of members, employees, or shareholders of an organization, including a communication by a political party to its members who are registered with that party.

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 709

An act to amend Section 25211.3 of, and to repeal and add Sections 25211.1, 25211.2, and 25211.4 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 25211.1 of the Health and Safety Code is repealed.

SEC. 2. Section 25211.1 is added to the Health and Safety Code, to read:

25211.1. (a) Except as provided in subdivision (b), a person, other than a certified appliance recycler, shall not remove materials that require special handling from a major appliance.

(b) An appliance service technician certified pursuant to Section 82.161 of Title 40 of the Code of Federal Regulations may remove refrigerant from major appliances.

SEC. 3. Section 25211.2 of the Health and Safety Code is repealed.

SEC. 4. Section 25211.2 is added to the Health and Safety Code, to read:

25211.2. (a) 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 and that were removed from the appliances were sent or are to be sent. If the appliances have been crushed, baled, or shredded by the certified appliance recycler, the requirement to include the number and types of appliances included in the shipment on the form shall not apply.

(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 scrap recycling facility is a certified appliance recycler and only if either of the following conditions specified is met:

(1) 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.

(2) The appliances have been crushed, baled, shredded, or 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, and that person does one of the following:

(A) Provides the scrap recycling facility with a written certification, at the time of the transaction, that identifies any materials that require special handling that have been removed from the appliance and certifies that all of these materials were removed by a person authorized under Section 25211.1. The certification shall include the appliance recycler or appliance service technician certificate number, the appliance recycler or appliance service technician'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) Presents a form of government issued identification and, under penalty of perjury, provides the scrap recycling facility his or her name, address, telephone number, and written certification that he or she obtained the appliance in its current condition and did not process the appliance or arrange to have it processed or knowingly accept the appliance from any other person who processed it or arranged to have it processed. That person shall also provide the name and address of the person from whom the appliance was obtained, or include in the written certification the reason that the information is unavailable.

(c) Appliances delivered to a scrap recycling facility by a local government representative that were generated as part of the local government's waste management activities are exempt from subdivision (b).

(d) A scrap recycling facility that accepts appliances pursuant to subparagraph (B) of paragraph (2) of subdivision (b) shall provide a

monthly report to the department and the local CUPA that includes both of the following:

(1) For each appliance received by the scrap facility, the name and address of the person who transported, delivered, or sold the appliance to the scrap recycling facility.

(2) The total number of appliances received pursuant to the conditions provided in subparagraph (B) of paragraph (2) of subdivision (b).

SEC. 5. Section 25211.3 of the Health and Safety Code is amended to read:

25211.3. A certified appliance recycler, and any person who is not a certified appliance recycler who is subject to subdivision (b) 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 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.

(c) The number and types of appliances from which materials that require special handling are removed each year.

(d) The reports required pursuant to subdivision (c) of Section 25211.2.

SEC. 6. Section 25211.4 of the Health and Safety Code is repealed.

SEC. 7. Section 25211.4 is added to the Health and Safety Code, to read:

25211.4. (a) On and after January 1, 2008, a person wishing to operate as a certified appliance recycler, except a person having a certification issued before January 1, 2008, until that certification expires, shall submit an initial or a renewal application to the department and obtain or renew certification from the department pursuant to this section. The department shall make available on its Internet Web site an application for certification as a certified appliance recycler that requires all of the following:

(1) The business name under which the appliance recycler operates, the telephone number, the physical address and mailing address, if different, 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 issued 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 how each material requiring special handling will be removed and a description of how each material requiring special handling will be managed by the applicant consistent with applicable laws.

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

CHAPTER 710

An act to amend Section 50675.13 of the Health and Safety Code, relating to housing.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 50675.13 of the Health and Safety Code is amended to read:

50675.13. (a) With respect to funds made available under this chapter, the department shall award reasonable priority points for projects to prioritize any of the following:

(1) Infill development.

(2) Adaptive reuse in existing developed areas served with public infrastructure.

(3) Projects in proximity to public transit, public schools, parks and recreational facilities, or job centers.

(4) Sustainable building methods that are either of the following:

(A) Established in accordance with the criteria listed under paragraph (8) of subdivision (c) of Section 10325 of Title 4 of the California Code of Regulations, or any successor regulation.

(B) Established by the department, in consultation with the California Building Standards Commission for the purposes of funding developments subject to this section and are more stringent than those in subparagraph (A).

(b) The department may utilize other factors in rural areas to promote infill development.

CHAPTER 711

An act to repeal and add Chapter 2 (commencing with Section 14200) of Division 6 of the Business and Professions Code, relating to trademarks.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Chapter 2 (commencing with Section 14200) of Division 6 of the Business and Professions Code is repealed.

SEC. 2. Chapter 2 (commencing with Section 14200) is added to Division 6 of the Business and Professions Code, to read:

CHAPTER 2. MODEL STATE TRADEMARK LAW

Article 1. General Provisions

14200. This chapter shall be known and may be cited as the Model State Trademark Law.

14202. For the purposes of this chapter, the following terms have the following meanings:

(a) "Trademark" means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.

(b) "Service mark" means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of that person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

(c) "Mark" includes any trademark or service mark entitled to registration under this chapter, whether registered or not.

(d) "Trade name" means any name used by a person to identify a business or vocation of that person.

(e) The term "person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this chapter includes a juristic person as well as a natural person. The term "juristic person" includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.

(f) "Applicant" means the person filing an application for registration of a mark under this chapter, and the legal representatives, successors, or assigns of the person.

(g) "Registrant" means the person to whom the registration of a mark under this chapter is issued, and the legal representatives, successors, or assigns of the person.

(h) "Use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this chapter, a mark shall be deemed to be in use if it is used on either of the following:

(1) On goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes that placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state.

(2) On services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(i) "Abandoned" means either of the following has occurred:

(1) A mark's use has been discontinued with intent not to resume that use. Intent not to resume the use may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(j) "Secretary" means the Secretary of State or the designee of the Secretary of State charged with the administration of this chapter.

(k) "Dilution" means dilution by blurring or dilution by tarnishment, regardless of the presence or absence of any of the following:

(1) Competition between the owner of the famous mark and other parties.

(2) Actual or likely confusion, mistake, or deception.

(3) Actual economic injury.

(*l*) "Dilution by blurring" means association arising from the similarity between a mark or a trade name and a famous mark that impairs the distinctiveness of the famous mark.

(m) "Dilution by tarnishment" means association arising from the similarity between a mark or a trade name and a famous mark that harms the reputation of the famous mark.

(n) "Counterfeit" means a spurious trademark, service mark, collective mark, or certification mark that is identical to, or substantially indistinguishable from, a registered mark that is used on or in connection with goods or services or any labels or packaging or components.

(o) "Comparative commercial advertising" means the use of a competitor's trademark in advertising to compare the relative qualities of the competitive goods.

Article 2. Application for Registration

14205. A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it meets any of the following criteria:

(a) It consists of or comprises immoral, deceptive, or scandalous matter.

(b) It consists of or comprises matter that may disparage or falsely suggest a connection with persons living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute.

(c) It consists of or comprises the flag or coat of arms or other insignia of the United States of America, of any state or municipality, or of any foreign nation, or any simulation thereof.

(d) It consists of or comprises the name, signature, or a portrait identifying a particular living individual, except by the individual's written consent.

(e) It consists of a mark that is any of the following:

(1) When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them.

(2) When used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them.

(3) Is primarily merely a surname, provided, however, that nothing in this paragraph shall prevent the registration of a mark used by the applicant that has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in

this state for the five years before the date on which the claim of distinctiveness is made.

(f) It consists of or comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake, or to deceive.

14207. (a) Subject to the limitations set forth in this chapter, any person who uses a mark may file with the secretary, on a form prescribed by the secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for the registration and, if that person is a corporation or partnership, the state of incorporation or the state in which the partnership is organized and the names of the general partners, as specified by the secretary.

(2) The goods or services on or in connection with which the mark is used, the mode or manner in which the mark is used on or in connection with the goods or services, and the class in which the goods or services fall.

(3) The date on which the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest.

(4) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered in this state, or has the right to use the mark, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion, to cause mistake, or to deceive.

(b) The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest with the United States Patent and Trademark Office and, if so, the applicant shall provide full particulars with respect thereto, including the filing date and serial number of each application, the status thereof, and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons for the refusal or result.

(c) The secretary may also require that a drawing of the mark, complying with requirements specified by the secretary, accompany the application.

(d) The application shall include a declaration of accuracy signed by the applicant or by a member of the firm or an officer of the corporation or association, or by a general partner of the partnership, making application. If the person signing the declaration willfully states as true

in the declaration any material fact that he or she knows to be false, he or she shall be subject to a civil penalty of not more than ten thousand dollars ($10,000). An action for that penalty may be brought by any public prosecutor. The person signing the declaration shall be informed of this penalty in writing.

(e) The application shall be accompanied by three specimens showing the mark as actually used.

(f) The application shall be accompanied by the application fee payable to the secretary as set forth in subdivision (a) of Section 12193 of the Government Code.

(g) If the mark or any part of the mark is in any language other than English, the application shall be accompanied by a certified translation in English.

14209. (a) Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with this chapter.

(b) The applicant shall provide any additional pertinent information requested by the secretary, including a description of a design mark, and may make, or authorize the secretary to make, amendments to the application as may be reasonably requested by the secretary or deemed by the applicant to be advisable in order to respond to any rejection or objection.

(c) The secretary may require the applicant to disclaim an unregisterable component of an otherwise registerable mark, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights, then existing or thereafter arising, in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.

(d) The secretary may make amendments to the application submitted by the applicant upon the applicant's agreement, or may require the submission of a new application.

(e) If an applicant is found not to be entitled to registration, the secretary shall so advise the applicant and shall advise the applicant of the reasons. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall be reexamined. This procedure may be repeated until the secretary finally refuses registration of the mark or the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

(f) If the secretary finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel registration. A writ may be

granted, but without costs to the secretary, on proof that all statements in the application are true and that the mark is otherwise entitled to registration.

(g) In the instance of applications concurrently being processed by the secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in the order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of Section 14230.

Article 3. Certificate of Registration

14215. (a) Upon compliance by the applicant with the requirements of this chapter, the secretary shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and shall show the following information:

(1) The name and business address and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark.

(2) The date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state.

(3) The class of goods or services and a description of the goods or services on or in connection with which the mark is used.

(4) A reproduction of the mark.

(5) The registration date and the term of the registration of the mark.

(b) Any certificate of registration issued by the secretary under the provisions of this chapter or a copy thereof duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of the mark in any action or judicial proceeding in any court of this state.

14217. (a) A registration of mark pursuant to this chapter shall be effective for a term of five years from the date of registration and, upon application filed within six months prior to the expiration of the term, in a manner complying with the requirements of the secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee, payable to the secretary, shall accompany the application for renewal of the registration as set forth in subdivision (c) of Section 12193 of the Government Code.

(b) A registration may be renewed for successive periods of five years in like manner.

(c) Any registration in force on January 1, 2008, shall continue in full force and effect for the unexpired term thereof, and may be renewed by filing an application for renewal with the secretary that complies with the requirements of the secretary and payment of the renewal fee within the six months prior to the expiration of the registration.

(d) All applications for renewal under this chapter, whether of registrations made under this chapter or of registrations effected under any prior act, shall include a verified statement that the mark has been and is still in use and shall include a specimen showing actual use of the mark on, or in connection with, the goods or services with which the mark is associated.

Article 4. Assignments, Changes of Name, and Other Instruments

14220. (a) Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instrument in writing duly executed and may be recorded with the secretary upon the payment of the recording fee payable to the secretary as set forth in subdivision (b) of Section 12193 of the Government Code, who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary within three months after the date thereof or prior to the subsequent purchase.

(b) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may, on a form prescribed by the secretary, record a certificate of change of name of the registrant or applicant with the secretary upon the payment of the recording fee. The secretary may issue in the name of the assignee a certificate of registration of an assigned application or a new certificate or registration for the remainder of the term of the registration or last renewal thereof.

(c) Other instruments that relate to a mark registered or application pending pursuant to this chapter, including, but not limited to, licenses, may be recorded at the discretion of the secretary, provided that the instrument is in writing and is duly executed.

(d) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of the execution of an assignment.

(e) A photocopy of any instrument referred to in subdivision (a), (b), or (c) shall be accepted for recording if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original.

(f) Neither this chapter nor the recordal of any instrument received by the secretary pursuant to this chapter shall have any effect, including, but not limited to, any effect relating to attachment, perfection, priority, or enforcement, on any security interest governed by Division 9 (commencing with Section 9101) of the Uniform Commercial Code.

Article 5. Records

14225. The secretary shall keep for public examination a record of all marks registered or renewed under this chapter, as well as a record of all documents recorded pursuant to Section 14220.

Article 6. Cancellation

14230. The secretary shall cancel from the register, in whole or in part, any of the following:

(a) Any registration concerning which the secretary receives a voluntary request for cancellation from the registrant or the assignee of record.

(b) All registrations granted under this chapter and not renewed in accordance with the provisions of this chapter.

(c) Any registration concerning a mark with regard to which a court of competent jurisdiction finds any of the following:

(1) The registered mark has been abandoned.

(2) The registrant is not the owner of the mark.

(3) The registration was granted improperly.

(4) The registration was obtained fraudulently.

(5) The mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered.

(6) The registered mark is so similar to a mark registered by another person in the United States Patent and Trademark Office prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned, as to be likely to cause confusion or mistake, or to deceive. However, should the registrant prove that the registrant is the owner of a concurrent registration of a mark in the United

States Patent and Trademark Office covering an area including this state, the registration hereunder shall not be canceled for that area of the state.

(d) Cancellation of a registration ordered on any ground by a court of competent jurisdiction.

(e) Any registration or renewal if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. The secretary shall give written notice of the applicability of this subdivision to the registrant. Thereafter, 30 days shall be allowed from the date of the notification letter for payment by cashier's check or the equivalent.

(f) Within six months of the date of registration, any registration issued in error by the secretary that violates the requirements of subdivision (f) of Section 14205.

Article 7. Classification

14235. The classification of goods and services shall conform to the classifications adopted by the United States Patent and Trademark Office. A single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services that fall within multiple classes, the secretary may require payment of a fee for each class.

Article 8. Fraudulent Registration

14240. Any person who, either for himself or herself or on behalf of another person, procures the filing or registration of any mark pursuant to this chapter by knowingly making any false or fraudulent representation or declaration, either orally or in writing, or by any other fraudulent means shall be liable to pay all damages sustained as a consequence of the filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

Article 9. Violations

14245. (a) A person who does any of the following shall be subject to a civil action by the owner of the registered mark, and the remedies provided in Section 14250:

(1) Uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which the

use is likely to cause confusion or mistake, or to deceive as to the source of origin of such goods or services.

(2) Reproduces, counterfeits, copies, or colorably imitates any such mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of any goods or services. The registrant shall not be entitled under this paragraph to recover profits or damages unless the acts have been committed with knowledge that the mark is intended to be used to cause confusion or mistake, or to deceive.

(3) Knowingly facilitate, enable, or otherwise assist a person to manufacture, use, distribute, display, or sell any goods or services bearing any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter, without the consent of the registrant. Any action by a person is presumed to have been taken knowingly following delivery to that person by personal delivery, courier, or certified mail return receipt requested, of a written demand to cease and desist that is accompanied by all of the following:

(A) A copy of the certificate of registration and of any claimed reproduction, counterfeit, copy, or colorable imitation of the registered mark.

(B) A statement, made under penalty of perjury, by the owner of the registered mark, by an officer of the corporation that owns the registered mark, or by legal counsel for the owner of the registered mark, that includes all of the following:

(i) The name or description of the infringer.

(ii) The product or service and mark being or to be infringed.

(iii) The dates of the infringement.

(iv) Any other reasonable information to assist the recipient to identify the infringer.

(4) The presumption created by paragraph (3) does not affect the owner's burden of showing that there was a violation of this chapter.

(5) Paragraph (3) is applicable to a landlord or property owner who provides, rents, leases, or licenses the use of real property where any goods or services bearing any reproduction, counterfeit, copy, or colorable imitation of a mark registered pursuant to this chapter are sold, offered for sale, or advertised, where the landlord or property owner had control of the property and knew, or had reason to know, of the infringing activity.

(b) Notwithstanding any other provision of this chapter, the remedies given to the owner of the right infringed pursuant to this section are limited as follows:

(1) If an infringer or violator is engaged solely in the business of printing the mark or violating matter for others and establishes that he or she was an innocent infringer or innocent violator, the owner of the right infringed is entitled only to an injunction against future printing of the mark by the innocent infringer or innocent violator.

(2) If the infringement complained of is contained in, or is part of, paid advertising matter in a newspaper, magazine, or other similar periodical, or in an electronic communication as defined in subsection (12) of Section 2510 of Title 18 of the United States Code, the remedies of the owner of the right infringed against the publisher or distributor of the newspaper, magazine, or other similar periodical or electronic communication shall be confined to an injunction against the presentation of the advertising matter in future issues of the newspapers, magazines, or other similar periodicals or in further transmissions of the electronic communication. The limitation of this subdivision shall apply only to innocent infringers and innocent violators.

(3) Injunctive relief is not available to the owner of the right infringed with respect to an issue of a newspaper, magazine, or other similar periodical or electronic communication containing infringing matter if restraining the dissemination of the infringing matter in any particular issue of the periodical or in an electronic communication would delay the delivery of the issue or transmission of the electronic communication after the regular time for delivery and the delay would be due to the method by which publication and distribution of the periodical or transmission of the electronic communication is customarily conducted in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to the infringing matter.

(c) An innocent infringer or innocent violator is any person whose acts were committed without knowledge that the mark was intended to be used to cause confusion, mistake, or to deceive.

14247. (a) Subject to the principles of equity, an owner of a mark that is famous and distinctive, whether inherently or through acquired distinctiveness, shall be entitled to an injunction against another person's commercial use of a mark or trade name, if such use begins after the mark has become famous and is likely to cause dilution of the famous mark, and to obtain such other relief as is provided in this section. For purposes of this subdivision, a mark is famous if it is widely recognized by the general consuming public of this state, or by a geographic area of this state, as a designation of source of the goods or services of the mark's owner. In determining whether a mark is famous, a court may consider factors including, but not limited to, all of the following:

(1) The duration, extent, and geographic reach of advertising and publicity of the mark in this state, whether advertised or publicized by the owner or third parties.

(2) The amount, volume, and geographic extent of sales in this state of goods or services offered under the mark.

(3) The extent of actual recognition of the mark in this state.

(4) Whether the mark is the subject of a state registration in this state, or a federal registration under the Act of March 3, 1881, or under the Act of February 20, 1905, or on the principal register under the Trademark Act of 1946 (15 U.S.C. Sec. 1051 et seq.), as amended.

(b) In an action brought under this section, the owner of a famous mark shall be entitled to injunctive relief throughout the geographic area in which the mark is found to have become famous prior to commencement of the junior use, but not beyond the borders of this state. If the person against whom injunctive relief is sought willfully intended to cause dilution of the famous mark, the owner shall also be entitled to the remedies set forth in Section 14250, subject to the discretion of the court and the principles of equity. The following shall not be actionable under this section:

(1) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including use in connection with either of the following:

(A) Advertising or promotion that permits consumers to compare goods or services.

(B) Identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner.

(2) Noncommercial use of the mark.

(3) All forms of news reporting and news commentary.

14250. (a) Any owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits thereof and any court of competent jurisdiction may grant injunctions to restrain the manufacture, use, display, or sale as may be deemed just and reasonable, and shall require the defendants to pay to the owner up to three times their profits from, and up to three times all damages suffered by reason of, the wrongful manufacture, use, display, or sale. If, in any action brought under this section, the court determines that any goods in the possession of or services offered by a defendant bear or consist of a counterfeit mark, the court shall order the destruction of any goods, labels, packaging or any components bearing the counterfeit mark and all instrumentalities used in the production of the counterfeit goods, including, but not limited to, any items, objects, tools, machines or equipment or, after obliteration of the counterfeit mark, the court may

dispose of those materials by ordering their transfer to the state, a civil claimant, an eleemosynary institution, or any appropriate private person other than the person from whom the materials were obtained.

(b) The court, upon motion or ex parte application by a plaintiff in a suit to enjoin the manufacture, use, display, or sale of counterfeits, may order seizure of any goods, labels, packaging or any components bearing the counterfeit mark and all instrumentalities used in the production of the counterfeit goods, including, but not limited to, any items, objects, tools, machines or equipment from persons manufacturing, displaying for sale, or selling the goods, upon a showing of good cause and a probability of success on the merits and upon the posting of an undertaking pursuant to subdivision (e). If it appears from the ex parte application that there is good reason for proceeding without notification to the defendant, the court may, for good cause shown, waive the requirement of notice for the ex parte proceeding. The order of seizure shall specifically set forth all of the following:

(1) The date or dates on which the seizure is ordered to take place.

(2) A description of the counterfeit goods to be seized.

(3) The identity of the persons or class of persons to effect seizure.

(4) A description of the location or locations at which seizure is to occur.

(5) A hearing date not more than 10 court days after the last date on which seizure is ordered at which any person from whom goods are seized may appear and seek release of the seized goods. Any person from whom seizure is effected shall be served with the order at the time of seizure.

(c) Any person who causes seizure of goods that are not counterfeit shall be liable in an amount equal to the following:

(1) Any damages proximately caused to any person having a financial interest in the seized goods by the seizure of goods that are not counterfeit.

(2) Costs incurred in defending against seizure of noncounterfeit goods.

(3) Upon a showing that the person causing the seizure to occur acted in bad faith, expenses, including reasonable attorneys' fees expended in defending against the seizure of any noncounterfeit or noninfringing goods.

(4) Punitive damages, if warranted.

(d) A person entitled to recover pursuant to subdivision (c) may seek a recovery by cross-claim or motion made in the trial court and served pursuant to Section 1011 of the Code of Civil Procedure. A person seeking a recovery pursuant to this section may join any surety on an undertaking posted pursuant to subdivision (b), and any judgment of

liability shall bind the person liable pursuant to subdivision (c) and the surety jointly and severally, but the liability of the surety shall be limited to the amount of the undertaking.

(e) The court shall set the amount of the undertaking required by subdivision (b) in accordance with the probable recovery of damages, costs, and expenses under subdivision (c) if it were ultimately determined that the goods seized were not counterfeit.

(f) Any person entitled to recover under subdivision (c) may, within 30 days after the date of seizure, object to the undertaking on the grounds that the surety or the amount of undertaking is insufficient.

(g) The motion or application filed pursuant to subdivision (b) shall include a statement advising the person from whom the goods are seized that the undertaking has been filed, informing him or her of his or her right to object to the undertaking on the grounds that the surety or the amount of the undertaking is insufficient, and advising the person from whom the goods are seized that an objection to the undertaking must be made within 30 days after the date of seizure.

14252. The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state, including, but not limited to, Section 350 of the Penal Code.

14254. (a) Actions to require cancellation of a mark registered pursuant to this chapter or in mandamus to compel registration of a mark pursuant to this chapter shall be brought in the superior court.

(b) In an action in mandamus, the proceeding shall be based solely upon the record before the secretary. In an action for cancellation, the secretary shall not be made a party to the proceeding, but shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall be given the right to intervene in the action.

(c) In any action brought against a nonresident registrant, service may be effected upon the secretary as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under Sections 416.10 to 416.40, inclusive, of the Code of Civil Procedure, and Sections 2110, 2111, and 2114 of the Corporations Code.

14259. Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time within common law.

Article 10. Fees

14260. Unless specified by the secretary, the fees payable herein are not refundable.

Article 11. Severability

14265. If any provision of this chapter, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby.

Article 12. Miscellaneous

14270. This chapter shall not affect any suit, proceeding, or appeal pending on January 1, 2008.

14272. The intent of this chapter is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946 (15 U.S.C. Sec. 1051 et seq.), as amended. To that end, the construction given the federal act should be examined as nonbinding authority for interpreting and construing this chapter.

CHAPTER 712

An act to add and repeal Section 78261.5 of the Education Code, relating to public postsecondary education.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 78261.5 is added to the Education Code, to read:

78261.5. (a) A community college registered nursing program that determines that the number of applicants to that program exceeds its capacity may admit students in accordance with any of the following procedures:

(1) Administration of a multicriteria screening process, as authorized by Section 78261.3, in a manner that is consistent with the standards set forth in subdivision (b).

(2) A random selection process.

(3) A blended combination of random selection and a multicriteria screening process.

(b) A community college registered nursing program that elects, on or after January 1, 2008, to use a multicriteria screening process to

evaluate applicants pursuant to this article shall apply those measures in accordance with all of the following:

(1) The criteria applied in a multicriteria screening process under this article shall include, but shall not necessarily be limited to, all of the following:

(A) Academic degrees or diplomas, or relevant certificates, held by an applicant.

(B) Grade-point average in relevant coursework.

(C) Any relevant work or volunteer experience.

(D) Life experiences or special circumstances of an applicant, including, but not necessarily limited to, the following experiences or circumstances:

(i) Disabilities.

(ii) Low family income.

(iii) First generation of family to attend college.

(iv) Need to work.

(v) Disadvantaged social or educational environment.

(vi) Difficult personal and family situations or circumstances.

(vii) Refugee or veteran status.

(E) Proficiency or advanced level coursework in languages other than English. Credit for languages other than English shall be received for languages that are identified by the chancellor as high-frequency languages, as based on census data. These languages may include, but are not necessarily limited to, any of the following:

(i) American Sign Language.

(ii) Arabic.

(iii) Chinese, including its various dialects.

(iv) Farsi.

(v) Russian.

(vi) Spanish.

(vii) Tagalog.

(viii) The various languages of the Indian subcontinent and Southeast Asia.

(2) Additional criteria, such as a personal interview, a personal statement, letter of recommendation, or the number of repetitions of prerequisite classes, or other criteria, as approved by the chancellor, may be used, but are not required.

(3) A community college registered nursing program using a multicriteria screening process under this article may use an approved diagnostic assessment tool, in accordance with Section 78261.3, before, during, or after the multicriteria screening process.

(4) As used in this section:

(A) "Disabilities" has the same meaning as used in Section 2626 of the Unemployment Insurance Code.

(B) "Disadvantaged social or educational environment" includes, but is not necessarily limited to, the status of a student who has participated in Extended Opportunity Programs and Services (EOPS).

(C) "Grade-point average" refers to the same fixed set of required prerequisite courses that all applicants to the nursing program administering the multicriteria screening process are required to complete.

(D) "Low family income" shall be measured by a community college registered nursing program in terms of a student's eligibility for, or receipt of, financial aid under a program that may include, but is not necessarily limited to, a fee waiver from the board of governors under Section 76300, the Cal Grant Program under Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5, the federal Pell Grant program, or CalWORKs.

(E) "Need to work" means that the student is working at least part time while completing academic work that is a prerequisite for admission to the nursing program.

(5) A community college registered nursing program that uses a multicriteria screening process pursuant to this article shall report its nursing program admissions policies to the chancellor annually, in writing. The admissions policies reported under this paragraph shall include the weight given to any criteria used by the program, and shall include demographic information relating to both the persons admitted to the program and the persons of that group who successfully completed that program.

(c) The chancellor is encouraged to develop, and make available to community college registered nursing programs by July 1, 2008, a model admissions process based on this section.

(d) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 2. The Legislative Analyst's Office shall evaluate the use and efficacy of the admissions process for community college registered nursing programs. The Legislative Analyst's Office shall report its findings and any related recommendations to the Legislature as part of its annual analysis of the Budget Bill, commencing with its analysis of the Budget Bill for the 2009–10 fiscal year.

CHAPTER 713

An act to add Chapter 8 (commencing with Section 2840) to Part 2 of Division 1 of the Public Utilities Code, relating to energy.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Chapter 8 (commencing with Section 2840) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

Chapter 8. Energy Efficiency Systems

Article 1. Waste Heat and Carbon Emissions Reduction Act

2840. This article shall be known and may be cited as the Waste Heat and Carbon Emissions Reduction Act.

2840.2. For purposes of this article, the following terms have the following meanings:

(a) "Combined heat and power system" means a system that produces both electricity and thermal energy for heating or cooling from a single fuel input that meets all of the following:

(1) Is interconnected to, and operates in parallel with, the electric transmission and distribution grid.

(2) Is sized to meet the eligible customer-generator's onsite thermal demand.

(3) Meets the efficiency standards of subdivisions (a) and (d), and the greenhouse gases emissions performance standard of subdivision (f) of Section 2843.

(b) "Eligible customer-generator" means a customer of an electrical corporation that meets both of the following requirements:

(1) Uses a combined heat and power system with a generating capacity of not more than 20 megawatts, that first commences operation on or after January 1, 2008.

(2) Uses a time-of-use meter capable of registering the flow of electricity in two directions. If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the eligible customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or

meters are installed, the electricity flow calculations shall yield a result identical to that of a time-of-use meter.

(c) "Electrical corporation" has the same meaning as defined in Section 218.

(d) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(e) "Excess electricity" means the net electricity exported to the electrical grid, generated by a combined heat and power system that is in compliance with Section 2843.

(f) "Greenhouse gas" or "greenhouse gases" includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

2840.4. The Legislature finds and declares all of the following:

(a) Combined heat and power systems produce both electricity and thermal energy from a single fuel input, thus achieving much greater efficiency than the usual separate systems for producing these forms of energy, and reducing consumption of fuel.

(b) Combined heat and power systems recover heat that would otherwise be wasted in separate energy applications, and use this heat to avoid consumption of fuel that would otherwise be required to produce heat.

(c) Gigawatthours of potential useful electricity and millions of British thermal units of thermal energy could be derived from unused waste heat that is currently being vented into the atmosphere.

2840.6. (a) It is the intent of the Legislature that state policies dramatically advance the efficiency of the state's use of natural gas by capturing unused waste heat, and in so doing, help offset the growing crisis in electricity supply and transmission congestion in the state.

(b) It is the intent of the Legislature to reduce wasteful consumption of energy through improved residential, commercial, institutional, industrial, and manufacturer utilization of waste heat whenever it is cost effective, technologically feasible, and environmentally beneficial, particularly when this reduces emissions of carbon dioxide and other carbon-based greenhouse gases.

(c) It is the intent of the Legislature to support and facilitate both customer- and utility-owned combined heat and power systems.

(d) This article does not apply to, and shall not impact, combined heat and power systems in operation prior to January 1, 2008, or combined heat and power systems with a generating capacity greater than 20 megawatts.

2841. (a) The commission may require an electrical corporation to purchase from an eligible customer-generator, excess electricity that is delivered to the grid that is generated by a combined heat and power

system that is in compliance with Section 2843. The commission may establish a maximum kilowatthours limitation on the amount of excess electricity that an electrical corporation is required to purchase if the commission finds that the anticipated excess electricity generated has an adverse effect on long-term resource planning or reliable operation of the grid. The commission shall establish, in consultation with the Independent System Operator, tariff provisions that facilitate both the provisions of this chapter and the reliable operation of the grid.

(b) (1) Every electrical corporation shall file with the commission a standard tariff for the purchase of excess electricity from an eligible customer-generator.

(2) The tariff shall provide for payment for every kilowatthour delivered to the electrical grid by the combined heat and power system at a price determined by the commission.

(3) The tariff shall include flexible rates with options for different durations, not to exceed 10 years, and fixed or variable rates relative to the cost of natural gas.

(4) The commission shall ensure that ratepayers not utilizing combined heat and power systems are held indifferent to the existence of this tariff.

(c) The commission, in reviewing the tariff filed by an electrical corporation, shall establish time-of-delivery rates that encourage demand management and net generation of electricity during periods of peak system demand.

(d) Every electrical corporation shall make the tariff available to eligible customer-generators that own, or lease, and operate a combined heat and power system within the service territory of the electrical corporation, upon request. An electrical corporation may make the terms of the tariff available to an eligible customer in the form of a standard contract.

(e) The costs and benefits associated with any tariff or contract entered into by an electrical corporation pursuant to this section shall be allocated to all benefiting customers. For purposes of this section "benefiting customers" may, as determined by the commission, include bundled service customers of the electrical corporation, customers of the electrical corporation that receive their electric service through a direct transaction, as defined in subdivision (c) of Section 331, and customers of an electrical corporation that receive their electric service from a community choice aggregator, as defined in Section 331.1.

(f) The physical generating capacity of the combined heat and power system shall count toward the resource adequacy requirements of load-serving entities for purposes of Section 380.

(g) The commission shall adopt or maintain standby rates or charges for combined heat and power systems that are based only upon

assumptions that are supported by factual data, and shall exclude any assumptions that forced outages or other reductions in electricity generation by combined heat and power systems will occur simultaneously on multiple systems, or during periods of peak electrical system demand, or both.

(h) The commission may modify or adjust the requirements of this article for any electrical corporation with less than 100,000 service connections, as individual circumstances merit.

2841.5. A local publicly owned electric utility serving retail end-use customers shall establish a program that does both of the following:

(a) Allows retail end-use customers to utilize combined heat and power systems that reduce emissions of greenhouse gases by achieving improved efficiencies utilizing heat that would otherwise be wasted in separate energy applications.

(b) Provides a market for the purchase of excess electricity generated by a combined heat and power system, at a just and reasonable rate, to be determined by the governing body of the utility.

2842. The commission, in approving a procurement plan for an electrical corporation pursuant to Section 454.5, shall require that the electrical corporation's procurement plan incorporate combined heat and power solutions to the extent that it is cost effective compared to other competing forms of wholesale generation, technologically feasible, and environmentally beneficial, particularly as it pertains to reducing emissions of carbon dioxide and other greenhouse gases.

2842.2. The commission shall ensure that an electrical corporation utilizes long-term planning and a reliability assessment for upgrades to its transmission and distribution systems and that any upgrades are not inconsistent with promoting combined heat and power systems that are cost effective, technologically feasible, and environmentally beneficial, particularly as those combined heat and power systems reduce emissions of greenhouse gases.

2842.4. (a) The commission shall, for each electrical corporation, establish a pay-as-you-save pilot program for eligible customers.

(b) For the purposes of this section, an "eligible customer" means a customer of an electrical corporation that meets the following criteria:

(1) The customer uses a combined heat and power system with a generating capacity of not more than 20 megawatts that is in compliance with Section 2843.

(2) The customer is a nonprofit organization described in Section 501(c) (3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c) (3)), that is exempt from taxation under Section 501(a) of that code (26 U.S.C. Sec. 501(a)).

(c) The pilot program shall enable an eligible customer to finance all of the upfront costs for the purchase and installation of a combined heat and power system by repaying those costs over time through on-bill financing at the difference between what an eligible customer would have paid for electricity and the actual savings derived for a period of up to 10 years.

(d) The commission shall ensure that the reasonable costs of the electrical corporation associated with the pilot program are recovered.

(e) All costs of the pay-as-you-save program or financing mechanisms shall be borne solely by the combined heat and power generators that use the program or financing mechanisms, and the commission shall ensure that the costs of the program are not shifted to the other customers or classes of customers of the electrical corporation.

(f) Each electric corporation shall make on-bill financing available to eligible customers until the statewide cumulative rated generating capacity from pilot program combined heat and power systems in the service territories of the three largest electrical corporations in the state reaches 100 megawatts. An electrical corporation shall only be required to participate in the pilot program until it meets its proportionate share of the 100-megawatt limitation, based on the percentage of its peak demand to the total statewide peak demand within the service territories of all electrical corporations.

2843. (a) The Energy Commission shall, by January 1, 2010, adopt guidelines that combined heat and power systems subject to this chapter shall meet, and shall accomplish all of the following:

(1) Reduce waste energy.

(2) Be sized to meet the eligible customer-generator's thermal load.

(3) Operate continuously in a manner that meets the expected thermal load and optimizes the efficient use of waste heat.

(4) Are cost effective, technologically feasible, and environmentally beneficial.

(b) It is the intent of the Legislature that the guidelines do not permit customers to operate as de facto wholesale generators with guaranteed purchasers for their electricity.

(c) Notwithstanding any other provisions of law, the guidelines required by this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The guidelines shall be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment. At least 30 days' public notice shall be given of the meeting required by this section, before the Energy Commission initially adopts guidelines. Substantive changes to the guidelines shall not be adopted without at least 10 days' written notice to the public.

(d) Prior to January 1, 2010, the Energy Commission may adopt temporary guidelines for combined heat and power systems that comply with the parameters set forth in subdivision (a).

(e) (1) An eligible customer-generator's combined heat and power system shall meet an oxides of nitrogen (NO_x) emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100-percent load.

(2) An eligible customer-generator's combined heat and power system that meets the 60-percent efficiency standard may take a credit to meet the applicable NO_x emissions standard of 0.07 pounds per megawatthour. Credit shall be at the rate of one megawatthour for each 3.4 million British thermal units of heat recovered.

(f) An eligible customer-generator's combined heat and power system shall comply with the greenhouse gases emission performance standard established by the commission pursuant to Section 8341.

(g) An eligible customer-generator shall adequately maintain and service the combined heat and power system so that during operation, the system continues to meet or exceed the efficiency and emissions standards established pursuant to subdivisions (a), (d), and (f).

2845. The State Air Resources Board shall report to the Governor and the Legislature by December 31, 2011, on the reduction in emissions of greenhouse gases resulting from the increase of new electrical generation that utilizes excess waste heat through combined heat and power systems and recommend policies that further the goals of this article.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because certain 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.

With respect to certain other expenses, 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 714

An act to amend Section 596.7 of the Penal Code, relating to animals.

[Approved by Governor October 14, 2007. Filed with
Secretary of State October 14, 2007.]

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

SECTION 1. Section 596.7 of the Penal Code is amended to read:

596.7. (a) (1) For purposes of this section, "rodeo" means a performance featuring competition between persons that includes three or more of the following events: bareback bronc riding, saddle bronc riding, bull riding, calf roping, steer wrestling, or team roping.

(2) A rodeo performed on private property for which admission is charged, or that sells or accepts sponsorships, or is open to the public constitutes a performance for the purpose of this subdivision.

(b) The management of any professionally sanctioned or amateur rodeo that intends to perform in any city, county, or city and county shall ensure that there is a veterinarian licensed to practice in this state present at all times during the performances of the rodeo, or a veterinarian licensed to practice in the state who is on-call and able to arrive at the rodeo within one hour after a determination has been made that there is an injury which requires treatment to be provided by a veterinarian.

(c) (1) The attending or on-call veterinarian shall have complete access to the site of any event in the rodeo that uses animals.

(2) The attending or on-call veterinarian may, for good cause, declare any animal unfit for use in any rodeo event.

(d) (1) Any animal that is injured during the course of, or as a result of, any rodeo event shall receive immediate examination and appropriate treatment by the attending veterinarian or shall begin receiving examination and appropriate treatment by a veterinarian licensed to practice in this state within one hour of the determination of the injury requiring veterinary treatment.

(2) The attending or on-call veterinarian shall submit a brief written listing of any animal injury requiring veterinary treatment to the Veterinary Medical Board within 48 hours of the conclusion of the rodeo.

(3) The rodeo management shall ensure that there is a conveyance available at all times for the immediate and humane removal of any injured animal.

(e) The rodeo management shall ensure that no electric prod or similar device is used on any animal once the animal is in the holding chute, unless necessary to protect the participants and spectators of the rodeo.

(f) A violation of this section is an infraction and shall be punishable as follows:

(1) A fine of not less than five hundred dollars ($500) and not more than two thousand dollars ($2,000) for a first violation.

(2) A fine of not less than one thousand five hundred dollars ($1,500) and not more than five thousand dollars ($5,000) for a second or subsequent violation.

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 715

An act to add Section 8571.5 to the Government Code, relating to emergency powers.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 8571.5 is added to the Government Code, to read:

8571.5. Nothing in this article shall authorize the seizure or confiscation of any firearm or ammunition from any individual who is lawfully carrying or possessing the firearm or ammunition, or authorize any order to that effect, provided however, that a peace officer who is acting in his or her official capacity may disarm an individual if the officer reasonably believes it is immediately necessary for the protection of the officer or another individual. The officer shall return the firearm to the individual before discharging the individual, unless the officer arrests that individual or seizes the firearm as evidence pursuant to an investigation for the commission of a crime.

CHAPTER 716

An act to amend Sections 17900, 17903, 17910, 17911, 17913, 17914, 17915, 17917, 17922, 17923, 17926, 17927, and 17929 of the Business and Professions Code, relating to business.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 17900 of the Business and Professions Code is amended to read:

17900. (a) (1) The purpose of this section is to protect those dealing with individuals or partnerships doing business under fictitious names, and it is not intended to confer any right or advantage on individuals or firms that fail to comply with the law. The filing of a fictitious business name certificate is designed to make available to the public the identities of persons doing business under the fictitious name.

(2) Nothing in this section shall be construed to impair or impede the rebuttable presumption described in Section 14411.

(b) As used in this chapter, "fictitious business name" means:

(1) In the case of an individual, a name that does not include the surname of the individual or a name that suggests the existence of additional owners, as described in subdivision (c).

(2) In the case of a partnership or other association of persons, other than a limited partnership that has filed a certificate of limited partnership with the California Secretary of State pursuant to Section 15621 or 15902.01 of the Corporations Code, a foreign limited partnership that has filed an application for registration with the California Secretary of State pursuant to Section 15692 or 15909.02 of the Corporations Code, a registered limited liability partnership that has filed a registration pursuant to Section 15049 or 16953 of the Corporations Code, or a foreign limited liability partnership that has filed an application for registration pursuant to Section 15055 or 16959 of the Corporations Code, a name that does not include the surname of each general partner or a name that suggests the existence of additional owners, as described in subdivision (c) and in Section 17901.

(3) In the case of a domestic or foreign corporation, any name other than the corporate name stated in its articles of incorporation filed with the California Secretary of State, in accordance with subdivision (a) of Section 17910.5.

(4) In the case of a limited partnership that has filed a certificate of limited partnership with the California Secretary of State pursuant to Section 15621 or 15902.01 of the Corporations Code and in the case of a foreign limited partnership that has filed an application for registration with the California Secretary of State pursuant to Section 15692 or 15902.02 of the Corporations Code, any name other than the name of the limited partnership as on file with the California Secretary of State.

(5) In the case of a limited liability company, any name other than the name stated in its articles of organization and in the case of a foreign limited liability company that has filed an application for registration with the California Secretary of State pursuant to Section 17451 of the Corporations Code, any name other than the name of the limited liability company as on file with the California Secretary of State, in accordance with subdivision (b) of Section 17910.5.

(c) A name that suggests the existence of additional owners within the meaning of subdivision (b) is one that includes such words as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business being conducted.

SEC. 2. Section 17903 of the Business and Professions Code is amended to read:

17903. As used in this chapter, "registrant" means a person or entity who is filing or has filed a fictitious business name statement, and who is the legal owner of the business.

SEC. 3. Section 17910 of the Business and Professions Code is amended to read:

17910. Every person who regularly transacts business in this state for profit under a fictitious business name shall do all of the following:

(a) File a fictitious business name statement in accordance with this chapter not later than 40 days from the time the registrant commences to transact such business.

(b) File a new statement after any change in the facts, in accordance with subdivision (b) of Section 17920.

(c) File a new statement when refiling a fictitious business name statement.

SEC. 4. Section 17911 of the Business and Professions Code is amended to read:

17911. This chapter does not apply to a nonprofit corporation or association, including, but not limited to, organizations such as churches, labor unions, fraternal and charitable organizations, foundations, and similar organizations.

SEC. 5. Section 17913 of the Business and Professions Code is amended to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as
* _____
at ** _____:
*** _____
_____
_____
_____

This business is conducted by **** _____

The registrant commenced to transact business under the fictitious business name or names listed above on
***** _____

I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of a crime.)

Signed_____

Statement filed with the County Clerk of _____ County on_____

NOTICE—IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.
THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

(b) The statement shall contain the following information set forth in the manner indicated in the form provided by subdivision (a):

(1) Where the asterisk (*) appears in the form, insert the fictitious business name or names. Only those businesses operated at the same address and under the same ownership may be listed on one statement.

(2) Where the two asterisks (**) appear in the form: If the registrant has a place of business in this state, insert the street address, and county, of his or her principal place of business in this state. If the registrant has no place of business in this state, insert the street address, and county, of his or her principal place of business outside this state.

(3) Where the three asterisks (***) appear in the form: If the registrant is an individual, insert his or her full name and residence address. If the registrants are husband and wife, insert the full name and residence address of both the husband and the wife. If the registrant is a general partnership, copartnership, joint venture, limited liability partnership, or unincorporated association other than a partnership, insert the full name and residence address of each general partner. If the registrant is a limited partnership, insert the full name and residence address of each general partner. If the registrant is a limited liability company, insert the name and address of the limited liability company, as set out in its articles of organization on file with the California Secretary of State, and the state of organization. If the registrant is a trust, insert the full name and residence address of each trustee. If the registrant is a corporation, insert the name and address of the corporation, as set out in its articles of incorporation on file with the California Secretary of State, and the state of incorporation. If the registrants are state or local registered domestic partners, insert the full name and residence address of each domestic partner.

(4) Where the four asterisks (****) appear in the form, insert whichever of the following best describes the nature of the business: (i) "an individual," (ii) "a general partnership," (iii) "a limited partnership," (iv) "a limited liability company," (v) "an unincorporated association other than a partnership," (vi) "a corporation," (vii) "a trust," (viii) "copartners," (ix) "husband and wife," (x) "joint venture," (xi) "state or local registered domestic partners," or (xii) "a limited liability partnership."

(5) Where the five asterisks (*****) appear in the form, insert the date on which the registrant first commenced to transact business under the fictitious business name or names listed, if already transacting business under that name or names. If the registrant has not yet commenced to transact business under the fictitious business name or names listed, insert the statement, "Not applicable."

(c) The registrant shall declare that all of the information in the statement is true and correct. A registrant who declares as true any

material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

SEC. 6. Section 17914 of the Business and Professions Code is amended to read:

17914. The statement shall be signed as follows:

(a) If the registrant is an individual, by the individual.

(b) If the registrants are husband and wife, by the husband or wife.

(c) If the registrant is a general partnership, limited partnership, limited liability partnership, copartnership, joint venture, or unincorporated association other than a partnership, by a general partner.

(d) If the registrant is a limited liability company, by a manager or officer.

(e) If the registrant is a trust, by a trustee.

(f) If the registrant is a corporation, by an officer.

(g) If the registrant is a state or local registered domestic partnership, by one of the domestic partners.

SEC. 7. Section 17915 of the Business and Professions Code is amended to read:

17915. The fictitious business name statement shall be filed with the clerk of the county in which the registrant has his or her principal place of business in this state or, if the registrant has no place of business in this state, with the Clerk of Sacramento County. Nothing in this chapter shall preclude a person from filing a fictitious business name statement in a county other than that where the principal place of business is located, as long as the requirements of this subdivision are also met.

SEC. 8. Section 17917 of the Business and Professions Code is amended to read:

17917. (a) Within 30 days after a fictitious business name statement has been filed pursuant to this chapter, the registrant shall cause a statement in the form prescribed by subdivision (a) of Section 17913 to be published pursuant to Section 6064 of the Government Code in a newspaper of general circulation in the county where the fictitious business name statement was filed or, if there is no such newspaper in that county, in a newspaper of general circulation in an adjoining county. If the registrant does not have a place of business in this state, the notice shall be published in a newspaper of general circulation in Sacramento County.

(b) Subject to the requirements of subdivision (a), the newspaper selected for the publication of the statement should be one that circulates in the area where the business is to be conducted.

(c) If a refiling is required because the prior statement has expired, the refiling need not be published unless there has been a change in the

information required in the expired statement, provided the refiling is filed within 40 days of the date the statement expired.

(d) An affidavit showing the publication of the statement shall be filed with the county clerk where the fictitious business name statement was filed within 30 days after the completion of the publication.

SEC. 9. Section 17922 of the Business and Professions Code is amended to read:

17922. (a) Upon ceasing to transact business in this state under a fictitious business name that was filed in the previous five years, a person who has filed a fictitious business name statement shall file a statement of abandonment of use of fictitious business name. The statement shall be executed in the same manner as a fictitious business name statement and shall be filed with the county clerk of the county in which the person has filed his or her fictitious business name statement. The statement shall be published in the same manner as a fictitious business name statement and an affidavit showing its publication shall be filed with the county clerk after the completion of publication.

(b) The statement shall include:

(1) The name being abandoned and the street address of the principal place of business.

(2) The date on which the fictitious business name statement relating to the fictitious business name being abandoned was filed, the file number, and the county where filed.

(3) In the case of an individual, the full name and residence address of the individual.

(4) In the case of a husband and wife, the full name and residence address of both the husband and the wife.

(5) In the case of a general partnership, a limited partnership, copartners, a limited liability partnership, a joint venture, or an unincorporated association other than a partnership, the full names and residence addresses of all of the general partners.

(6) In the case of a corporation, the name and address of the corporation as set forth in its articles of incorporation on file with the California Secretary of State.

(7) In the case of a trust, the full name and residence address of each of the trustees.

(8) In the case of a limited liability company, the name and address of the limited liability company as set forth in its articles of organization on file with the California Secretary of State.

(9) In the case of state or local registered domestic partners, the full name and residence address of each domestic partner.

SEC. 10. Section 17923 of the Business and Professions Code is amended to read:

17923. (a) Any person who is a general partner in a partnership that is or has been regularly transacting business under a fictitious business name may, upon withdrawing as a general partner, file a statement of withdrawal from the partnership operating under a fictitious business name. The statement shall be executed by the person filing the statement in the same manner as a fictitious business name statement and shall be filed with the county clerk of the county where the partnership filed its fictitious business name statement.

(b) The statement shall include:

(1) The fictitious business name of the partnership.

(2) The date on which the fictitious business name statement for the partnership was filed, the file number, and the county where filed.

(3) The street address of its principal place of business in this state or, if it has no place of business in this state, the street address of its principal place of business outside this state, if any.

(4) The full names and residence addresses of the person or persons withdrawing as partners.

(c) The statement of withdrawal from the partnership operating under a fictitious business name shall be published in the same manner as the fictitious business name statement and an affidavit showing the publication of the statement shall be filed with the county clerk after the completion of the publication.

(d) The withdrawal of a general partner does not cause a fictitious business name statement to expire if the withdrawing partner files a statement of withdrawal meeting the requirements of this section.

SEC. 11. Section 17926 of the Business and Professions Code is amended to read:

17926. (a) As used in this section, "statement" means a fictitious business name statement, a statement of abandonment of use of fictitious business name, or a statement of withdrawal from partnership operating under fictitious business name.

(b) For a fee of two dollars ($2), the county clerk shall provide any person who so requests a certified copy of any statement on file in his or her office.

(c) A copy of a statement, when certified as provided in subdivision (b), establishes a rebuttable presumption of all of the following:

(1) The existence of the original statement.

(2) The execution of the statement by the person by whom it purports to have been executed.

(3) The truth of the information required by Sections 17913, 17922, or 17923 that is contained in the statement.

(d) The presumptions established by subdivision (c) are presumptions affecting the burden of producing evidence.

(e) All of the provisions of this section are subject to Section 54985 of the Government Code.

SEC. 12. Section 17927 of the Business and Professions Code is amended to read:

17927. (a) The county clerk shall mark each fictitious business name statement with a file number and the date of filing and shall retain the original statement for his or her file. He or she may destroy or otherwise dispose of the statement, including proof of publication and any other references related to the fictitious business name statement, four years after the statement expires.

(b) The county clerk shall mark each statement of abandonment of use of fictitious business name or statement of withdrawal from partnership operating under fictitious business name with a file number and the date of filing. He or she may destroy or otherwise dispose of the statement at the same time the fictitious business name statement to which it relates is destroyed pursuant to subdivision (a).

(c) In lieu of retaining the original statement on file, the county clerk may retain a copy of the statement in accordance with Section 26205.1 of the Government Code.

SEC. 13. Section 17929 of the Business and Professions Code is amended to read:

17929. (a) The fee for filing a fictitious business name statement is ten dollars ($10) for the first fictitious business name and owner and two dollars ($2) for each additional fictitious business name or owner filed on the same statement and doing business at the same location. This fee covers the cost of filing and indexing the statement (and any affidavit of publication), furnishing one certified copy of the statement to the person filing the statement, and the cost for notifying registrants of the pending expiration of their fictitious business name statement.

(b) The fee for filing a statement of abandonment of use of a fictitious business name is five dollars ($5). This fee covers the cost of filing and indexing the statement, any affidavit of publication, and furnishing one certified copy of the statement to the person filing the statement.

(c) The fee for filing a statement of withdrawal from partnership operating under fictitious business name is five dollars ($5). This fee covers the cost of filing and indexing the statement, any affidavit of publication, and furnishing one certified copy of the statement to the person filing the statement.

(d) All of the provisions of this section are subject to Section 54985 of the Government Code.

SEC. 14. 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 717

An act to amend Sections 14502 and 14503 of, and to add Section 14533.1 to, the Government Code, relating to transportation.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 14502 of the Government Code is amended to read:

14502. The commission consists of 13 members appointed as follows:

(a) Nine members shall be appointed by the Governor with the advice and consent of the Senate. One member shall be appointed by the Speaker of the Assembly and one member shall be appointed by the Senate Committee on Rules, with neither of these members subject to confirmation by the Senate. A member appointed pursuant to this subdivision shall not simultaneously hold an elected public office, or serve on any local or regional public board or commission with business before the commission.

(b) One Member of the Senate appointed by the Senate Committee on Rules and one Member of the Assembly appointed by the Speaker of the Assembly shall be ex officio members without vote and shall participate in the activities of the commission to the extent that such participation is not incompatible with their positions as Members of the Legislature.

(c) Notwithstanding any other provision of law, a voting member of the commission may serve on the High-Speed Rail Authority as established in Division 19.5 (commencing with Section 165000) of the Public Utilities Code.

SEC. 2. Section 14503 of the Government Code is amended to read:

14503. (a) Other than ex officio members, the members of the commission shall hold office for terms of four years, and until their successors are appointed, except as otherwise provided in this section.

(b) In the case of the members initially appointed by the Governor, three shall be appointed to serve until February 1, 1979, two until February 1, 1980, two until February 1, 1981, and two until February 1, 1982.

(c) The members appointed by the Speaker of the Assembly and the Senate Committee on Rules pursuant to subdivision (a) of Section 14502 shall hold office for terms of four years, and until their successors are appointed.

(d) Vacancies shall be filled by the appointing authority for the unexpired portion of the terms in which they occur.

SEC. 3. Section 14533.1 is added to the Government Code, to read:

14533.1. Not less than 30 days prior to adopting changes to any guidelines for the expenditure of any funds pursuant to the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, the California Transportation Commission shall provide written notification to the chairs of the appropriate policy committees and budget committees of the Legislature.

CHAPTER 718

An act to amend Sections 379 and 411 of the Streets and Highways Code, relating to highways.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 379 of the Streets and Highways Code is amended to read:

379. (a) Route 79 is from:

(1) Route 8 near Descanso to Route 78 near Julian.

(2) Route 78 near Santa Ysabel to the Temecula city limits east of Butterfield Stage Road.

(3) Temecula city limits south of Murrieta Hot Springs Road to Route 74 near Hemet.

(4) Route 74 near Hemet to Route 10 near Beaumont.

(b) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of Temecula the portion of Route 79 located within Temecula's city limits, upon terms and conditions the commission finds to be in the best interest of the state.

(2) Any relinquishment agreement shall require that the City of Temecula administer the operation and maintenance of the highways in a manner consistent with professional traffic engineering standards.

(3) Any relinquishment agreement shall require the City of Temecula to ensure that appropriate traffic studies or analysis will be performed to substantiate any decisions affecting the highways.

(4) Any relinquishment agreement shall also require the City of Temecula to provide for public notice and the consideration of public input on the proximate effects of any proposed decision on traffic flow, residences, or businesses, other than a decision on routine maintenance.

(5) Notwithstanding any of its other terms, any relinquishment agreement shall require the City of Temecula to indemnify and hold the department harmless from any liability for any claims made or damages suffered by any person, including a public entity, as a result of any decision made or damages suffered by any person, including a public entity, as a result of any decision made or action taken by the City of Temecula, its officers, employees, contractors, or agent, with respect to the design, maintenance, construction, or operation of that portion of Route 79 that is to be relinquished to the city.

(6) Any relinquishment shall become effective immediately after the county recorder records the relinquishment resolution that contains the commission's approval of the terms and conditions of the relinquishment.

(7) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 79 relinquished shall cease to be a state highway.

(B) The portion of Route 79 relinquished may not be considered for future adoption under Section 81.

(8) The City of Temecula shall ensure the continuity of traffic flow on the relinquished portion of Route 79, including any traffic signal progression.

(9) For relinquished portions of Route 79, the City of Temecula shall maintain signs directing motorists to the continuation of Route 79.

(c) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of San Jacinto the portion of Route 79 that is located within the city limits of that city, upon terms and conditions the commission finds to be in the best interests of the state, if the department and the city enter into an agreement providing for that relinquishment.

(2) A relinquishment under this subdivision shall become effective immediately following the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, the relinquished portion of Route 79 shall cease to be a state highway.

(4) The portion of Route 79 relinquished under this subdivision shall be ineligible for future adoption under Section 81.

(5) For the portion of Route 79 that is relinquished under this subdivision, the City of San Jacinto shall maintain within its jurisdiction signs directing motorists to the continuation of Route 79.

(d) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of Hemet the portion of Route 79 that is located within the city limits of that city, upon terms and conditions the commission finds to be in the best interests of the state, if the department and the city enter into an agreement providing for that relinquishment.

(2) A relinquishment under this subdivision shall become effective immediately following the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, the relinquished portion of Route 79 shall cease to be a state highway.

(4) The portion of Route 79 relinquished under this subdivision shall be ineligible for future adoption under Section 81.

(5) For the portion of Route 79 that is relinquished under this subdivision, the City of Hemet shall maintain within its jurisdiction signs directing motorists to the continuation of Route 79.

SEC. 2. Section 411 of the Streets and Highways Code is amended to read:

411. (a) Route 111 is from:

(1) The international border south of Calexico to Route 78 near Brawley, passing east of Heber.

(2) Route 78 near Brawley to Route 86 via the north shore of the Salton Sea.

(3) Route 10 near Indio to the southeastern city limits of Rancho Mirage.

(4) The western city limits of Cathedral City to Route 10 near Whitewater.

(b) (1) The commission may relinquish to the Cities of Indian Wells, Indio, La Quinta, and Palm Desert the respective portions of Route 111 that are located within the city limits of those cities, upon terms and conditions the commission finds to be in the best interests of the state, if the department and the applicable city enter into an agreement providing for that relinquishment.

(2) A relinquishment under this subdivision shall become effective immediately following the county recorder's recordation of the

relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, the relinquished portions of Route 111 shall cease to be a state highway.

(4) The portions of Route 111 relinquished under this subdivision shall be ineligible for future adoption under Section 81.

(5) For the portions of Route 111 that are relinquished under this subdivision, the Cities of Indian Wells, Indio, La Quinta, and Palm Desert, as applicable, shall maintain within their respective jurisdiction signs directing motorists to the continuation of Route 111.

(c) The relinquished former portions of Route 111 within the Cities of Cathedral City and Rancho Mirage are not a state highway and are not eligible for adoption under Section 81.

CHAPTER 719

An act to amend Section 1470 of the Probate Code, relating to minors.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 1470 of the Probate Code is amended to read:

1470. (a) The court may appoint private legal counsel for a ward, a proposed ward, a conservatee, or a proposed conservatee in any proceeding under this division if the court determines the person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests.

(b) If a person is furnished legal counsel under this section, the court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel.

(c) The court shall order the sum fixed under subdivision (b) to be paid:

(1) If the person for whom legal counsel is appointed is an adult, from the estate of that person.

(2) If the person for whom legal counsel is appointed is a minor, by a parent or the parents of the minor or from the minor's estate, or any combination thereof, in any proportions the court deems just.

(3) If a ward or proposed ward is furnished legal counsel for a guardianship proceeding, upon its own motion or that of a party, the court shall determine whether a parent or parents of the ward or proposed ward or the estate of the ward or proposed ward is financially unable to pay all or a portion of the cost of counsel appointed pursuant to this section. Any portion of the cost of that counsel that the court finds the parent or parents or the estate of the ward or proposed ward is unable to pay shall be paid by the county. The Judicial Council shall adopt guidelines to assist in determining financial eligibility for county payment of counsel appointed by the court pursuant to this chapter.

(d) The court may make an order under subdivision (c) requiring payment by a parent or parents of the minor only after the parent or parents, as the case may be, have been given notice and the opportunity to be heard on whether the order would be just under the circumstances of the particular case.

SEC. 2. 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.

CHAPTER 720

An act to amend Sections 33352 and 51241 of the Education Code, relating to teachers.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(a) A lack of adequate physical activity and appropriate nutrition has greatly contributed to the epidemic levels of obesity found in California.

(b) Obesity is a key risk factor associated with a number of health problems including heart disease, diabetes, some cancers, hypertension, gallbladder disease, musculoskeletal disorders, and mental health.

(c) According to the State Department of Public Health, the costs of obesity in California are estimated to equal more than $21.7 billion in health care costs, workers' compensation costs, and lost productivity.

(d) According to the State Department of Education, healthy, active, and well-nourished children are more likely to attend school and are more prepared and motivated to learn.

(e) Healthy children are also more likely to grow up to be healthy adults and are less likely to develop costly and harmful health problems.

(f) California's youth have the potential to advance the generational change necessary for reversing and preventing the devastating consequences of such an epidemic.

(g) Physical education can provide necessary physical activity while motivating a child to maintain healthy eating habits and to engage in regular physical activity as an aspect of one's lifestyle.

SEC. 2. Section 33352 of the Education Code is amended to read:

33352. (a) The department shall exercise general supervision over the courses of physical education in elementary and secondary schools of the state; advise school officials, school boards, and teachers in the development and improvement of their physical education and activity programs; and investigate the work in physical education in the public schools.

(b) The department shall ensure that the data collected through the categorical program monitoring indicates the extent to which each school within the jurisdiction of a school district or county office of education does all of the following that are applicable to the school:

(1) Provides instruction in physical education for a total period of time of not less than 200 minutes each 10 schooldays to pupils in grades 1 to 6, inclusive, as required pursuant to subdivision (g) of Section 51210.

(2) Provides instruction in physical education for a total period of time of not less than 400 minutes each 10 schooldays to pupils in grades 7 to 12, inclusive, as required pursuant to subdivision (a) of Section 51222.

(3) Provides instruction in physical education for a total period of time of not less than 200 minutes each 10 schooldays to pupils in an elementary school maintaining grades 1 to 8, inclusive, as required pursuant to Section 51233.

(4) Conducts physical fitness testing of pupils as required pursuant to Chapter 6 (commencing with Section 60800) of Part 33.

(5) Includes the results of physical fitness testing of pupils in the school accountability report card as required pursuant to subparagraph (C) of paragraph (1) of subdivision (b) of Section 33126.

(6) Offers pupils exempted from required attendance in physical education courses pursuant to paragraph (1) of either subdivision (b) or (c) of Section 51241 a variety of elective physical education courses of not less than 400 minutes every 10 schooldays.

(7) Provides a course of study in physical education to pupils in any of grades 9 to 12, inclusive, that includes a developmentally appropriate sequence of instruction, including the effects of physical activity upon dynamic health, the mechanics of body movement, aquatics, gymnastics and tumbling, individual and dual sports, rhythms and dance, team sports, and combatives.

(8) Provides instruction in physical education to pupils that provides equal opportunities for participation regardless of gender.

(9) Provides instruction in physical education to pupils in any of grades 1 to 12, inclusive, by physical education teachers who hold appropriate teaching credentials issued by the Commission on Teacher Credentialing.

(c) The department annually shall do both of the following:

(1) Submit a report to the Governor and the Legislature that summarizes the data collected through categorical program monitoring regarding the items described in paragraphs (1) to (9), inclusive, of subdivision (b).

(2) Post a summary of the data collected through categorical program monitoring regarding the items described in paragraphs (1) to (9), inclusive, of subdivision (b) on the Internet Web site of the department.

SEC. 3. Section 51241 of the Education Code is amended to read:

51241. (a) The governing board of a school district or the office of the county superintendent of schools of a county may grant a temporary exemption to a pupil from courses in physical education, if the pupil is one of the following:

(1) Ill or injured and a modified program to meet the needs of the pupil cannot be provided.

(2) Enrolled for one-half, or less, of the work normally required of full-time pupils.

(b) (1) The governing board of a school district or the office of the county superintendent of schools of a county, with the consent of a pupil, may grant a pupil an exemption from courses in physical education for two years any time during grades 10 to 12, inclusive, if the pupil has met satisfactorily any five of the six standards of the physical performance test administered in grade 9 pursuant to Section 60800.

(2) Pursuant to Sections 51210, 51220, and 51222, physical education is required to be offered to all pupils, and, therefore, schools are required to provide adequate facilities and instructional resources for that instruction. In this regard, paragraph (1) shall be implemented in a manner that does not create a new program or impose a higher level of service on a local educational agency. Paragraph (1) does not mandate any overall increase in staffing or instructional time because, pursuant to subdivision (d), pupils are not permitted to attend fewer total hours

of class if they do not enroll in physical education. Paragraph (1) does not mandate any new costs because any additional physical education instruction that a local educational agency provides may be accomplished during the existing instructional day, with existing facilities. Paragraph (1) does not prevent a local educational agency from implementing any other temporary or permanent exemption authorized by this section.

(c) The governing board of a school district or the office of the county superintendent of a county may grant permanent exemption from courses in physical education if the pupil complies with any one of the following:

(1) Is 16 years of age or older and has been enrolled in the 10th grade for one academic year or longer.

(2) Is enrolled as a postgraduate pupil.

(3) Is enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are scheduled for recreation and exercise pursuant to the requirements of Section 4346 of Title 15 of the California Code of Regulations.

(d) A pupil exempted under paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c) shall not attend fewer total hours of courses and classes if he or she elects not to enroll in a physical education course than he or she would have attended if he or she had elected to enroll in a physical education course.

(e) Notwithstanding any other law, the governing board of a school district also may administer to pupils in grades 10 to 12, inclusive, the physical performance test required in grade 9 pursuant to Section 60800. A pupil who meets satisfactorily any five of the six standards of this physical performance test in any of grades 10 to 12, inclusive, is eligible for an exemption pursuant to subdivision (b).

CHAPTER 721

An act to add Sections 7574.5 and 7574.7 to the Business and Professions Code, relating to security services.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 7574.5 is added to the Business and Professions Code, to read:

7574.5. (a) Except for a person who has completed the course of training required by Section 7583.45, a person registered pursuant to

this chapter shall complete training in security officer skills within six months from the date upon which evidence of registration is issued, or within six months of his or her employment with a proprietary private security officer employer.

(b) A course provider shall issue a certificate to a proprietary private security officer upon satisfactory completion of a required course, conducted in accordance with the department's requirements. An employer of a proprietary private security officer may provide training programs and courses in addition to the training required in this section.

(c) The department shall develop and approve by regulation a standard course and curriculum for the skills training required by subdivision (a) to promote and protect the safety of persons and the security of property. For this purpose, the department shall, before June 30, 2008, convene an advisory committee consisting of security directors at proprietary facilities, including, but not limited to, sports or entertainment complex owners, retailers, and restaurants, labor organizations representing security officers, law enforcement representatives, representatives of the Commission on Peace Officer Standards and Training, subject matter experts, and other interested parties in order to develop a curriculum for the training of proprietary security officers that features skills, courses, and a minimum number of hours of instruction appropriate to a proprietary private security officer's worksite or industry. The advisory committee shall not include any representation from private patrol operators, or any trade association representing private patrol operators or security guards or officers.

(d) The course of training required by subdivision (a) may be administered, tested, and certified by any proprietary private security officer employer, organization, or school approved by the department. The department may approve any proprietary private security officer employer, organization, or school to teach the course.

(e) (1) On and after January 1, 2009, a proprietary private security officer employer shall annually provide each employee registered pursuant to this chapter with specifically dedicated review or practice of security officer skills prescribed in the course required in this section. The minimum number of hours shall be established by regulation pursuant to the recommendations of the advisory committee.

(2) A proprietary private security officer employer 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 department upon request.

(f) 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.

SEC. 2. Section 7574.7 is added to the Business and Professions Code, to read:

7574.7. Section 7574.5 shall apply on and after July 1, 2009, to any person hired as a proprietary private security officer on and after January 1, 2009. For a person hired as a proprietary private security officer before January 1, 2009, that section shall apply on and after January 1, 2010.

CHAPTER 722

An act to amend Section 12011.5 of, and to add Sections 69614.2 and 69615 to, the Government Code, relating to courts.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 12011.5 of the Government Code is amended to read:

12011.5. (a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor, or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of Section 16 of Article VI of the Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for the judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Sections 6013.4 and 6013.5 of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, gender, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial

candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision.

(c) Upon receipt from the Governor of the names of candidates for judicial office and their completed personal data questionnaires, the State Bar shall employ appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to his or her ability to discharge the judicial duties of the office to which the appointment or nomination shall be made. Within 90 days of submission by the Governor of the name of a potential appointee for judicial office, the State Bar shall report in confidence to the Governor its recommendation whether the candidate is exceptionally well qualified, well qualified, qualified, or not qualified and the reasons therefor, and may report, in confidence, other information as the State Bar deems pertinent to the qualifications of the candidate.

(d) In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience. The State Bar shall consider legal experience broadly, including, but not limited to, litigation and nonlitigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.

(e) The State Bar shall establish and promulgate rules and procedures regarding the investigation of the qualifications of candidates for judicial office by the designated agency. These rules and procedures shall establish appropriate, confidential methods for disclosing to the candidate the subject matter of substantial and credible adverse allegations received regarding the candidate's health, physical or mental condition, or moral turpitude which, unless rebutted, would be determinative of the candidate's unsuitability for judicial office. No provision of this section shall be construed as requiring that any rule or procedure be adopted that permits the disclosure to the candidate of information from which the candidate may infer the source, and no information shall either be disclosed to the candidate nor be obtainable by any process that would jeopardize the confidentiality of communications from persons whose opinion has been sought on the candidate's qualifications.

(f) All communications, written, verbal, or otherwise, of and to the Governor, the Governor's authorized agents or employees, including, but not limited to, the Governor's Legal Affairs Secretary and Appointments Secretary, or of and to the State Bar in furtherance of the purposes of this section are absolutely privileged from disclosure and confidential, and any communication made in the discretion of the

Governor or the State Bar with a candidate or person providing information in furtherance of the purposes of this section shall not constitute a waiver of the privilege or a breach of confidentiality.

(g) If the Governor has appointed a person to a trial court who has been found not qualified by the designated agency, the State Bar may make public this fact after due notice to the appointee of its intention to do so, but that notice or disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the appointee.

(h) If the Governor has nominated or appointed a person to the Supreme Court or court of appeal in accordance with subdivision (d) of Section 16 of Article VI of the California Constitution, the Commission on Judicial Appointments may invite, or the State Bar's governing board or its designated agency may submit to the commission its recommendation, and the reasons therefor, but that disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the nominee or appointee.

(i) No person or entity shall be liable for any injury caused by any act or failure to act, be it negligent, intentional, discretionary, or otherwise, in the furtherance of the purposes of this section, including, but not limited to, providing or receiving any information, making any recommendations, and giving any reasons therefor. As used in this section, the term "State Bar" means its governing board and members thereof, the designated agency of the State Bar and members thereof, and employees and agents of the State Bar.

(j) At any time prior to the receipt of the report from the State Bar specified in subdivision (c) the Governor may withdraw the name of any person submitted to the State Bar for evaluation pursuant to this section.

(k) No candidate for judicial office may be appointed until the State Bar has reported to the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate's name to the State Bar, whichever occurs earlier. The requirement of this subdivision shall not apply to any vacancy in judicial office occurring within the 90 days preceding the expiration of the Governor's term of office, provided, however, that with respect to those vacancies and with respect to nominations pursuant to subdivision (d) of Section 16 of Article VI of the California Constitution, the Governor shall be required to submit any candidate's name to the State Bar in order to provide an opportunity, if time permits, to make an evaluation.

(*l*) Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to judicial office, nor

shall anything in this section be construed as adding any additional qualifications for the office of a judge.

(m) The Board of Governors of the State Bar shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature, except an evaluation, review, or report on potential judicial appointees or nominees as authorized by this section.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in an evaluation, review, or report in his or her individual capacity.

(n) (1) Notwithstanding any other provision of this section, on or before March 1, 2007, and on or before March 1 of each year thereafter, all of the following shall occur:

(A) The Governor shall collect and release, on an aggregate statewide basis, all of the following:

(i) Demographic data provided by all judicial applicants relative to ethnicity, race, and gender.

(ii) Demographic data relative to ethnicity, race, and gender as provided by all judicial applicants, both as to those judicial applicants who have been and those who have not been submitted to the State Bar for evaluation.

(iii) Demographic data relative to ethnicity, race, and gender of all judicial appointments or nominations as provided by the judicial appointee or nominee.

(B) The designated agency of the State Bar responsible for evaluation of judicial candidates shall collect and release both of the following on an aggregate statewide basis:

(i) Statewide demographic data provided by all judicial applicants reviewed relative to ethnicity, race, gender, and areas of legal practice and employment.

(ii) The statewide summary of the recommendations of the designated agency of the State Bar by ethnicity, race, gender, and areas of legal practice and employment.

(C) The Administrative Office of the Courts shall collect and release the demographic data provided by justices and judges described in Article VI of the California Constitution relative to ethnicity, race, and gender, by specific jurisdiction.

(2) Any demographic data disclosed or released pursuant to this subdivision shall disclose only aggregated statistical data and shall not identify any individual applicant, justice, or judge.

(o) If any provision of this section other than a provision relating to or providing for confidentiality or privilege from disclosure of any communication or matter, or the application of the provision to any person or circumstances, is held invalid, the remainder of this section to the extent it can be given effect, or the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable. If any other act of the Legislature conflicts with the provisions of this section, this section shall prevail.

SEC. 2. Section 69614.2 is added to the Government Code, to read:

69614.2. Upon appropriation by the Legislature in the 2007–08 fiscal year, there shall be 50 additional judges allocated to the various county superior courts, pursuant to the uniform criteria described in subdivision (b) of Section 69614, as updated and approved by the Judicial Council on February 23, 2007.

SEC. 3. Section 69615 is added to the Government Code, to read:

69615. (a) It is the intent of the Legislature in enacting this section to restore an appropriate balance between subordinate judicial officers and judges in the trial courts by providing for the conversion, as needed, of subordinate judicial officer positions to judgeships in courts that assign subordinate judicial officers to act as temporary judges. The Legislature finds that these positions must be converted to judgeships in order to ensure that critical case types, including family, probate, and juvenile law matters can be heard by judges.

(b) (1) (A) Sixteen subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council pursuant to uniform criteria for determining the need for converting existing subordinate judicial officer positions to superior court judgeships, shall be converted to judgeships as set forth in paragraph (2).

(B) Upon subsequent authorization by the Legislature, 146 subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council pursuant to uniform criteria for determining the need for converting existing subordinate judicial officer positions to superior court judgeships, shall be converted to judgeships as set forth in paragraphs (2) and (3), except that no more than 16 subordinate judicial officer positions may be converted in any fiscal year.

(2) The positions for conversion shall be allocated each fiscal year pursuant to uniform allocation standards to be developed by the Judicial Council for factually determining the relative judicial need for conversion

of a subordinate judicial officer position that becomes vacant to a superior court judgeship position.

(3) Beginning in the 2008–09 fiscal year, a subordinate judicial officer position shall be converted to a judgeship when all of the following conditions are met:

(A) A vacancy occurs in a subordinate judicial officer position in an eligible superior court as determined by the uniform allocation standards described in paragraph (2).

(B) The Judicial Council files notice of the vacancies and allocations with the Chair of the Senate Committee on Rules, the Speaker of the Assembly, and the respective chairs of the Senate and Assembly Committees on Judiciary.

(C) The proposed action is ratified by the Legislature, either in the annual Budget Act or other legislative measure.

(4) The provisions of Section 12011.5 of the Government Code shall apply to any appointment to a superior court judgeship converted from a subordinate judicial officer position.

(c) For purposes of this section, "subordinate judicial officer" means an officer appointed under the authority of Section 22 of Article VI of the California Constitution. This section shall not apply to a subordinate judicial officer established by Section 4251 of the Family Code.

(d) It is the intent of the Legislature that no subordinate judicial officer shall involuntarily lose his or her position solely due to operation of this section. This section does not change the employment relationship between subordinate judicial officers and the trial courts established by law.

(e) This section does not limit the authority of the Governor to appoint a person to fill a vacancy pursuant to subdivision (c) of Section 16 of Article VI of the California Constitution.

(f) This section does not entitle a court to an increase in funding.

(g) The operation of this section shall neither increase nor decrease the number of judicial and subordinate judicial officer positions and court support positions for which a county is responsible by law.

CHAPTER 723

An act to amend Sections 44253.3 and 44253.4 of, to add Sections 44274.3 and 44274.4 to, and to add and repeal Section 44300.1 of, the Education Code, relating to teacher credentialing.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 44253.3 of the Education Code is amended to read:

44253.3. (a) The commission shall issue a certificate that authorizes the holder to provide all of the following services to limited-English-proficient pupils:

(1) Instruction for English language development in preschool, kindergarten, grades 1 to 12, inclusive, and classes organized primarily for adults, except when the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a children's center instructional permit pursuant to Sections 8363 and 44252.7, a children's center supervision permit pursuant to Section 8363, or a designated subjects teaching credential in adult education pursuant to Section 44260.2. If the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a children's center instructional permit, or a children's center supervision permit, instruction for English language development is limited to the programs authorized by that permit. If the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a designated subjects teaching credential in adult education, instruction for English language development is limited to classes organized primarily for adults.

(2) Specially designed content instruction delivered in English in the subjects and at the levels authorized by the teacher's prerequisite credential or permit used to satisfy the requirement specified in paragraph (1) of subdivision (b).

(b) The minimum requirements for the certificate shall include all of the following:

(1) Possession of a valid California teaching credential, services credential, visiting faculty permit, children's center instructional permit, or children's center supervision permit which credential or permit authorizes the holder to provide instruction to pupils in preschool, kindergarten, any of grades 1 to 12, inclusive, or classes primarily organized for adults, except for any of the following:

(A) Emergency credentials or permits.

(B) Exchange credentials as specified in Section 44333.

(C) District intern credentials as specified in Section 44325.

(D) Sojourn certificated employee credentials as specified in Section 44856.

(E) Teacher education internship credentials as specified in Article 3 (commencing with Section 44450) of Chapter 3.

(2) Passage of one or more examinations that the commission determines are necessary for demonstrating the knowledge and skills required for effective delivery of the services authorized by the certificate.

(3) Completion of at least six semester units, or nine quarter units, of coursework in a second language at a regionally accredited institution of postsecondary education. The commission shall establish minimum standards for scholarship in the required coursework. The commission shall also establish alternative ways in which the requirement can be satisfied by language learning experience that creates an awareness of the challenges of second language acquisition and development.

(c) Completion of coursework in human relations in accordance with the commission's standards of program quality and effectiveness that includes, at a minimum, instruction in the following:

(1) The nature and content of culture.

(2) Crosscultural contact and interactions.

(3) Cultural diversity in the United States and California.

(4) Providing instruction responsive to the diversity of the pupil population.

(5) Recognizing and responding to behavior related to bias based on race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation.

(6) Techniques for the peaceful resolution of conflict.

(d) The commission shall establish alternative requirements for a teacher to earn the certificate, which shall be awarded as a supplementary authorization pursuant to subdivision (e) of Section 44225.

(e) A teacher who possesses a credential or permit described in paragraph (1) of subdivision (b) and is able to present a valid out-of-state credential or certificate that authorizes the instruction of English language learners may qualify for the certificate issued under this section by submitting an application and fee to the commission.

(f) The certificate shall remain valid as long as the prerequisite credential or permit specified in paragraph (1) of subdivision (b) remains valid.

SEC. 1.5. Section 44253.3 of the Education Code is amended to read:

44253.3. (a) The commission shall issue a certificate that authorizes the holder to provide all of the following services to limited-English-proficient pupils:

(1) Instruction for English language development in preschool, kindergarten, grades 1 to 12, inclusive, and classes organized primarily for adults, except when the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a children's center instructional permit pursuant to Sections 8363 and 44252.7, a children's center supervision permit pursuant to Section 8363, or a designated

subjects teaching credential in adult education pursuant to Section 44260.2. If the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a children's center instructional permit, or a children's center supervision permit, instruction for English language development is limited to the programs authorized by that permit. If the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a designated subjects teaching credential in adult education, instruction for English language development is limited to classes organized primarily for adults.

(2) Specially designed content instruction delivered in English in the subjects and at the levels authorized by the teacher's prerequisite credential or permit used to satisfy the requirement specified in paragraph (1) of subdivision (b).

(b) The minimum requirements for the certificate shall include all of the following:

(1) Possession of a valid California teaching credential, services credential, visiting faculty permit, children's center instructional permit, or children's center supervision permit which credential or permit authorizes the holder to provide instruction to pupils in preschool, kindergarten, any of grades 1 to 12, inclusive, or classes primarily organized for adults, except for any of the following:

(A) Emergency credentials or permits.

(B) Exchange credentials as specified in Section 44333.

(C) District intern credentials as specified in Section 44325.

(D) Sojourn certificated employee credentials as specified in Section 44856.

(E) Teacher education internship credentials as specified in Article 3 (commencing with Section 44450) of Chapter 3.

(2) Passage of one or more examinations that the commission determines are necessary for demonstrating the knowledge and skills required for effective delivery of the services authorized by the certificate.

(3) Completion of at least six semester units, or nine quarter units, of coursework in a second language at a regionally accredited institution of postsecondary education. The commission shall establish minimum standards for scholarship in the required coursework. The commission shall also establish alternative ways in which the requirement can be satisfied by language-learning experience that creates an awareness of the challenges of second-language acquisition and development.

(c) Completion of coursework in human relations in accordance with the commission's standards of program quality and effectiveness that includes, at a minimum, instruction in the following:

(1) The nature and content of culture.

(2) Crosscultural contact and interactions.

(3) Cultural diversity in the United States and California.

(4) Providing instruction responsive to the diversity of the pupil population.

(5) Recognizing and responding to behavior related to the characteristics listed in Section 220.

(6) Techniques for the peaceful resolution of conflict.

(d) The commission shall establish alternative requirements for a teacher to earn the certificate, which shall be awarded as a supplementary authorization pursuant to subdivision (e) of Section 44225.

(e) A teacher who possesses a credential or permit described in paragraph (1) of subdivision (b) and is able to present a valid out-of-state credential or certificate that authorizes the instruction of English language learners may qualify for the certificate issued under this section by submitting an application and fee to the commission.

(f) The certificate shall remain valid as long as the prerequisite credential or permit specified in paragraph (1) of subdivision (b) remains valid.

SEC. 2. Section 44253.4 of the Education Code is amended to read:

44253.4. (a) The commission shall issue a certificate that authorizes the holder to provide all of the following services to limited-English-proficient pupils:

(1) Instruction for English language development in preschool, kindergarten, grades 1 to 12, inclusive, and classes organized primarily for adults, except when the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a children's center instructional permit pursuant to Sections 8363 and 44252.7, a children's center supervision permit pursuant to Section 8363, or a designated subjects teaching credential in adult education pursuant to Section 44260.2. If the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a children's center instructional permit, or a children's center supervision permit, then instruction for English language development shall be limited to the programs authorized by that permit. If the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a designated subjects teaching credential in adult education, then instruction for English language development shall be limited to classes organized primarily for adults.

(2) Specially designed content instruction delivered in English in the subjects and at the levels authorized by the teacher's prerequisite credential or permit used to satisfy the requirement specified in paragraph (1) of subdivision (b).

(3) Content instruction delivered in the pupil's primary language in the subjects and at the levels authorized by the teacher's prerequisite

credential or permit used to satisfy the requirement specified in paragraph (1) of subdivision (b).

(4) Instruction for primary language development in preschool, kindergarten, grades 1 to 12, inclusive, and classes organized primarily for adults, except when the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a children's center instructional permit, a children's center supervision permit, or a designated subjects teaching credential in adult education. If the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a children's center instructional permit or a children's center supervision permit, then instruction for primary language development is limited to the programs authorized by that permit. If the requirement specified in paragraph (1) of subdivision (b) is satisfied by the possession of a designated subjects teaching credential in adult education, then instruction for primary language development is limited to classes organized primarily for adults.

(b) The minimum requirements for the certificate shall include all of the following:

(1) Possession of a valid California teaching credential, services credential, visiting faculty permit, children's center instructional permit, or children's center supervision permit which credential or permit authorizes the holder to provide instruction to pupils in preschool, kindergarten, any of grades 1 to 12, inclusive, or classes primarily organized for adults, except for the following:

(A) Emergency credentials or permits.

(B) Exchange credentials as specified in Section 44333.

(C) District intern certificates as specified in Section 44325.

(D) Sojourn certificated employee credentials as specified in Section 44856.

(E) Teacher education internship credentials as specified in Article 3 (commencing with Section 44450) of Chapter 3.

(2) Passage of one or more examinations that the commission determines are necessary for demonstrating the knowledge and skills required for effective delivery of the services authorized by the certificate.

(c) To earn the certificate, teachers who hold the certificate described in Section 44253.3, or in Article 3.5 (commencing with Section 44475) of Chapter 3, as that section and that article existed on December 31, 1992, shall not be required to pass examinations that primarily assess the skills and knowledge necessary for effective delivery of the services authorized by the certificates they possess.

(d) The certificate shall remain valid as long as the prerequisite credential or permit specified in paragraph (1) of subdivision (b) remains valid.

(e) The commission shall initially issue certificates for languages spoken by the largest numbers of limited-English-proficient pupils for which there are reasonable numbers of teachers or potential teachers who speak those languages. The commission shall explore alternative ways to make certificates available for other languages.

SEC. 3. Section 44274.3 is added to the Education Code, to read:

44274.3. (a) Notwithstanding any other provision of this chapter, the commission shall issue a five-year preliminary single subject teaching credential authorizing instruction in departmentalized classes to an individual who satisfies all of the following requirements:

(1) Possesses a valid visiting faculty permit issued pursuant to Section 44300.1.

(2) Submits evidence of two years of recent satisfactory or better performance evaluations from the district while teaching pursuant to a visiting faculty permit.

(3) Satisfies the standards and requirements regarding the instruction of English language learners pursuant to subdivision (c) of Section 44259.5.

(4) Satisfies the methodology course requirement in paragraph (5) of subdivision (a) of Section 44300.1.

(b) An applicant for a credential pursuant to this section is exempt from the basic skills proficiency requirement in Section 44252.

SEC. 4. Section 44274.4 is added to the Education Code, to read:

44274.4. Unless the commission determines that substantial evidence exists that the individual is unqualified to teach, upon the recommendation of the governing board of the school district employing the individual, and notwithstanding any other provision of this chapter, the commission shall issue a five-year professional clear single subject teaching credential authorizing instruction in departmentalized classes to an individual who satisfies all of the following requirements:

(a) Possesses a valid preliminary single subject teaching credential issued pursuant to Section 44274.3.

(b) Submits verification by the employing school district that the individual has completed an individualized professional development plan tailored to the needs of the individual teacher and the district that includes mentoring, support, and assistance provided by a credentialed, experienced teacher who teaches the same subject as the applicant. The individualized professional development plan shall include instruction and information about the appropriate academic content standards and curriculum frameworks to enable candidates to provide standards-based instruction and shall also include instruction on working with special populations. For purposes of satisfying the requirements of this section,

an applicant may complete a beginning teacher induction program as described in paragraph (2) of subdivision (c) of Section 44259.

(c) Submits verification of experience that addresses subparagraph (A) of paragraph (4) of subdivision (c) of Section 44259.

SEC. 5. Section 44300.1 is added to the Education Code, to read:

44300.1. (a) The commission may issue or renew a visiting faculty permit authorizing instruction in departmentalized classes to an individual who satisfies all of the following requirements:

(1) Has a minimum of three years of full-time teaching experience or the full-time equivalent of that experience at an accredited California community college, a campus of the California State University or the University of California, or a regionally accredited private, nonprofit postsecondary institution. The three years of teaching experience shall be within five years of the date of application for a visiting faculty permit.

(2) Possesses a master's degree or higher from a regionally accredited institution of postsecondary education in a subject area closely related, as determined by the commission, to the subject he or she proposes to teach.

(3) Submits evidence of two years of the most recent performance evaluations, student evaluations, or other evaluations that indicate teacher effectiveness while teaching in an accredited California community college, a campus of the California State University or the University of California, or a regionally accredited private, nonprofit postsecondary institution in which the applicant received ratings of satisfactory or higher based on criteria determined by the commission. An applicant for the renewal of a visiting faculty permit shall submit evidence of satisfactory or higher performance evaluations while serving on a current, valid visiting faculty permit.

(4) Satisfies the requirements for teacher fitness pursuant to Sections 44339 to 44341, inclusive.

(5) Completes, within the first year of serving on the visiting faculty permit, a three-semester unit course or a four-quarter unit course in methodology directly related to teaching in a departmentalized setting offered by a teacher preparation program that is accredited by the commission.

(b) To the extent that a school district chooses to employ an individual who possesses a visiting faculty permit, prior to issuing a visiting faculty permit, the commission shall review and approve the justification for the permit submitted by the employing school district. The justification shall include both of the following:

(1) Annual documentation that the school district has implemented a process for conducting a diligent search that includes, but is not limited to, distributing job announcements, contacting college and university

placement centers, advertising in local newspapers, and participating in job fairs in this state, but has been unable to recruit a sufficient number of certificated teachers to teach the subject matter that the visiting faculty member proposes to teach.

(2) A declaration of need for fully qualified certificated teachers based on the documentation set forth in paragraph (1) and made in the form of a motion adopted by the governing board of the school district or the county board of education at a regularly scheduled meeting of the governing board or county board. The motion shall not be part of the consent agenda and shall be entered in the minutes of the meeting.

(c) The commission may deny a request for a visiting faculty permit that does not include a justification as set forth in subdivision (b).

(d) A visiting faculty permit is valid for one year. The commission shall not renew the visiting faculty permit of an individual more than two times.

(e) Notwithstanding any other provision of law, the commission shall not issue a visiting faculty permit pursuant to this section on or after July 1, 2013.

(f) The commission shall incorporate data on visiting faculty permits into the report required pursuant to Section 44225.6. It is the intent of the Legislature that this data be used to determine if participation rates warrant extending the authority of the commission to issue visiting faculty permits.

(g) This section shall become inoperative on July 1, 2015, and, as of January 1, 2016, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2016, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 44253.3 of the Education Code proposed by both this bill and SB 777. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 44253.3 of the Education Code, and (3) this bill is enacted after SB 777, in which case Section 1 of this bill shall not become operative.

CHAPTER 724

An act to amend Section 14581 of the Public Resources Code, relating to beverage containers, and making an appropriation therefor.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 14581 of the Public Resources Code is amended to read:

14581. (a) Subject to the availability of funds, and pursuant to subdivision (c), the department shall expend the moneys set aside in the fund, pursuant to subdivision (c) of Section 14580, for the purposes of this section:

(1) (A) On and after July 1, 2005, to June 30, 2006, inclusive, up to thirty-one million dollars ($31,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(B) On and after July 1, 2006, to June 30, 2007, inclusive, up to thirty-three million dollars ($33,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(C) On and after July 1, 2007, to June 30, 2008, inclusive, up to thirty-five million dollars ($35,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(D) For each fiscal year commencing July 1, 2008, the department may expend the amount necessary to make the required handling fee payment pursuant to Section 14585.

(2) Fifteen million dollars ($15,000,000) shall be expended annually for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3) (A) Fifteen million dollars ($15,000,000), plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps that were in existence on September 30, 1999, or that are formed subsequent to that date, that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

(ii) Community conservation corps that are designated by a county to perform litter abatement, recycling, and related activities, and are certified by the California Conservation Corps as having operated for a minimum of two years and as meeting all other criteria of Section 14507.5.

(B) Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(4) (A) On or after July 1, 2007, until June 30, 2008, for only that fiscal year, up to twenty million dollars ($20,000,000) may be expended in the form of competitive grants issued to community conservation corps that are designated by a city or county, and that meet all of the following criteria:

(i) Are certified by the California Conservation Corps as having operated for a minimum of two years.

(ii) Meet all other requirements under Section 14507.5.

(B) The department shall prepare and adopt criteria and procedures for evaluating grant applications on a competitive basis. Eligible activities for the use of these funds shall include developing new projects, or enhancing or assisting existing projects, to increase beverage container recycling and increasing the quality of recycled material at the following locations:

(i) Multifamily dwellings.

(ii) Schools.

(iii) Commercial, state, and local government buildings.

(iv) Bars, restaurants, hotels, and lodging establishments, and entertainment venues.

(v) Parks and beaches.

(C) Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(D) Any grants provided pursuant to this paragraph shall support one-time capital improvement projects and shall not be used to support ongoing staff activities.

(E) Any grant funds appropriated pursuant to this paragraph that have not been awarded to a grantee prior to the end of the 2007–08 fiscal year shall revert to the fund.

(5) (A) Ten million five hundred thousand dollars ($10,500,000) may be expended annually for payments of five thousand dollars ($5,000) to cities and ten thousand dollars ($10,000) for payments to counties for beverage container recycling and litter cleanup activities, or the department may calculate the payments to counties and cities on a per capita basis, and may pay whichever amount is greater, for those activities.

(B) Eligible activities for the use of these funds may include, but are not necessarily limited to, support for new or existing curbside recycling programs, neighborhood dropoff recycling programs, public education-promoting beverage container recycling, litter prevention, and cleanup, cooperative regional efforts among two or more cities or counties, or both, or other beverage container recycling programs.

(C) These funds may not be used for activities unrelated to beverage container recycling or litter reduction.

(D) To receive these funds, a city, county, or city and county shall fill out and return a funding request form to the Department of Conservation. The form shall specify the beverage container recycling or litter reduction activities for which the funds will be used.

(E) The Department of Conservation shall annually prepare and distribute a funding request form to each city, county, or city and county. The form shall specify the amount of beverage container recycling and litter cleanup funds for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city, county, or city and county does not return the funding request form within 90 days of receipt of the form from the department, the city, county, or city and county is not eligible to receive the funds for that funding cycle.

(F) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(6) One million five hundred thousand dollars ($1,500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(7) (A) The department shall expend the amount necessary to pay the processing payment and supplemental processing payment established pursuant to Sections 14575 and 14575.5 and pay processing fee rebates pursuant to Section 14575.2. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee are calculated pursuant to Section 14575, or for which a processing payment is calculated pursuant to Section 14575 and a voluntary artificial scrap value is calculated pursuant to Section 14575.1, into which account shall be deposited all of the following:

(i) All amounts paid as processing fees for each beverage container material type pursuant to Section 14575.

(ii) Funds equal to the difference between the amount in clause (i) and the amount of the processing payments established in subdivision (b) of Section 14575, and adjusted pursuant to paragraphs (2) and (3) of subdivision (c) of, and subdivision (f) of, Section 14575, to reduce the processing fee to the level provided in subdivision (f) of Section 14575,

or to reflect the agreement by a willing purchaser to pay a voluntary artificial scrap value pursuant to Section 14575.1.

(iii) Funds equal to an amount sufficient to pay the total amount of the supplemental processing payments established pursuant to Section 14575.5.

(B) Notwithstanding Section 13340 of the Government Code, the moneys in each processing fee account are hereby continuously appropriated to the department for expenditure without regard to fiscal years, for purposes of making processing payments and supplemental processing payments, and reducing processing fees, pursuant to Sections 14575 and 14575.5, and paying processing fee rebates pursuant to Section 14575.2.

(8) Up to five million dollars ($5,000,000) may be annually expended by the department for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

(9) Until January 1, 2008, the department may expend up to five million dollars ($5,000,000) for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers that meets both of the following requirements:

(A) The public education and information campaign is multimedia and includes print, radio, and television.

(B) The public education and information campaign is multilingual.

(10) Up to fifteen million dollars ($15,000,000) may be expended annually by the department for quality incentive payments for empty beverage containers pursuant to Section 14549.1.

(11) Up to twenty million dollars ($20,000,000) may be expended annually by the department, until January 1, 2012, to issue grants for recycling market development and expansion-related activities aimed at increasing the recycling of beverage containers, including, but not limited to, the following:

(A) Research and development of collecting, sorting, processing, cleaning, or otherwise upgrading the market value of recycled beverage containers.

(B) Identification, development, and expansion of markets for recycled beverage containers.

(C) Research and development for products manufactured using recycled beverage containers.

(D) Research and development to provide high-quality materials that are substantially free of contamination.

(E) Payments to California manufacturers who recycle beverage containers that are marked by resin type identification code "3," "4," "5," "6," or "7," pursuant to Section 18015.

(12) Up to ten million dollars ($10,000,000) may be transferred on a one-time basis by the department to the Recycling Infrastructure Loan Guarantee Account, for expenditure pursuant to Section 14582.

(13) Up to ten million dollars ($10,000,000) may be expended annually by the department for the payment of recycling incentive payments pursuant to Section 14549.7 until payments for eligible beverage containers redeemed or collected for recycling on or before December 31, 2009, have been paid.

(14) Up to five million dollars ($5,000,000) may be expended annually by the department for market development payments for empty plastic beverage containers pursuant to Section 14549.2, until January 1, 2012.

(15) Up to five million dollars ($5,000,000) may be expended, by the department, on a one-time basis beginning on January 1, 2007, in coordination with the Department of Parks and Recreation for the purposes of installing source separated beverage container recycling receptacles at each of the state parks, starting with those parks that have the highest day use.

(16) Up to five million dollars ($5,000,000) may be expended, from January 1, 2007, to January 1, 2008, to provide grants to local governments or nonprofit agencies to place multifamily housing source separated beverage container recycling receptacles in low-income communities.

(17) (A) Up to fifteen million dollars ($15,000,000) may be expended from January 1, 2008, to January 1, 2009, to provide grants to place source separated beverage container recycling receptacles in multifamily housing.

(B) Notwithstanding subdivision (b) of Section 14580, the amount of one hundred ninety-eight thousand dollars ($198,000) may be expended by the department from the fund, on a one-time basis, for the administrative costs of implementing the grant program established by subparagraph (A).

(b) The fifteen million dollars ($15,000,000) that is set aside pursuant to paragraph (3) of subdivision (a) is a base amount that the department shall adjust annually to reflect any increases or decreases in the cost of living, as measured by the Department of Labor, or a successor agency, of the federal government.

(c) (1) The department shall review all funds on a quarterly basis to ensure that there are adequate funds to make the payments specified in this section and the processing fee reductions required pursuant to Section 14575.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the payments required by this section and the processing fee reductions required pursuant to Section 14575, the department shall immediately notify the appropriate policy and fiscal committees of the Legislature regarding the inadequacy.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the funds as necessary, according to the procedure set forth in subdivision (d).

(d) If the department determines that there are insufficient funds to make the payments specified pursuant to this section and Section 14575, the department shall reduce all payments proportionally.

(e) Prior to making an expenditure pursuant to paragraph (7) of subdivision (a), the department shall convene an advisory committee consisting of representatives of the beverage industry, beverage container manufacturers, environmental organizations, the recycling industry, nonprofit organizations, and retailers, to advise the department on the most cost-effective and efficient method of the expenditure of the funds for that education and information campaign.

(f) After setting aside money for the expenditures required pursuant to subdivisions (a) and (b) and Section 14580, the department may, on and after January 1, 2007, but not after July 1, 2007, expend remaining moneys in the fund to pay a refund value in an amount greater than the refund value established pursuant to subdivision (b) of Section 14560.

CHAPTER 725

An act to add Sections 116365.01 and 116365.02 to the Health and Safety Code, relating to drinking water standards.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. The Legislature finds and declares that it is essential for the protection of public health that primary and secondary drinking water standards, as defined in subdivisions (c) and (d) of Section 116275 of the Health and Safety Code, adopted by the State Department of Public Health become effective and enforceable, and are implemented by public water systems, by the earliest feasible date after their adoption.

SEC. 2. Section 116365.01 is added to the Health and Safety Code, immediately following Section 116365, to read:

116365.01. (a) (1) Notwithstanding any other provision of law or regulation, including Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, and Part 3 (commencing with Section 13000) of the Government Code, and except as provided in subdivision (b), for any proposed regulation that relates to the maximum contaminant levels for primary or secondary drinking water standards, as defined in subdivisions (c) and (d) of Section 116275, that is submitted by the department to the Office of Administrative Law for review, pursuant to Section 11349.1 of the Government Code, the Department of Finance shall take no longer than 90 days, commencing on the date that the department submits the rule or regulation to the Department of Finance, to do any of the following:

(A) Review any estimate pursuant to subdivision (c) of Section 11357 of the Government Code.

(B) Provide a letter or documentation, if required, pursuant to Section 11349.1 of the Government Code.

(C) Complete any other function in connection with the adoption of proposed regulations that relates to the maximum contaminant levels for primary or secondary drinking water standards, as required pursuant to any provision of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(D) Return the proposed regulation if the department has not prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5 of the Government Code, in accordance with Section 11357 of the Government Code.

(2) If the Department of Finance returns the proposed regulation pursuant to subparagraph (D) of paragraph (1), an additional 90 day time period under this section shall begin when the regulations are resubmitted by the department to the Department of Finance.

(3) If the Department of Finance takes longer than 90 days to complete any of the functions set forth in subparagraphs (A) to (D), inclusive, of paragraph (1), the proposed regulations shall be exempt from any provision of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that requires the involvement of the Department of Finance, and the department and the Office of Administrative Law shall proceed with all other applicable procedures in connection with the adoption of proposed regulations.

(b) Subdivision (a) shall not apply to any regulation adopted by the department that reduces, weakens, lessens, or otherwise undermines any requirement established pursuant to this chapter for the protection of public health.

SEC. 3. Section 116365.02 is added to the Health and Safety Code, to read:

116365.02. (a) The department may adopt, pursuant to subdivision (c) of Section 11346.2 of the Government Code, any rules and regulations promulgated pursuant to the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), other than those federal rules and regulations that establish maximum contaminant levels for primary and secondary drinking water standards.

(b) Rules and regulations adopted pursuant to this subdivision shall not be subject to subparagraphs (C) and (D) of paragraph (3) of subdivision (d) of Section 11349.1 of the Government Code.

CHAPTER 726

An act to amend Section 11450 of the Welfare and Institutions Code, relating to CalWORKs.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 11450 of the Welfare and Institutions Code, as amended by Section 31.1 of Chapter 75 of the Statutes of 2006, is amended to read:

11450. (a) (1) Aid shall be paid for each needy family, which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter. In determining the amount of aid paid, and notwithstanding the minimum basic standards of adequate care specified in Section 11452, the family's income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (e) or Section 11453.1 shall be deducted from the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2). In no case shall the amount of aid paid for each month exceed the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2), plus any special needs, as specified in subdivisions (c), (e), and (f):

Number of eligible needy persons in the same home	Maximum aid
1	$ 326
2	535
3	663
4	788
5	899
6	1,010
7	1,109
8	1,209
9	1,306
10 or more	1,403

If, when, and during those times that the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to that increase or decrease by the United States government, provided that no increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(2) The sums specified in paragraph (1) shall not be adjusted for cost of living for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years, and through October 31, 1998, nor shall that amount be included in the base for calculating any cost-of-living increases for any fiscal year thereafter. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 11453.05, and no further reduction shall be made pursuant to that section.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother for the month in which the birth is anticipated and for the three-month period immediately prior to the month in which the birth is anticipated in the amount which would otherwise be paid to one person, as specified in subdivision (a), if the mother, and child if born, would have qualified for aid under this chapter. Verification of pregnancy shall be required as a condition of eligibility for aid under this subdivision. Aid shall also be paid to a pregnant woman with no other children in the amount which would otherwise be paid to one person under subdivision (a) at any time after verification of pregnancy if the pregnant woman is also eligible for the Cal-Learn Program described in Article 3.5 (commencing with

Section 11331) and if the mother and child, if born, would have qualified for aid under this chapter.

(c) The amount of forty-seven dollars ($47) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which delivery is anticipated, if the mother, and the child if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under this chapter, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month which, when added to the child's income, is equal to the rate specified in Section 11460, 11461, 11462, 11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping services, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both exempt and nonexempt, in excess of one hundred dollars ($100), the family shall also be entitled to receive an allowance for nonrecurring special needs.

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant, or which is otherwise available to the county welfare department, and the information provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A family is also considered homeless for the purpose of this section if the family has received a notice to pay rent or quit. The family shall demonstrate that the eviction is the result of a verified financial hardship as a result of extraordinary circumstances beyond their control, and not other lease or rental violations, and that the family is experiencing a financial crisis that could result in homelessness if preventative assistance is not provided.

(A) (i) A nonrecurring special need of sixty-five dollars ($65) a day shall be available to families of up to four members for the costs of temporary shelter, subject to the requirements of this paragraph. The fifth and additional members of the family shall each receive fifteen dollars ($15) per day, up to a daily maximum of one hundred twenty-five dollars ($125). County welfare departments may increase the daily amount available for temporary shelter as necessary to secure the additional bedspace needed by the family.

(ii) This special need shall be granted or denied immediately upon the family's application for homeless assistance, and benefits shall be available for up to three working days. The county welfare department shall verify the family's homelessness within the first three working days and if the family meets the criteria of questionable homelessness established by the department, the county welfare department shall refer the family to its early fraud prevention and detection unit, if the county has such a unit, for assistance in the verification of homelessness within this period.

(iii) After homelessness has been verified, the three-day limit shall be extended for a period of time which, when added to the initial benefits provided, does not exceed a total of 16 calendar days. This extension of benefits shall be done in increments of one week and shall be based upon searching for permanent housing which shall be documented on a housing search form; good cause; or other circumstances defined by the department. Documentation of a housing search shall be required for the initial extension of benefits beyond the three-day limit and on a weekly basis thereafter as long as the family is receiving temporary shelter benefits. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but unsuccessful effort to secure permanent housing while receiving temporary shelter benefits.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence, or to pay for up to two months of rent arrearages, when these payments are a reasonable condition of preventing eviction.

The last month's rent or monthly arrearage portion of the payment (i) shall not exceed 80 percent of the family's total monthly household income without the value of food stamps or special needs for a family of that size and (ii) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's total monthly household income without the value of food stamps or special needs for a family of that size.

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (ii) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter, the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) (i) Except as provided in clauses (ii) and (iii), eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to this paragraph shall be limited to one period of up to 16 consecutive calendar days of temporary assistance and one payment of permanent assistance. Any family that includes a parent or nonparent caretaker relative living in the home who has previously received temporary or permanent homeless assistance at any time on behalf of an eligible child shall not be eligible for further homeless assistance. Any person who applies for homeless assistance benefits shall be informed that the temporary shelter benefit of up to 16 consecutive days is available only once in a lifetime, with certain exceptions, and that a break in the consecutive use of the benefit constitutes permanent exhaustion of the temporary benefit.

(ii) A family that becomes homeless as a direct and primary result of a state or federally declared natural disaster shall be eligible for temporary and permanent homeless assistance.

(iii) A family shall be eligible for temporary and permanent homeless assistance when homelessness is a direct result of domestic violence by a spouse, partner, or roommate; physical or mental illness that is medically verified that shall not include a diagnosis of alcoholism, drug addiction, or psychological stress; or, the uninhabitability of the former residence caused by sudden and unusual circumstances beyond the control of the family including natural catastrophe, fire, or condemnation. These circumstances shall be verified by a third-party governmental or private health and human services agency, except that domestic violence may also be verified by a sworn statement by the victim, as provided under Section 11495.25. Homeless assistance payments based on these specific circumstances may not be received more often than once in any 12-month period. A county may require that a recipient of homeless assistance benefits who qualifies under this paragraph for a second time in a 24-month period participate in a homelessness avoidance case plan as a condition of eligibility for homeless assistance benefits.

(iv) The county welfare department shall report to the department through a statewide homeless assistance payment indicator system, necessary data, as requested by the department, regarding all recipients of aid under this paragraph.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in their share to any refunds resulting from payment of the permanent housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(I) No payment shall be made pursuant to this paragraph unless the provider of housing is a commercial establishment, shelter, or person in the business of renting properties who has a history of renting properties.

(g) The department shall establish rules and regulations ensuring the uniform application statewide of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a).

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

(j) For children receiving Kin-GAP pursuant to Article 4.5 (commencing with Section 11360) of Chapter 2, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month, which, when added to the child's income, is equal to the rate specified in Section 11364.

SEC. 2. Section 11450 of the Welfare and Institutions Code, as amended by Section 31.2 of Chapter 75 of the Statutes of 2006, is amended to read:

11450. (a) (1) Aid shall be paid for each needy family, which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter. In determining the amount of aid paid, and notwithstanding the minimum basic standards of adequate care specified in Section 11452, the family's income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (e) or Section 11453.1, averaged for the prospective quarter pursuant to Sections 11265.2 and 11265.3, and then calculated pursuant to Section 11451.5, shall be deducted from the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2). In no case shall the amount of aid paid for each month exceed the sum specified in the following table, as

adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2), plus any special needs, as specified in subdivisions (c), (e), and (f):

Number of eligible needy persons in the same home	Maximum aid
1	$ 326
2	535
3	663
4	788
5	899
6	1,010
7	1,109
8	1,209
9	1,306
10 or more	1,403

If, when, and during those times that the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to that increase or decrease by the United States government, provided that no increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(2) The sums specified in paragraph (1) shall not be adjusted for cost of living for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years, and through October 31, 1998, nor shall that amount be included in the base for calculating any cost-of-living increases for any fiscal year thereafter. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 11453.05, and no further reduction shall be made pursuant to that section.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother for the month in which the birth is anticipated and for the three-month period immediately prior to the month in which the birth is anticipated in the amount that would otherwise be paid to one person, as specified in subdivision (a), if the mother, and child, if born, would have qualified for aid under this chapter. Verification of pregnancy shall be required as a condition of eligibility for aid under this subdivision. Aid shall also be paid to a pregnant woman with no other children in the amount which

would otherwise be paid to one person under subdivision (a) at any time after verification of pregnancy if the pregnant woman is also eligible for the Cal-Learn Program described in Article 3.5 (commencing with Section 11331) and if the mother, and child, if born, would have qualified for aid under this chapter.

(c) The amount of forty-seven dollars ($47) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which delivery is anticipated, if the mother, and the child, if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under this chapter, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month which, when added to the child's income, is equal to the rate specified in Section 11460, 11461, 11462, 11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping services, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both exempt and nonexempt, in excess of one hundred dollars ($100), the family shall also be entitled to receive an allowance for nonrecurring special needs.

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all

nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant, or which is otherwise available to the county welfare department, and the information provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A family is also considered homeless for the purpose of this section if the family has received a notice to pay rent or quit. The family shall demonstrate that the eviction is the result of a verified financial hardship as a result of extraordinary circumstances beyond their control, and not other lease or rental violations, and that the family is experiencing a financial crisis that could result in homelessness if preventative assistance is not provided.

(A) (i) A nonrecurring special need of sixty-five dollars ($65) a day shall be available to families of up to four members for the costs of temporary shelter, subject to the requirements of this paragraph. The fifth and additional members of the family shall each receive fifteen dollars ($15) per day, up to a daily maximum of one hundred twenty-five dollars ($125). County welfare departments may increase the daily amount available for temporary shelter as necessary to secure the additional bedspace needed by the family.

(ii) This special need shall be granted or denied immediately upon the family's application for homeless assistance, and benefits shall be available for up to three working days. The county welfare department shall verify the family's homelessness within the first three working days and if the family meets the criteria of questionable homelessness established by the department, the county welfare department shall refer the family to its early fraud prevention and detection unit, if the county

has such a unit, for assistance in the verification of homelessness within this period.

(iii) After homelessness has been verified, the three-day limit shall be extended for a period of time which, when added to the initial benefits provided, does not exceed a total of 16 calendar days. This extension of benefits shall be done in increments of one week and shall be based upon searching for permanent housing which shall be documented on a housing search form; good cause; or other circumstances defined by the department. Documentation of a housing search shall be required for the initial extension of benefits beyond the three-day limit and on a weekly basis thereafter as long as the family is receiving temporary shelter benefits. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but unsuccessful effort to secure permanent housing while receiving temporary shelter benefits.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence, or to pay for up to two months of rent arrearages, when these payments are a reasonable condition of preventing eviction.

The last month's rent or monthly arrearage portion of the payment (i) shall not exceed 80 percent of the family's total monthly household income without the value of food stamps or special needs for a family of that size and (ii) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's total monthly household income without the value of food stamps or special needs for a family of that size.

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (ii) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter, the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has

failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) (i) Except as provided in clauses (ii) and (iii), eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to this paragraph shall be limited to one period of up to 16 consecutive calendar days of temporary assistance and one payment of permanent assistance. Any family that includes a parent or nonparent caretaker relative living in the home who has previously received temporary or permanent homeless assistance at any time on behalf of an eligible child shall not be eligible for further homeless assistance. Any person who applies for homeless assistance benefits shall be informed that the temporary shelter benefit of up to 16 consecutive days is available only once in a lifetime, with certain exceptions, and that a break in the consecutive use of the benefit constitutes permanent exhaustion of the temporary benefit.

(ii) A family that becomes homeless as a direct and primary result of a state or federally declared natural disaster shall be eligible for temporary and permanent homeless assistance.

(iii) A family shall be eligible for temporary and permanent homeless assistance when homelessness is a direct result of domestic violence by a spouse, partner, or roommate; physical or mental illness that is medically verified that shall not include a diagnosis of alcoholism, drug addiction, or psychological stress; or, the uninhabitability of the former residence caused by sudden and unusual circumstances beyond the control of the family including natural catastrophe, fire, or condemnation. These circumstances shall be verified by a third-party governmental or private health and human services agency, except that domestic violence may also be verified by a sworn statement by the victim, as provided under Section 11495.25. Homeless assistance payments based on these specific circumstances may not be received more often than once in any 12-month period. In addition, if the domestic violence is verified by a sworn statement by the victim, the homeless assistance payments shall be limited to two periods of not more than 16 consecutive calendar days of temporary assistance and two payments of permanent assistance. A county may require that a recipient of homeless assistance benefits who qualifies under this paragraph for a second time in a 24-month period participate in a homelessness avoidance case plan as a condition of eligibility for homeless assistance benefits. The county welfare department shall immediately inform recipients who verify domestic violence by a sworn statement pursuant to clause (iii) of the availability of domestic violence counseling and services, and refer those recipients to services upon request.

(v) If a county requires a recipient who verifies domestic violence by a sworn statement to participate in a homelessness avoidance case plan pursuant to clause (iii), the plan shall include the provision of domestic violence services, if appropriate.

(vi) If a recipient seeking homeless assistance based on domestic violence pursuant to clause (iii) has previously received homeless avoidance services based on domestic violence, the county shall review whether services were offered to the recipient and consider what additional services would assist the recipient in leaving the domestic violence situation.

(vii) The county welfare department shall report to the department through a statewide homeless assistance payment indicator system, necessary data, as requested by the department, regarding all recipients of aid under this paragraph.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in their share to any refunds resulting from payment of the permanent housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(I) No payment shall be made pursuant to this paragraph unless the provider of housing is a commercial establishment, shelter, or person in the business of renting properties who has a history of renting properties.

(g) The department shall establish rules and regulations ensuring the uniform application statewide of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a).

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

(j) For children receiving Kin-GAP pursuant to Article 4.5 (commencing with Section 11360) of Chapter 2, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month, which, when added to the child's income, is equal to the rate specified in Section 11364.

SEC. 3. 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.

CHAPTER 727

An act to repeal and add Section 23109.2 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 23109.2 of the Vehicle Code is repealed.

SEC. 2. This act shall be known and may be cited as the U'Kendra K. Johnson Memorial Act.

SEC. 3. Section 23109.2 is added to the Vehicle Code, to read:

23109.2. (a) (1) Whenever a peace officer determines that a person was engaged in any of the activities set forth in paragraph (2), the peace officer may immediately arrest and take into custody that person and may cause the removal and seizure of the motor vehicle used in that offense in accordance with Chapter 10 (commencing with Section 22650). A motor vehicle so seized may be impounded for not more than 30 days.

(2) (A) A motor vehicle speed contest, as described in subdivision (a) of Section 23109.

(B) Reckless driving on a highway, as described in subdivision (a) of Section 23103.

(C) Reckless driving in an offstreet parking facility, as described in subdivision (b) of Section 23103.

(D) Exhibition of speed on a highway, as described in subdivision (c) of Section 23109.

(b) The registered and legal owner of a vehicle removed and seized under subdivision (a) or their agents shall be provided the opportunity

for a storage hearing to determine the validity of the storage in accordance with Section 22852.

(c) (1) Notwithstanding Chapter 10 (commencing with Section 22650) or any other provision of law, an impounding agency shall release a motor vehicle to the registered owner or his or her agent prior to the conclusion of the impoundment period described in subdivision (a) under any of the following circumstances:

(A) If the vehicle is a stolen vehicle.

(B) If the person alleged to have been engaged in the motor vehicle speed contest, as described in subdivision (a), was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense.

(C) If the registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation pursuant to subdivision (a), or was unaware that the driver was using the vehicle to engage in any of the activities described in subdivision (a).

(D) If the legal owner or registered owner of the vehicle is a rental car agency.

(E) If, prior to the conclusion of the impoundment period, a citation or notice is dismissed under Section 40500, criminal charges are not filed by the district attorney because of a lack of evidence, or the charges are otherwise dismissed by the court.

(2) A vehicle shall be released pursuant to this subdivision only if the registered owner or his or her agent presents a currently valid driver's license to operate the vehicle and proof of current vehicle registration, or if ordered by a court.

(3) If, pursuant to subparagraph (E) of paragraph (1) a motor vehicle is released prior to the conclusion of the impoundment period, neither the person charged with a violation of subdivision (a) of Section 23109 nor the registered owner of the motor vehicle is responsible for towing and storage charges nor shall the motor vehicle be sold to satisfy those charges.

(d) A vehicle seized and removed under subdivision (a) shall be released to the legal owner of the vehicle, or the legal owner's agent, on or before the 30th day of impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the impoundment of the vehicle. No lien sale

processing fees shall be charged to a legal owner who redeems the vehicle on or before the 15th day of impoundment.

(3) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

(e) (1) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(2) Notwithstanding paragraph (1), if the person convicted of engaging in the activities set forth in paragraph (2) of subdivision (a) was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense, the court shall order the convicted person to reimburse the registered owner for any towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5 incurred by the registered owner to obtain possession of the vehicle, unless the court finds that the person convicted does not have the ability to pay all or part of those charges.

(3) If the vehicle is a rental vehicle, the rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 incurred by the rental car agency in connection with obtaining possession of the vehicle.

(4) The owner is not liable for any towing and storage charges related to the impoundment if acquittal or dismissal occurs.

(5) The vehicle may not be sold prior to the defendant's conviction.

(6) The impounding agency is responsible for the actual costs incurred by the towing agency as a result of the impoundment should the registered owner be absolved of liability for those charges pursuant to paragraph (3) of subdivision (c). Notwithstanding this provision, nothing shall prohibit impounding agencies from making prior payment arrangements to satisfy this requirement.

(f) Any period when a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (h) of Section 23109.

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 protect the public from the consequences of reckless driving on a highway or in an offstreet parking facility and exhibitions of speed

on a highway at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 728

An act to amend Section 40600 of the Health and Safety Code, relating to air quality.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 40600 of the Health and Safety Code is amended to read:

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

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

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

(3) A uniform fee structure.

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

(5) A citizen's advisory committee.

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

revise, adopt, and implement any air pollution control plans required within the San Joaquin Valley Air Basin by state and federal law.

(c) Notwithstanding any other provision of law, the San Joaquin Valley Unified Air Pollution Control District shall be governed by a district board composed of 15 voting members, appointed as follows:

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

(2) Five city council members appointed by the cities within the territory of the unified district. There shall not be more than one city council member selected from one county. Of the five city council members appointed pursuant to this paragraph, three shall be from a city having a population of less than 100,000, with one member selected from the northern region, one from the central region, and one from the southern region of the district. The other two city council members appointed pursuant to this paragraph shall be from a city having a population of 100,000 or more, with each member selected from different regions of the district.

(3) The terms of office for members appointed pursuant to paragraph (2) after April 1, 2007, shall be three years.

(4) Two public members appointed by the Governor, with the advice and consent of the Senate, as follows:

(A) One public member who is a physician, actively practicing within the district, whose daily practice or research specialty lies in the health effects of air pollution on vulnerable populations.

(B) One public member who has medical or scientific expertise in the health effects of air pollution.

(5) The terms of office for the members initially appointed pursuant to subparagraphs (A) and (B) of paragraph (4) shall be as follows:

(A) For the member appointed pursuant to subparagraph (A) of paragraph (4), the term shall be four years.

(B) For the member appointed pursuant to subparagraph (B) of paragraph (4), the term shall be two years.

(6) After the initial term of appointment, the terms of office for the members appointed pursuant to subparagraphs (A) and (B) of paragraph (4) shall be four years.

(d) Each member shall be appointed on the basis of his or her demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems of the San Joaquin Valley Air Basin.

(e) Each member shall be appointed on the basis of his or her ability to attend substantially all meetings of the district board, to discharge all duties and responsibilities of a member of the district board on a regular basis, and to participate actively in the affairs of the district. A member shall not designate an alternate for any purpose or otherwise be represented by another person in his or her capacity as a member of the district board.

(f) All members shall be residents of the district.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 729

An act to add Article 5.5 (commencing with Section 25359.20) to Chapter 6.8 of Division 20, of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Article 5.5 (commencing with Section 25359.20) is added to Chapter 6.8 of Division 20 of the Health and Safety Code, to read:

Article 5.5. Cleanup of Santa Susana Field Laboratory

25359.20. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 25187 of the Health and Safety Code, the department may use any legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.5 (commencing with Section 25100) to compel a responsible party or parties to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment at the Santa Susana Field Laboratory site in Ventura County.

(b) A response action taken or approved at the Santa Susana Field Laboratory site shall be conducted in accordance with the provisions of this chapter.

(c) A response action taken or approved pursuant to this chapter for the Santa Susana Field Laboratory site shall be based upon, and be no less stringent than, the provisions of Section 25356.1.5. In calculating the risk, the cumulative risk from radiological and chemical contaminants at the site shall be summed, and the land use assumption shall be either suburban residential or rural residential (agricultural), whichever produces the lower permissible residual concentration for each contaminant. In the case of radioactive contamination, the department shall use as its risk range point of departure the concentrations in the Preliminary Remediation Goals issued by the Superfund Office of the United States Environmental Protection Agency in effect as of January 1, 2007.

(d) Notwithstanding any other provision of law regarding transfers of land, no person or entity shall sell, lease, sublease, or otherwise transfer land presently, or formerly occupied by the Santa Susana Field Laboratory, except as provided in subdivision (e).

(e) As a condition for a sale, lease, sublease, or transfer of land presently or formerly occupied by the Santa Susana Field Laboratory, the Director of the Department of Toxic Substances Control or his or her designee shall certify that the land has undergone complete remediation pursuant to the most protective standards in subdivisions (a) to (c), inclusive.

SEC. 2. The Legislature finds and declares that due to the following unique circumstances regarding the former Santa Susana Field Laboratory, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

(a) Founded in late 1940s, the Santa Susana Field Laboratory (SSFL) was a facility dedicated to the development and testing of nuclear reactors, rockets, missiles, and munitions. The location of SSFL was chosen for its remoteness in order to conduct work that was considered too dangerous to be performed in more densely populated areas. In subsequent years, however, southern California's population has mushroomed. Today, more than 150,000 people live within five miles of the facility, and at least half a million people live within 10 miles.

(b) Throughout the years, approximately 10 nuclear reactors were operated at SSFL, in addition to several "critical facilities" (low power reactors); a sodium burn pit in which sodium-coated radioactively contaminated objects were burned in an open pit; a plutonium fuel fabrication facility; a uranium carbide fuel fabrication facility; and a Hot Lab used for remotely cutting up irradiated nuclear fuel.

(c) The Hot Lab suffered a number of fires involving radioactive materials and at least four of the 10 nuclear reactors suffered accidents, including a partial meltdown.

(d) The reactors located on the grounds of SSFL were considered experimental, and, therefore, had no containment structures. Reactors and highly radioactive components were housed without the large concrete domes surrounding modern power reactors.

(e) The most famous accident occurred in July of 1959, when the Sodium Reactor Experiment (SRE) experienced a partial core meltdown releasing radioactive gasses and particles into the atmosphere over a period of weeks. Recent studies have concluded that this accident may have caused hundreds of cancer cases in the Los Angeles area.

(f) One of the disposal procedures at the site in the 1950s and 1960s would consist of workers disposing of barrels filled with highly toxic substances by shooting the barrels at a distance with shotguns, so that they would explode and burn, releasing some of their contents in the form of gasses and particulates into the air. In the mid-1990s a similar practice involving the illegal disposal by open air burning led to the death of two workers at the facility.

(g) Additionally, large amounts of toxic chemicals were released into the soil, air, and groundwater and surface water. For example, the rocket test stands were routinely washed off with TCE, approximately half a million gallons of which were allowed to percolate into the soil and groundwater. Significant contamination exists by perchlorate, heavy metals, PCBs, dioxins, volatile organic, and semivolatile organic compounds, in addition to radioactivity.

(h) In 1989, the United States Department of Energy (DOE) found widespread chemical and radioactive contamination at the site, and a cleanup program commenced. In 1995 the United States Environmental Protection Agency (EPA) and DOE announced that they had entered into a Joint Policy Agreement to assure that all DOE sites would be cleaned up to standards consistent with EPA's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) standards, also known as Superfund. Those standards would have required a full characterization of the site and cleanup of the remaining contamination to standards deemed protective by EPA. In 2003, DOE declined to follow the 1995 Joint Policy and chose to instead rely on less protective cleanup standards. EPA declared that under the circumstances the site would not be safe for unrestricted release but only for day hikes with restrictions on picnicking; however, DOE continues to insist upon unrestricted release despite the use of sitewide cleanup standards not in keeping with the 1995 Joint Policy and EPA CERCLA guidance.

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 730

An act to amend Sections 1242.5, 5017, 8222, 8223, 8236, 8265, 8279.1, 17072.11, 17608, 18444, 18830, 35035, 44258.9, 44269, 44270, 44300, 44302, 44386, 44506, 44868, 44869, 48900, 49430.7, 49452.8, 52055.625, 52302, 52302.2, 52321, 52379, 54022, 54023, 54026, 56351.5, 60242, 60640, and 99237 of, to add Sections 41544 and 52325 to, to repeal Section 8451 of, and to repeal Article 5.6 (commencing with Section 44305) of Chapter 2 of Part 25 of Division 3 of Title 2 of, the Education Code, relating to education.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 1242.5 of the Education Code is amended to read:

1242.5. On or before March 31, 2007, the department shall review the actual costs of 2005–06 fiscal year site visits conducted pursuant to Section 1240. If the department determines that a county office of education did not expend the funds allocated for this purpose during the 2005–06 fiscal year, the amount that exceeds the amount spent shall revert to the extraordinary cost pool created by Chapter 710 of the Statutes of 2005 and shall be available to cover the extraordinary costs incurred by county offices of education as a result of the reviews conducted pursuant to Section 1240. Based on a determination by the department and the Department of Finance that it was necessary for a county office of education to incur extraordinary costs to conduct the site visits, funds in the amount necessary to cover these costs shall be allocated to the county office of education by June 30, 2007.

SEC. 2. Section 5017 of the Education Code is amended to read:

5017. Each person elected at a regular biennial governing board member election shall hold office for a term of four years commencing on the first Friday in December next succeeding his or her election. Any member of the governing board of a school district or community college district whose term has expired shall continue to discharge the duties of the office until his or her successor has qualified. The term of the successor shall begin upon the expiration of the term of his or her predecessor.

SEC. 3. Section 8222 of the Education Code is amended to read:

8222. (a) Payments made by alternative payment programs shall not exceed the applicable market rate ceiling. Alternative payment programs may expend more than the standard reimbursement rate for a particular child. However, the aggregate payments for services purchased by the agency during the contract year shall not exceed the assigned reimbursable amount as established by the contract for the year. No agency may make payments in excess of the rate charged to full-cost families. This section does not preclude alternative payment programs from using the average daily enrollment adjustment factor for children with exceptional needs as provided in Section 8265.5.

(b) Alternative payment programs shall reimburse licensed child care providers in accordance with an annual market rate survey, at a rate not to exceed the ceilings established pursuant to statute.

(c) An alternative payment program shall reimburse a licensed provider for child care of a subsidized child based on the rate charged by the provider to nonsubsidized families, if any, for the same services, or the rates established by the provider for prospective nonsubsidized families. A licensed child care provider shall submit to the alternative payment program a copy of the provider's rate sheet listing the rates charged, and the provider's discount or scholarship policies, if any, along with a statement signed by the provider confirming that the rates charged for a subsidized child are equal to or less than the rates charged for a nonsubsidized child.

(d) An alternative payment program shall maintain a copy of the rate sheet and the confirmation statement.

(e) A licensed child care provider shall submit to the local resource and referral agency a copy of the provider's rate sheet listing rates charged, and the provider's discount or scholarship policies, if any, and shall self-certify that the information is correct.

(f) Each licensed child care provider may alter rate levels for subsidized children once per year and shall provide the alternative payment program and resource and referral agency with the updated information pursuant to subdivisions (c) and (e), to reflect any changes.

(g) A licensed child care provider shall post in a prominent location adjacent to the provider's license at the child care facility the provider's rates and discounts or scholarship policies, if any.

(h) An alternative payment program shall verify provider rates once a year by randomly selecting 10 percent of licensed child care providers serving subsidized families. The purpose of this verification process is to confirm that rates reported to the alternative payment programs reasonably correspond to those reported to the resource and referral agency and the rates actually charged to nonsubsidized families for equivalent levels of services. It is the intent of the Legislature that the privacy of nonsubsidized families shall be protected in implementing this subdivision.

(i) The department shall develop regulations for addressing discrepancies in the provider rate levels identified through the rate verification process in subdivision (h).

SEC. 4. Section 8223 of the Education Code is amended to read:

8223. The reimbursement 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 shall not exceed the costs allowable for administration under federal requirements.

SEC. 5. Section 8236 of the Education Code is amended to read:

8236. (a) For purposes of this section, the following definitions apply:

(1) "Eligible children" means children who are currently eligible for the state preschool program.

(2) "Four-year-old children" means those children who will have their fourth birthday on or before December 2 of the fiscal year in which they are enrolled in a state preschool program.

(3) "Local educational agency" means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district.

(4) "Superintendent" means the Superintendent of Public Instruction.

(5) "Three-year-old children" means those children who will have their third birthday on or before December 2 of the fiscal year in which they are enrolled in a state preschool program.

(b) (1) Each applicant or contracting agency funded pursuant to Section 8235 shall give first priority to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. If an agency is unable to enroll a child in this

first priority category, the agency shall refer the child's parent or guardian to local resource and referral services so that services for the child can be located.

(2) After children in the first priority category set forth in paragraph (1) are served, each agency funded pursuant to Section 8235 shall serve eligible four-year-old children prior to serving eligible three-year-old children. Each agency shall certify to the Superintendent that enrollment priority is being given to eligible four-year-old children.

(c) For state preschool programs operating with funding that was initially allocated in a prior fiscal year, at least half the children enrolled at a preschool site shall be four-year-olds. Any exception to this requirement shall be approved by the Superintendent. The Superintendent shall inform the Secretary of Child Development and Education of any exceptions that have been granted.

(d) The following provisions apply to the award of new funding for the expansion of the state preschool program that is appropriated by the Legislature for that purpose in any fiscal year:

(1) In an application for those expansion funds, an agency shall furnish the Superintendent with an estimate of the number of four-year-old and three-year-old children that it plans to serve in the following fiscal year with those expansion funds. The agency also shall furnish documentation that indicates the basis of those estimates.

(2) In awarding contracts for expansion pursuant to this subdivision, the Superintendent, after taking into account the geographic criteria established pursuant to Section 8279.3, and the headquarters preferences and eligibility criteria relating to fiscal or programmatic noncompliance established pursuant to Section 8261, shall give priority to applicant agencies that, in expending the expansion funds, will be serving the highest percentage of four-year-old children.

(3) (A) Agencies that receive funding for the expansion of a state preschool program shall enroll children in the following priority order:

(i) Neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social services agency.

(ii) Four-year-old children who are eligible for the state preschool program.

(B) Otherwise, children shall be enrolled based on other statutory and regulatory priorities for the state preschool program.

(e) Nothing in this section shall be deemed to preclude a local educational agency from subcontracting with an appropriate public or private agency to operate a state preschool program and to apply for funds made available for the purposes of this section. If a school district chooses not to operate or subcontract for a state preschool program, the

Superintendent shall work with the county office of education and other eligible agencies to explore possible opportunities in contracting or alternative subcontracting to provide a state preschool program.

(f) Nothing in this section shall prevent eligible children who are currently receiving services from continuing to receive those services in future years pursuant to this chapter.

SEC. 6. Section 8265 of the Education Code is amended to read:

8265. (a) The Superintendent shall implement a plan that establishes reasonable standards and assigned reimbursement rates, which vary with the length of the program year and the hours of service.

(1) Parent fees shall be used to pay reasonable and necessary costs for providing additional services.

(2) When establishing standards and assigned reimbursement rates, the Superintendent shall confer with applicant agencies.

(3) The reimbursement system, including standards and rates, shall be submitted to the Joint Legislative Budget Committee.

(4) The Superintendent may establish any regulations he or she deems advisable concerning conditions of service and hours of enrollment for children in the programs.

(b) The standard reimbursement rate shall be three thousand five hundred twenty-three dollars ($3,523) per unit of average daily enrollment for a 250-day year, increased by the cost-of-living adjustment granted by the Legislature beginning July 1, 1980.

(c) The plan shall require agencies having an assigned reimbursement rate above the current year standard reimbursement rate to reduce costs on an incremental basis to achieve the standard reimbursement rate.

(d) The plan shall provide for adjusting reimbursement on a case-by-case basis, in order to maintain service levels for agencies currently at a rate less than the standard reimbursement rate. Assigned reimbursement rates shall be increased only on the basis of one or more of the following:

(1) Loss of program resources from other sources.

(2) Need of an agency to pay the same child care rates as those prevailing in the local community.

(3) Increased costs directly attributable to new or different regulations.

(4) Documented increased costs necessary to maintain the prior year's level of service and ensure the continuation of threatened programs.

Child care agencies funded at the lowest rates shall be given first priority for increases.

(e) The plan shall provide for expansion of child development programs at no more than the standard reimbursement rate for that fiscal year.

(f) The Superintendent may reduce the percentage of reduction for a public agency that satisfies any of the following:

(1) Serves more than 400 children.

(2) Has in effect a collective bargaining agreement.

(3) Has other extenuating circumstances that apply, as determined by the Superintendent.

SEC. 7. Section 8279.1 of the Education Code is amended to read:

8279.1. (a) The Legislature recognizes that child care programs have made valuable contributions towards ensuring that public assistance recipients will be able to accept and maintain employment or employment-related training. Therefore, it is the intent of the Legislature that the Superintendent ensure that counties comply with the requirements of Section 8279.

(b) The Superintendent shall ensure each county's compliance with Section 8279 by not issuing funds to a local child care contractor within a county until the Superintendent has received written certification from that county that the level of expenditure for child care services provided by the county has been maintained at the 1970–71 fiscal year level pursuant to Section 8279. Funding provided by a county to a local child care contractor shall not adversely affect the reimbursement received by the agency from the Superintendent pursuant to Section 8265, 8265.5, or 8266.

SEC. 8. Section 8451 of the Education Code is repealed.

SEC. 9. Section 17072.11 of the Education Code is amended to read:

17072.11. (a) All of the following shall apply on and after July 1, 2006:

(1) The per-unhoused-pupil grant eligibility determined under paragraphs (1) and (2) of subdivision (a) of Section 17072.10 shall be increased by 7 percent.

(2) The per-unhoused-pupil grant eligibility determined under paragraph (3) of subdivision (a) of Section 17072.10 shall be increased by 4 percent.

(3) The board shall conduct an analysis of the relationship between the per-unhoused-pupil grant eligibility determined under this article and the per-pupil cost of new school construction for elementary, middle, and high school pupils.

(b) On or after January 1, 2008, the board shall increase or decrease the per-unhoused-pupil grant eligibility determined pursuant to subdivision (a) by amounts it deems necessary to cause the grants to correspond to costs of new school construction, provided that the increase in any fiscal year pursuant to this section shall not exceed 6 percent.

SEC. 10. Section 17608 of the Education Code is amended to read:

17608. This article and Article 17 (commencing with Section 13180) of Chapter 2 of Division 7 of the Food and Agricultural Code shall be known and cited as the Healthy Schools Act of 2000.

SEC. 11. Section 18444 of the Education Code is amended to read:

18444. Within 30 days after the members of the commission are first appointed, and whenever vacancies in an office occur and are filled, the commission shall meet and organize as a commission, electing a president and a secretary from their number, after which they may transact business. The commission shall meet at a time and place that the commission determines by resolution. Regular and special meetings shall be called and conducted as prescribed in Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 12. Section 18830 of the Education Code is amended to read:

18830. (a) Libraries in public library jurisdictions that are members of a regional library network and libraries in institutions that are members of a regional library network are eligible to receive services under this chapter and to become participating libraries. The board of governance or the appropriate administrative authority for each academic library, public library, school library, and special library that decides to join a regional library network shall take official action to approve network membership. That local governing agency or appropriate administrative authority shall agree not to reduce funding for library services as a result of network participation. Each public library jurisdiction, school district, university or college, and institution or corporation, or agency or branch thereof, may become a member of a regional library network. A public library jurisdiction not a member of the California Library Service Act public library system on the effective date of this section, and an institution, shall have at least one library that agrees to be a participating library and meets the following eligibility standards:

(1) A written explicit mission statement and service objectives.

(2) A fixed location in California.

(3) Established hours of service.

(4) An organized collection of information and materials accessible for use by its primary clientele.

(5) Designated, onsite, paid staff for library services. At least one staff person shall have a master's degree in library or information science or a California library media teacher or teacher librarian credential issued by the Commission on Teacher Credentialing, but equivalent graduate education or demonstrated professional experience may be substituted for this requirement. The eligibility determination will be made by the regional library network.

(6) An established funding base.

(b) Participating libraries must agree to all of the following:

(1) To share resources and services with other members of the regional library network.

(2) To provide resources and services for other members of the regional library network.

(3) To meet the minimum resource-sharing performance standards of the regional library network.

(c) Participating libraries may not obtain services provided under this act on behalf of nonparticipating libraries. No membership fees or service fees may be assessed for access to services delivered by state funds under this chapter. Regional library networks may provide their members with increased or enhanced services for a fee, at the option of each member.

(d) Library jurisdictions that are members of the California Library Services Act public library systems on the effective date of this section are deemed to meet the eligibility standards in subdivision (a), and shall not be required to certify that they meet these eligibility standards.

SEC. 13. Section 35035 of the Education Code is amended to read:

35035. The superintendent of each school district shall, in addition to other powers and duties granted to or imposed upon him or her:

(a) Be the chief executive officer of the governing board of the district.

(b) Except in a district where the governing board has appointed or designated an employee other than the superintendent, or a deputy, or assistant superintendent, to prepare and submit a budget, prepare and submit to the governing board of the district, at the time it may direct, the budget of the district for the next ensuing school year, and revise and take other action in connection with the budget as the board may desire.

(c) Subject to the approval of the governing board, assign all employees of the district employed in positions requiring certification qualifications, to the positions in which they are to serve. This power to assign includes the power to transfer a teacher from one school to another school at which the teacher is certificated to serve within the district when the superintendent concludes that the transfer is in the best interest of the district.

(d) Upon adoption, by the district board, of a district policy concerning transfers of teachers from one school to another school within the district, have authority to transfer teachers consistent with that policy.

(e) Determine that each employee of the district in a position requiring certification qualifications has a valid certificated document registered as required by law authorizing him or her to serve in the position to which he or she is assigned.

(f) Enter into contracts for and on behalf of the district pursuant to Section 17604.

(g) Submit financial and budgetary reports to the governing board as required by Section 42130.

SEC. 14. Section 41544 is added to the Education Code, to read:

41544. (a) For a basic aid district that was entitled to reimbursement pursuant to Section 42247.4, as that section read on January 1, 2001, and that received an apportionment pursuant to subdivision (h) of Section 42247.4, as that section read on January 1, 2001, because a court order directs pupils to transfer to that district as part of the court-ordered voluntary pupil transfer program, the Superintendent, commencing with the 2001–02 fiscal year, shall calculate an apportionment of state funds for that basic aid district that provides 70 percent of the school district revenue limit calculated pursuant to Section 42238 that would have been apportioned to the school district from which the pupils were transferred for the average daily attendance of any pupils credited under that court order who did not attend the basic aid school district before the 1995–96 fiscal year.

(b) For purposes of this section, "basic aid district" means a school district that does not receive from the state, for any fiscal year in which this section is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

SEC. 15. 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 monitor and review school district certificated employee assignment practices in accordance with the following:

(A) Annually monitor and review schools and school districts that are likely to have problems with teacher misassignments and teacher vacancies, as defined in subparagraphs (A) and (B) of paragraph (5) of subdivision (b) of Section 33126, based on past experience or other available information.

(B) Annually monitor and review schools ranked in deciles 1 to 3, inclusive, of the base Academic Performance Index, as specified in paragraph (2) of subdivision (c) of Section 1240, if those schools are not currently under review through a state or federal intervention program. If a review completed pursuant to this subparagraph finds that a school has no teacher misassignments or teacher vacancies for two consecutive years, the next review of that school may be conducted according to the cycle specified in subparagraph (C), unless the school meets the criteria of subparagraph (A).

(C) All other schools on a four-year cycle.

(2) Each county superintendent of schools shall investigate school and district efforts to ensure that a 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 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) (A) Information on certificated employee assignment practices in schools ranked in deciles 1 to 3, inclusive, of the base Academic Performance Index, as specified in paragraph (2) of subdivision (c) of Section 1240, 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.

(B) This paragraph shall not relieve a school district from compliance with state and federal law regarding teachers of English learners or be construed to alter the definition of "misassignment" in subparagraph (B) of paragraph (5) of subdivision (b) of Section 33126.

(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 that 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 credentialholders.

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, a certificated person who is required by an administrative superior to accept an assignment for which he or she has no legal authorization, after exhausting existing local remedies, shall notify the county superintendent of schools in writing of the illegal assignment. The county superintendent of schools, within 15 working days, shall 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 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 school district superintendent, a 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 the 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 that 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 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 also may 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, as defined in subparagraphs (A) and (B) of paragraph (5) of subdivision (b) of Section 33126.

(3) The need, if any, to assist schools ranked in deciles 1 to 3, inclusive, of the base Academic Performance Index, as defined in paragraph (2) of subdivision (c) of Section 1240, to eliminate vacancies and misassignments.

SEC. 16. Section 44269 of the Education Code is amended to read:

44269. The commission may issue a services credential authorizing service as a library media teacher upon completion of specialized preparation as required by the commission.

The standards for these credentials are a baccalaureate degree or higher degree from an institution approved by the commission, a valid teaching credential, and specialized and professional preparation as the commission may require.

Whenever the term “librarian” or “library media teacher” is used in this article, it shall be deemed to refer to “teacher librarian.”

SEC. 17. Section 44270 of the Education Code is amended to read:

44270. (a) The minimum requirements for the preliminary services credential with a specialization in administrative services are all of the following:

(1) Possession of one of the following:

(A) A valid teaching credential requiring the possession of a baccalaureate degree and a professional preparation program including student teaching.

(B) A valid designated subjects vocational education, adult, or special subjects teaching credential, as specified in Section 44260, 44260.1, 44260.2, 44260.3, or 44260.4, provided the candidate also possesses a baccalaureate degree.

(C) A valid services credential with a specialization in pupil personnel, health, or clinical or rehabilitative services, as specified in Section 44266, 44267, 44267.5, or 44268, or a valid services credential authorizing service as a teacher librarian, as specified in Section 44269.

(D) A valid credential issued under the laws, rules, and regulations in effect on or before December 31, 1971, which authorizes the same areas as in subparagraphs (B) and (C).

(2) Completion of a minimum of three years of successful, full-time classroom teaching experience in the public schools, including, but not limited to, service in state- or county-operated schools, or in private schools of equivalent status or three years of experience in the fields of pupil personnel, health, clinical or rehabilitative, or librarian services.

(3) Completion of an entry level program of specialized and professional preparation in administrative services approved by the commission or a one-year internship in a program of supervised training in administrative services, approved by the commission as satisfying the requirements for the preliminary services credential with a specialization in administrative services.

(4) Current employment in an administrative position after completion of professional preparation as defined in paragraph (3), whether full or part time, in a public school or private school of equivalent status. The commission shall encourage school districts to consider the recency of preparation or professional growth in school administration as one of the criteria for employment.

(b) The preliminary administrative services credential shall be valid for a period of five years from the date of initial employment in an administrative position, whether full or part time, and shall not be renewable.

(c) A candidate who completed, by September 30, 1984, the requirements for the administrative services credential in effect on June 30, 1982, is eligible for the credential authorized under those requirements. All other candidates shall satisfy the requirements set forth in this section.

SEC. 18. Section 44300 of the Education Code is amended to read:

44300. (a) Commencing January 1, 1990, the commission may issue or renew emergency teaching or specialist permits in accordance with regulations adopted by the commission corresponding to the credential types specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 44225, provided that all of the following conditions are met:

(1) The applicant possesses a baccalaureate degree conferred by a regionally accredited institution of higher education and has fulfilled the subject matter requirements of Section 44301.

(2) The applicant passes the state basic skills proficiency test as provided for in Section 44252.

(3) The commission approves the justification for the emergency permit submitted by the school district in which the applicant is to be employed. The justification shall include all of the following:

(A) Annual documentation that the district has implemented in policy and practices a process for conducting a diligent search that shall include, but is not limited to, distributing job announcements, contacting college and university placement centers, advertising in local newspapers, exploring the incentives included in the Teaching As A Priority Block Grant established pursuant to Section 44735, participating in the state and regional recruitment centers established pursuant to Sections 44751, as it read prior to May 5, 2003, and 90530, and participating in job fairs in this state, but has been unable to recruit a sufficient number of certificated teachers, including teacher candidates pursuing full certification through internship, district internship, or other alternative routes established by the commission.

(B) A declaration of need for fully qualified educators based on the documentation set forth in subparagraph (A) and made in the form of a motion adopted by the governing board of the district or the county board of education at a regularly scheduled meeting of the governing board or the county board of education. The motion may not be part of the consent agenda and shall be entered in the minutes of the meeting.

(b) The commission may deny a request for an emergency permit that does not meet the justification set forth in subparagraph (A) of paragraph (3) of subdivision (a).

(c) It is the intent of the Legislature that the commission continue to issue emergency teaching permits to individuals employed by school districts defined in regulations as remote from regionally accredited institutions of higher education.

(d) The commission may issue and reissue emergency permits corresponding to the credential types specified in paragraph (4) of subdivision (b) of Section 44225. The commission shall establish appropriate standards for each type of emergency permit specified in paragraph (4) of subdivision (b) of Section 44225.

(e) The exclusive representative of certificated employees, if any, as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, may submit a written statement to the commission agreeing or disagreeing with the justification submitted to the commission pursuant to paragraph (3) of subdivision (a).

(f) A person holding an emergency teaching or specialist permit shall attend an orientation to the curriculum and to techniques of instruction and classroom management, and shall teach only with the assistance and guidance of a certificated employee of the district who has completed at least three years of full-time teaching experience, or the equivalent thereof. It is the intent of the Legislature to encourage districts to provide directed teaching experience to new emergency permitholders with no prior teaching experience.

(g) The holder of an emergency permit shall participate in ongoing training, coursework, or seminars designed to prepare the individual to become a fully credentialed teacher or other educator in the subject area or areas in which he or she is assigned to teach or serve. The employing agency shall verify that employees applying to renew their emergency permits are meeting these ongoing training requirements.

(h) Emergency permits for pupil personnel services shall not be valid for the purpose of determining pupil eligibility for placement in a special education class or program.

(i) This section shall not apply to the issuance of an emergency substitute teaching permit, or of an emergency permit to a teacher who has consented to teach temporarily outside of his or her field of certification, for which the commission shall establish minimum requirements.

SEC. 19. Section 44302 of the Education Code is amended to read:

44302. The Commission on Teacher Credentialing regularly shall notify local educational agencies of the various provisions in current law that allow the assignment of personnel when a fully qualified teacher is not available and a substitute has served for the maximum days permitted by law, including emergency permits under Section 44300, long-term and short-term waivers under subdivision (m) of Section 44225, and intern permits under Sections 44235, 44250, and 44464. When fulfilling the notification requirements of this section, the commission shall utilize a variety of approaches, including, but not limited to, correspondence, annual workshops for credential analysts, a credential handbook, a waiver handbook, the commission website, and special telephone, fax, and e-mail lines for school districts and county offices of education. Additionally, the commission shall provide local

educational agencies with information about waiver requests including specific timelines, key steps, and appeal rights.

SEC. 20. Article 5.6 (commencing with Section 44305) of Chapter 2 of Part 25 of Division 3 of Title 2 of the Education Code is repealed.

SEC. 21. Section 44386 of the Education Code is amended to read:

44386. (a) From funds appropriated for the purposes of this article, the Commission on Teacher Credentialing shall award incentive grants to qualifying school districts or county offices of education. Each school district or county office of education that receives a grant shall provide matching funds from available sources in an amount equal to 50 percent of the cost of the alternative certification program. Grants shall be awarded by the commission for the remaining 50 percent of the cost of the alternative certification program, but in no event shall the grant amount awarded to a school district or county office of education exceed two thousand five hundred dollars ($2,500) per intern per year, except that the commission may require a lesser local contribution, or provide a larger grant per intern per year, in hardship cases.

(b) Participants in a district intern program conducted pursuant to Article 7.5 (commencing with Section 44325) or in an intern program conducted pursuant to Article 3 (commencing with Section 44450) of Chapter 3, who have received a preliminary credential and who are receiving funding for participating in an induction program pursuant to Article 4.5 (commencing with Section 44279.1) are not eligible for funding under this section.

SEC. 22. Section 44506 of the Education Code is amended to read:

44506. (a) The state funding for this article subsequent to the 1999–2000 fiscal year is subject to an appropriation in the annual Budget Act.

(b) A school district that receives funds for purposes of this article also may expend those funds for any of the following purposes:

(1) The Marian Bergeson Beginning Teacher Support and Assessment System as set forth in Article 4.5 (commencing with Section 44279.1) of Chapter 2.

(2) A district intern program as set forth in Article 7.5 (commencing with Section 44325) of Chapter 2.

(3) Professional development or other educational activities previously provided pursuant to Article 4 (commencing with Section 44490) of Chapter 3, as it read prior to January 1, 2002.

(4) A program that supports the training and development of new teachers.

(c) (1) The Superintendent shall determine a base funding unit rate for the California Peer Assistance and Review Program for Teachers that is equal to the total amount provided for the California Mentor

Teacher Program in subdivision (b) of Section 6 of Chapter 4 of the Statutes of 1999 for the First Extraordinary Session, divided by the total number of mentor teachers that the state calculated the school district is entitled to in the 1999–2000 fiscal year.

(2) The Superintendent annually shall apportion to each school district that certified implementation of the Peer Assistance and Review Program for Teachers pursuant to subdivision (b) of Section 44505, an amount equal to 5 percent of the prior year count of certificated classroom teachers employed by the school district, multiplied by a rate that equals the sum of (i) the base amount per funding unit as calculated in paragraph (1) of subdivision (c), adjusted annually pursuant to subdivision (b) of Section 42238.1, and (ii) two thousand eight hundred dollars ($2,800); adjusted annually pursuant to subdivision (b) of Section 42238.1.

(3) The Superintendent annually shall apportion to each school district that certified implementation of a Peer Assistance and Review Program for Teachers pursuant to subdivision (d) of Section 44505, an amount equal to 5 percent of the prior year count of certificated classroom teachers employed by the school district, multiplied by a rate which equals the sum of (i) the base amount per funding unit as calculated in paragraph (1) of subdivision (c), adjusted annually pursuant to subdivision (b) of Section 42238.1, and (ii) the per mentor teacher unit amount provided to the district pursuant to subdivision (c) of Section 44505, adjusted annually pursuant to subdivision (b) of Section 42238.1.

(4) In paragraphs (2) and (3), 5 percent of the certificated classroom teachers employed by the district shall be rounded to the next whole integer.

(5) If at the end of a fiscal year, an amount of funds available for purposes of the Peer Assistance and Review Program remain unallocated, the Superintendent shall use the unallocated amount to increase the base funding rate calculated under paragraph (1) for the succeeding fiscal year.

SEC. 23. Section 44868 of the Education Code is amended to read:

44868. No person shall be employed as a teacher librarian in an elementary or secondary school, unless he or she holds a valid credential of proper grade authorizing service as a teacher librarian or a valid teaching credential issued by the Commission on Teacher Credentialing if he or she has completed the specialized area of librarianship.

SEC. 24. Section 44869 of the Education Code is amended to read:

44869. A teacher librarian, when employed full time as a teacher librarian or serving full time, partly as a teacher librarian and partly as a teacher, shall rank as a teacher.

SEC. 25. Section 48900 of the Education Code is amended to read:

48900. A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of subdivisions (a) to (q), inclusive:

(a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person.

(2) Willfully used force or violence upon the person of another, except in self-defense.

(b) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object, unless, in the case of possession of an object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(*l*) Knowingly received stolen school property or private property.

(m) Possessed an imitation firearm. As used in this section, "imitation firearm" means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.

(p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.

(q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, "hazing" means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, "hazing" does not include athletic events or school-sanctioned events.

(r) A pupil shall not be suspended or expelled for any of the acts enumerated in this section, unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school sponsored activity.

(s) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(t) As used in this section, "school property" includes, but is not limited to, electronic files and databases.

(u) A superintendent or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this section.

(v) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

SEC. 26. Section 49430.7 of the Education Code is amended to read:

49430.7. (a) For purposes of this section, the following terms have the following meanings:

(1) "School" means a school operated and maintained by a school district or county office of education, or a charter school.

(2) "School district" means a school district, charter school, or county office of education.

(3) "Child development program" means a program operated pursuant to Chapter 2 (commencing with Section 8200) of Part 6.

(b) As a condition of receipt of funds pursuant to Section 49430.5, commencing with the 2007–08 fiscal year, for meals and food items sold as part of the free and reduced-price meal programs, a school or school district shall comply with all of the following requirements and prohibitions:

(1) Follow the United States Department of Agriculture (USDA) nutritional guidelines or the menu planning options of Shaping Health as Partners in Education developed by the state (SHAPE California network).

(2) Not sell or serve a food item that has in any way been deep fried, par fried, or flash fried by a school or school district.

(3) Not sell or serve a food item containing artificial trans fat. A food item contains artificial trans fat if it contains vegetable shortening, margarine, or any kind of hydrogenated or partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 gram per serving.

(4) Not sell or serve a food item that, as part of the manufacturing process, has been deep fried, par fried, or flash fried in an oil or fat that is prohibited by this paragraph. Oils and fats prohibited by this paragraph include, but are not limited to, palm, coconut, palm kernel, lard, typically solid at room temperature and are known to negatively impact cardiovascular health. Oils permitted by this paragraph include, but are not limited to, canola, safflower, sunflower, corn, olive, soybean, peanut, or a blend of these oils, typically liquid at room temperature and are known for their positive cardiovascular benefit.

(c) Commencing with the 2007–08 fiscal year, for meals and food items sold as part of the free and reduced-price meal programs, a child development program is encouraged to comply with all of the following guidelines:

(1) Meet developmentally and programmatically appropriate meal pattern and meal planning requirements developed by the USDA or menu planning options of Shaping Health as Partners in Education developed by the state (SHAPE California network).

(2) Not sell or serve a food item that has in any way been deep fried, par fried, or flash fried by a school, school district, or child development program.

(3) Not sell or serve a food item containing artificial trans fat. A food item contains artificial trans fat if it contains vegetable shortening, margarine, or any kind of hydrogenated or partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 gram per serving.

(4) Not sell or serve a food item that, as part of the manufacturing process, has been deep fried, par fried, or flash fried in an oil or fat prohibited by this paragraph. Oils and fats prohibited by this paragraph include, but are not limited to, palm, coconut, palm kernel, lard, typically solid at room temperature and are known to negatively impact cardiovascular health. Oils permitted by this provision include, but are not limited to, canola, safflower, sunflower, corn, olive, soybean, peanut, or a blend of these oils, typically liquid at room temperature and are known for their positive cardiovascular benefit.

(d) The prohibitions and requirements of this section regarding food items sold or served by a school or school district apply to raw bulk USDA commodity foods ordered by schools or school districts and sent to commercial processors for conversion into ready to use end products, but do not apply to other USDA commodity foods until the scheduled 2009 reauthorization of the USDA National School Lunch Program is complete or ingredient and nutrition information is available for all USDA commodity foods, whichever is earlier.

(e) As a condition of receipt of funds pursuant to Section 49430.5, no later than June 30, 2008, schools and school districts shall provide the department with a one-time certification of compliance with the provisions of this section.

(f) This section shall become operative only upon an appropriation for its purposes in the annual Budget Act or another statute.

SEC. 27. Section 49452.8 of the Education Code is amended to read:

49452.8. (a) A pupil, while enrolled in kindergarten in a public school, or while enrolled in first grade in a public school if the pupil was

not previously enrolled in kindergarten in a public school, no later than May 31 of the school year, shall present proof of having received an oral health assessment by a licensed dentist, or other licensed or registered dental health professional operating within his or her scope of practice, that was performed no earlier than 12 months prior to the date of the initial enrollment of the pupil.

(b) The parent or legal guardian of a pupil may be excused from complying with subdivision (a) by indicating on the form described in subdivision (d) that the oral health assessment could not be completed because of one or more of the reasons provided in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (d).

(c) A public school shall notify the parent or legal guardian of a pupil described in subdivision (a) concerning the assessment requirement. The notification, at a minimum, shall consist of a letter that includes all of the following:

(1) An explanation of the administrative requirements of this section.

(2) Information on the importance of primary teeth.

(3) Information on the importance of oral health to overall health and to learning.

(4) A toll-free telephone number to request an application for Healthy Families, Medi-Cal, or other government-subsidized health insurance programs.

(5) Contact information for county public health departments.

(6) A statement of privacy applicable under state and federal laws and regulations.

(d) In order to ensure uniform data collection, the department, in consultation with interested persons, shall develop and make available on the Internet Web site of the department, a standardized notification form as specified in subdivision (c) that shall be used by each school district. The standardized form shall include all of the following:

(1) A section that can be used by the licensed dentist or other licensed or registered dental health professional performing the assessment to record information that is consistent with the information collected on the oral health assessment form developed by the Association of State and Territorial Dental Directors.

(2) A section in which the parent or legal guardian of a pupil can indicate the reason why an assessment could not be completed by marking the box next to the appropriate reason. The reasons for not completing an assessment shall include all of the following:

(A) Completion of an assessment poses an undue financial burden on the parent or legal guardian.

(B) Lack of access by the parent or legal guardian to a licensed dentist or other licensed or registered dental health professional.

(C) The parent or legal guardian does not consent to an assessment.

(e) Upon receiving completed assessments, all school districts, by December 31 of each year, shall submit a report to the county office of education of the county in which the school district is located. The report shall include all of the following:

(1) The total number of pupils in the district, by school, who are subject to the requirement to present proof of having received an oral health assessment pursuant to subdivision (a).

(2) The total number of pupils described in paragraph (1) who present proof of an assessment.

(3) The total number of pupils described in paragraph (1) who could not complete an assessment due to financial burden.

(4) The total number of pupils described in paragraph (1) who could not complete an assessment due to lack of access to a licensed dentist or other licensed or registered dental health professional.

(5) The total number of pupils described in paragraph (1) who could not complete an assessment because their parents or legal guardians did not consent to their child receiving the assessment.

(6) The total number of pupils described in paragraph (1) who are assessed and found to have untreated decay.

(7) The total number of pupils described in paragraph (1) who did not return either the assessment form or the waiver request to the school.

(f) Each county office of education shall maintain the data described in subdivision (e) in a manner that allows the county office to release it upon request.

(g) This section does not prohibit any of the following:

(1) County offices of education from sharing aggregate data collected pursuant to this section with other governmental agencies, philanthropic organizations, or other nonprofit organizations for the purpose of data analysis.

(2) Use of assessment data that is compliant with the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) for purposes of conducting research and analysis on the oral health status of public school pupils in California.

(h) This section does not preclude a school district or county office of education from developing a schoolsite-based oral health assessment program to meet the requirements of this section.

(i) The Office of Oral Health of the Chronic Disease Control Branch of the State Department of Public Health shall conduct an evaluation of the requirements imposed by this section and prepare and submit a report to the Legislature by January 1, 2010, that discusses improvements in the oral health of children resulting from the imposition of those requirements. The Office of Oral Health may receive private funds and

contract with the University of California to fulfill the duties described in this subdivision.

(j) Funds appropriated in the annual Budget Act for the activities required by this section shall first be used to offset reimbursement provided to local educational agencies pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for state-mandated costs imposed by this section.

SEC. 28. 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 during 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, at a minimum, are 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 as required by law.

(B) Each significant subgroup at the school will demonstrate increased achievement based on Academic Performance Index (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 described 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, 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 content and performance 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 teacher librarian 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 independent reading levels of pupils, and assure that pupils read a variety of genres across all academic content areas. For purposes of this article, "teacher librarian" means a classroom

teacher who possesses or is in the process of obtaining a teacher librarian 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 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 99220) 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 described 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, in its action plan, may 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, teacher librarians, 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, 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.

(h) Participants under subdivision (d) of Section 52055.600 shall develop a series of schoolwide systemic support activities that provide pupils with the opportunity to meet the same state and local standards in core academic areas expected of all other pupils. Participating schools shall provide enrichment activities designed to improve pupil academic achievement and performance; improve life skill accomplishments; transition to a regular program of instruction or higher education, or both; access vocational training; or obtain employment. Individual pilot grant plans and systemic support activities shall comport with the statutory and regulatory requirements of each respective program.

SEC. 29. Section 52302 of the Education Code is amended to read:

52302. (a) On or before July 1, 2010, the governing board of each regional occupational center or program shall ensure that at least 90 percent of all state-funded courses offered by the center or program, in occupational areas in which both the program or center and the community college offer instruction, are part of occupational course sequences that target comprehensive skills. Each occupational sequence shall do all of the following:

(1) Result in an occupational skill certificate developed in cooperation with the appropriate employer advisory board created under Section 52302.2.

(2) Provide prerequisite courses that are needed to enter apprenticeship, or postsecondary vocational certificate or degree programs. Where possible, sequenced courses shall be linked to certificate and degree programs in the region.

(3) Focus on occupations requiring comprehensive skills leading to high entry-level wages or the possibility of significant wage increases after a few years on the job, or both.

(4) Offer as many courses as possible that have been approved by the University of California as courses meeting the "A-G" admissions requirements.

(b) (1) On or before July 1, 2008, the governing board of each regional occupational center or program shall develop a plan for establishing sequences of courses, and certify to the department, that those sequences have been developed, as described in subdivision (a). The board shall consult with the superintendents of the school districts served by the center or program and presidents of community colleges in the area during the development of the plan.

(2) The plan shall be presented at a public hearing by the governing board of each school district served by the regional occupational center or program and by the county board of education.

(3) Community college boards with identified articulated programs shall also review the plans in a public session.

(4) In developing the plan, each regional occupational program or center shall consult with school districts and community college districts located within the region served by the program or center and with the relevant occupational advisers and local workforce investment board to ensure the plan meets the vocational education needs of high school pupils in the region by providing sequences of courses that begin with middle or high school introductory courses, including, but not limited to, occupational skill courses provided by high schools or regional occupational programs or centers.

(5) The plan shall maximize the use of local, state, and federal resources in helping high school pupils enter comprehensive skill occupations, or apprenticeship programs, or continue education in college, or all of these, after graduating from high school.

(6) The plan shall include strategies for filling gaps in courses or other services needed to make the sequences effective in meeting the needs of pupils in developing skills and attending community college upon graduation from high school.

(7) Each center or program shall submit a copy of the approved plan to the appropriate community college or colleges in the region and the Superintendent on or before July 1, 2008. Every four years after this date, each center and program shall submit an update to the plan to the local community college or colleges and the Superintendent.

(c) As a condition of receiving federal funds provided under the Carl D. Perkins Vocational and Applied Technology Education Act of 1998 (20 U.S.C. Sec. 2301 et seq.), or any successor thereof, and to the extent permitted by federal law, school districts, regional occupational centers or programs, and community college districts shall do all of the following:

(1) Develop course sequences that meet the requirements of this section according to the schedule set forth in this paragraph.

(A) On or before July 1, 2008, school districts, regional occupational centers or programs, and community college districts shall have adopted an approved plan as required under this section.

(B) On or before July 1, 2009, school districts, regional occupational centers or programs, and community college districts shall have established course sequences as required under this section that include at least one-third of the courses offered by the regional occupational center or program in occupational areas in which both the program or center and the community college offer instruction.

(C) On or before July 1, 2010, school districts, regional occupational centers or programs, and community college districts shall have established course sequences as required under this section that include at least two-thirds of the courses offered by the regional occupational center or program in occupational areas in which both the program or center and the community college offer instruction.

(2) Provide pupils who are participating in vocational sequences with information and experiences designed to increase their postgraduation work and school options, including, but not limited to, all of the following:

(A) Information about the admissions requirements of the University of California and California State University.

(B) Information about the placement requirements of the local community college or colleges.

(C) Information about higher education options related to the interests of the pupil.

(D) Encourage visits to local colleges and universities offering programs that allow pupils to gain additional skills and degrees in related occupations.

(E) Information and referrals to employers for internships, summer employment opportunities, and employment after graduation from high school.

(3) School districts, regional occupational centers or programs, and community college districts that do not develop course sequences on or before the dates established under this subdivision, and have not received a waiver under subdivision (d), shall enter into a corrective action plan with the department and shall meet any timelines established by the Superintendent.

(d) (1) The department, with the assistance of the Office of the Chancellor of the California Community Colleges, shall meet with each program or center and the community college or colleges in the region no later than the 2009–10 fiscal year to validate that course sequences meeting the requirements of this section have been developed. These meetings shall be conducted using the existing resources of the department and shall be consistent with the standards developed pursuant to Section 51226.

(2) The department and the office of the chancellor shall provide technical assistance to programs or centers and community colleges that have developed articulated sequences for less than half of the courses offered by the program or center.

(3) The Superintendent may waive the requirements of subdivision (a) for programs or centers and community colleges located in rural areas of the state if the Superintendent finds that development of sequences is infeasible because of the distance, travel time, or safety between the center or program and the community college.

SEC. 30. Section 52302.2 of the Education Code is amended to read:

52302.2. (a) The governing board of each regional occupational center or program shall establish and maintain an employer advisory board or boards pursuant to guidelines developed by the department. The advisory board shall do all of the following:

(1) Assist in the development of skill certificates that identify the skills and knowledge that pupils completing an occupational course sequence are expected to acquire upon completing the sequence. The advisory board also shall approve the measures and criteria, and methods to evaluate whether pupils actually acquired the identified skills and knowledge.

(2) Review at least once a year whether pupils who are assessed as having met the requirements for a skill certificate possess the skills needed for success in employment in that occupation.

(3) Review the specific occupational sequences offered by the regional occupational center or program to train pupils for jobs that are in demand and offer high beginning salaries or the potential for significant wage increase after several years on the job.

(4) Assist the regional occupational center or program in developing internships, paid summer employment, and postgraduation employment opportunities for pupils participating in the course sequences.

(5) Assist the regional occupational center or program in creating college scholarships for pupils participating in the course sequences.

(b) Employer advisory boards shall be composed of representatives of trade organizations and businesses or government agencies that hire a significant number of employees each year and require the skills and knowledge that are taught in the course sequence or sequences in that occupational area, as well as at least one representative from a school district career technical educational advisory committee. The department shall develop regulations guiding the establishment of these boards.

(c) Regional occupational centers or programs operated in a rural county of the sixth, seventh, or eighth class may designate a local business or industry organization as the advisory board and consult with the leadership of the local business or industry organization to determine skill needs in the region and emerging job market needs. For purposes of this section, the local business organization may be designated as the advisory board for the regional occupational center or program.

SEC. 31. Section 52321 of the Education Code is amended to read:

52321. (a) (1) A regional occupational center or program established and maintained by school districts or joint powers agencies pursuant to Section 52301 shall receive in annual operating funds from each of the participating school districts an amount per unit of average daily attendance equal to the revenue limit received by those districts for each unit of average daily attendance generated in the regional occupational center or program.

(2) A regional occupational center or program established and maintained by a county superintendent of schools pursuant to Section 52301 shall receive funding pursuant to Section 2550. A county superintendent of schools shall report average daily attendance to the Superintendent for that funding.

(b) A regional occupational center or program is authorized to budget and accumulate an amount necessary to meet the cashflow needs of the regional occupational center or program known as a general reserve, and is authorized also to budget and accumulate amounts known as the designated fund balance and as the unappropriated fund balance. Alternatively, a center or program may budget and accumulate amounts necessary to meet its long-term program needs in a separate account known as the capital outlay and equipment replacement reserve account, and this account shall be part of the designated fund balance. At the end of each school year, the ending balance in the regional occupational center or program account may be distributed to any of the general

reserve, designated fund balance, and unappropriated fund balance accounts, provided that the combined total distributed does not exceed 15 percent of the expenditures for the current school year.

(1) The general reserve, the designated fund balance, including the capital outlay and equipment replacement reserve account, and the unappropriated fund balance shall be available for appropriation only after approval by a majority vote of the governing body of the regional occupational center or program.

(2) Funds of a regional occupational center or program shall be distributed to the capital outlay and equipment replacement reserve account only upon adoption by the governing board of a resolution specifying the general use to which each appropriation from the account would be put.

(c) (1) At the end of each school year, the combined ending balances of the general reserve, the designated fund balance, except the capital outlay and equipment replacement reserve account, and the unappropriated fund balance shall not exceed 15 percent of the expenditures for the current fiscal year.

(2) A regional occupational center or program may accumulate, over a period of two or more school years, an ending balance in the capital outlay and equipment replacement reserve account of more than 15 percent of the expenditures for the current fiscal year, under provisions of a resolution of the governing board pursuant to paragraph (2) of subdivision (b).

(d) Funds placed in either the general reserve, the designated fund balance, including the capital outlay and equipment replacement reserve account, or the unappropriated fund balance shall be expended only for regional occupational center or program educational purposes.

(e) The Superintendent shall require an annual certification by school districts, county superintendents of schools, and joint powers agencies commencing in the 2007–08 fiscal year that the regional occupational center or program funds have been expended as provided in this section. The Superintendent shall withhold from the apportionment of a subsequent fiscal year, any ending fund balance in excess of 15 percent of the expenditures for the year, except those funds specifically set aside by the governing board in the capital outlay and equipment replacement reserve account.

SEC. 32. Section 52325 is added to the Education Code, to read:

52325. A day of attendance for pupils enrolled in a regional occupational center or program is 180 minutes of attendance.

SEC. 33. Section 52379 of the Education Code is amended to read:

52379. (a) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be allocated to school districts based on

an equal amount per pupil enrolled in the district in the prior fiscal year, based on the fall California Basic Educational Data System (CBEDS) enrollment data, in grades 7 to 12, inclusive, with the following minimum-grant exceptions:

(1) Five thousand dollars ($5,000) for each schoolsite that has 100 or fewer pupils enrolled in any of grades 7 to 12, inclusive.

(2) Ten thousand dollars ($10,000) for each schoolsite that has at least 101, but not more than 200, pupils enrolled in any of grades 7 to 12, inclusive.

(3) Thirty thousand dollars ($30,000) or an amount per pupil enrolled, whichever is greater, for each schoolsite with more than 200 pupils enrolled in any of grades 7 to 12, inclusive.

(b) Funds allocated pursuant to this section shall supplement, and not supplant, expenditures made by a school district for school counseling programs.

(c) For purposes of this section, a charter school is not eligible to receive a minimum grant but instead shall receive an amount per pupil enrolled in grades 7 to 12, inclusive.

(d) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be used to provide supplemental counseling services delivered by personnel who hold a valid pupil personnel services credential.

SEC. 34. Section 54022 of the Education Code is amended to read:

54022. For the 2006–07 fiscal year and each fiscal year thereafter, each school district shall receive the amount of economic impact aid determined by the Superintendent pursuant to subdivision (b) or (c), whichever is greater, calculated for each school district according to all of the following:

(a) Increase the prior fiscal year economic impact aid per pupil amount by the percentage change specified in paragraph (2) of subdivision (b) of Section 42238.1 for the current fiscal year.

(b) Multiply the economic impact aid per pupil amount for the current fiscal year calculated in subdivision (a) by the economic impact aid-eligible pupil count for the current fiscal year as calculated in Section 54023.

(c) A school district shall, at a minimum, receive funds based on the number of economic impact aid-eligible pupils according to the following schedule:

(1) For the 2006–07 fiscal year, according to the following table:

Number of economic impact aid-eligible pupils	Amount
0	None
1–10	$5,500

11 or more..... $8,300

(2) For the 2007–08 fiscal year and each fiscal year thereafter, the minimum amounts for the schedule in paragraph (1) for the prior fiscal year shall be increased by the percentage change specified in paragraph (2) of subdivision (b) of Section 42238.1.

SEC. 35. Section 54023 of the Education Code is amended to read:

54023. For each fiscal year, the economic impact aid-eligible pupil count shall be calculated for each school district as follows:

(a) Determine the count of economically disadvantaged pupils, as defined in Section 54026.

(b) Determine the count of English learners, as defined in subdivision (b) of Section 54026.

(c) Calculate an economic impact aid weighted pupil concentration factor:

(1) Add the pupil counts determined in subdivisions (a) and (b).

(2) Divide the fall CBEDS enrollment for the school district for the prior school year by two.

(3) Subtract from the sum calculated in paragraph (1) the quotient calculated in paragraph (2).

(4) If the result of the calculation in paragraph (3) is greater than zero, multiply that difference by 0.5. If the result is less than zero, it shall be deemed to be zero.

(d) The economic impact aid-eligible pupil count for each school district shall equal the sum of the pupil counts determined in subdivisions (a) and (b), and the weighted pupil concentration factor determined in subdivision (c).

(e) In calculating the economic impact aid-eligible pupil count for a new charter school in its first year of operation, the department shall use CBEDS enrollment counts and counts of English learners reported in the current year instead of the prior year.

SEC. 36. Section 54026 of the Education Code is amended to read:

54026. For purposes of this article, the following definitions apply:

(a) "Economically disadvantaged pupils" means either of the following, whichever is applicable:

(1) Pupils described in Section 101 of Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6333(c)(1)(A)(B)). Counts of the pupils described in this paragraph shall be the counts used in the current year apportionment calculations for purposes of Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(2) (A) Notwithstanding paragraph (1), for a small school district, the product of the number of pupils eligible for participation in the free meals program for the prior fiscal year, as defined in subdivision (d),

and the free meals adjustment factor. The free meals adjustment factor is the quotient, rounded to two decimal places, resulting from dividing the statewide total of economically disadvantaged pupils as defined in paragraph (1) by the statewide total of pupils eligible for participation in the free meals program for the prior fiscal year, as defined in subdivision (d).

(B) Notwithstanding paragraph (1) or subparagraph (A), for charter schools that are funded through the block grant funding model pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8 in the 2006–07 fiscal year, the department shall use counts as of October 2006 of pupils ages 5 to 17 years, inclusive, who are living with families whose annual income is at or below the federal poverty guideline, as collected through the first principal apportionment data collection process, as defined in Section 41601, without revision. Commencing in the 2007–08 fiscal year, the Superintendent shall use counts as of October of the prior year of pupils ages 5 to 17 years, inclusive, who are living with families whose annual income is at or below the federal poverty guideline, as collected through the first principal apportionment data collection process, as defined in Section 41601, without revision. For purposes of this subdivision, the department may use in the first year of operation of a charter school that is established on or after July 1, 2007, the current year counts of pupils ages 5 to 17 years, inclusive, who are living with families whose annual income is at or below the federal poverty guideline.

(C) The Superintendent may expand upon an existing process of collecting free or reduced price meal data in order to collect from small districts, as defined in subdivision (c), counts of pupils living with families whose annual income is at or below the federal poverty guideline.

(b) "English learner" means a pupil described in subdivision (a) of Section 306 or identified as a pupil of limited English proficiency, as that term is defined in subdivision (m) of Section 52163. Counts of the pupils described in this subdivision shall be the counts reported in the prior year language census.

(c) "Small school district" means a school district that has an annual enrollment of less than 600 pupils based on prior school year CBEDS data and is, for the purposes of this section, designated a rural school by the Superintendent based on the appropriate school locale codes, as used by the National Center for Education Statistics of the United States Department of Education.

(d) "Free meals" means the aggregate number of pupils meeting the income eligibility guidelines established by the federal government for

free meals as reported for all schools for which the district is the authorizing agency.

(e) For purposes of subparagraph (B) of paragraph (2) of subdivision (a), the count of economically disadvantaged pupils for a charter school that is operated pursuant to Section 47612.1 shall be calculated without regard to the age of the pupil. A pupil who resides in program housing shall be considered a family of one.

SEC. 37. Section 56351.5 of the Education Code is amended to read:

56351.5. (a) (1) A local educational agency may reinforce braille instruction using a braille instructional aide who meets the criteria set forth in paragraph (2) under the supervision of a teacher who holds an appropriate credential, as determined by the Commission on Teacher Credentialing, to teach pupils who are functionally blind or visually impaired. This instruction shall be in accordance with the individualized education program of the pupil.

(2) For purposes of this section, a braille instructional aide shall demonstrate to the supervising teacher that he or she is fluent in reading and writing grade 2 braille and possesses basic knowledge of the rules of braille construction.

(b) A local educational agency that employs a braille instructional aide shall provide the aide with information regarding teaching credential programs, including the Wildman-Keeley-Solis Exemplary Teacher Training Act of 1997 (Article 12 (commencing with Section 44390) of Chapter 2 of Part 25) and the Teacher Education Internship Act of 1967 (Article 3 (commencing with Section 44450) of Chapter 3 of Part 25).

SEC. 38. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each school district, which may reflect increases or decreases in enrollment, that the district may use for the following purposes:

(1) To purchase instructional materials adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive. A school district may purchase with funds received pursuant to Chapter 3.25 (commencing with Section 60420) instructional materials for the visual and performing arts, foreign language, health, or other curricular area if those materials are adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive, and if the school district certifies that it has provided each pupil with a standards-aligned textbook or basic instructional materials in reading/language arts, mathematics, history/social science, and science.

(2) To purchase, at the discretion of the district, instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the State Board and made available pursuant to Section 60200.

(5) To fund in-service training related to instructional materials.

(6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive.

(b) The state board shall specify the percentage of the allowance of a district that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

(d) (1) A school district that purchases classroom library materials, as a condition of receiving funding pursuant to this article, shall develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

(2) In developing the plan required by paragraph (1), a school district is encouraged to consult with school teacher librarians and primary grade teachers and to consider selections included in the list of recommended books established pursuant to Section 19336. If a school teacher librarian is not employed by the school district, the district is encouraged to consult with a school teacher librarian employed by the local county office of education in developing the plan.

(3) To the extent that a school district or county office of education already has a plan meeting the criteria specified in paragraphs (1) and (2), no new plan is required to establish eligibility.

SEC. 39. Section 60640 of the Education Code, as amended by Section 22 of Chapter 174 of the Statutes of 2007, is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 2004–05 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 3 and 7 the achievement test designated by the state board pursuant to Section 60642 and shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils

at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).

(d) The governing board of the school district may administer achievement tests in grades other than those required by subdivision (b) as it deems appropriate.

(e) Pursuant to Section 1412(a)(17) of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(f) (1) At the option of the school district, pupils with limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivision (a) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable.

(2) Notwithstanding any other law, the state board shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 2 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997–98 fiscal year, as specified in Sections 60642 and 60643, as applicable.

(3) (A) The department shall use funds made available pursuant to Title VI of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and appropriated by the annual Budget Act for the purpose of developing and adopting primary language assessments that are aligned to the state academic content standards. Subject to the availability of funds, primary language assessments shall be developed and adopted for reading/language arts and mathematics in the dominant primary language of limited-English-proficient pupils. The dominant primary language shall be determined by the count in the annual language census of the primary language of each limited-English-proficient pupil enrolled in the California public schools.

(B) Once a dominant primary language assessment is available for use for a specific grade level, it shall be administered in place of the assessment designated pursuant to paragraph (1) for that grade level.

(C) In choosing a contractor to develop a primary language assessment the state board shall consider the criteria for choosing a contractor or test publisher as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.

(D) Subject to the availability of funds, the assessments shall be developed in grade order starting with the lowest grade subject to the STAR Program.

(E) If the state board contracts for the development of primary language assessments or test items to augment an existing assessment, the state shall retain ownership rights to the assessment and the test items. With the approval of the state board, the department may license the test for use in other states subject to a compensation agreement approved by the Department of Finance.

(F) On or before January 1, 2006, the department shall submit to the Legislature a report on the development and implementation of the initial primary language assessments and recommendations on the development and implementation of future assessments and funding requirements.

(g) A pupil identified as limited English proficient pursuant to the administration of a test made available pursuant to Section 60810 who is enrolled in any of grades 2 to 11, inclusive, and who either receives instruction in his or her primary language or has been enrolled in a school in the United States for less than 12 months shall be required to take a test in his or her primary language if a test is available.

(h) (1) The Superintendent shall apportion funds to school districts to enable school districts to meet the requirements of subdivisions (b), (e), (f), and (g).

(2) The state board annually shall establish the amount of funding to be apportioned to school districts for each test administered and annually shall establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the annual Budget Act, and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivisions (b), (e), (f), and (g).

(3) An adjustment to the amount of funding to be apportioned per test shall not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of

Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(i) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (h), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the Superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

(k) The Superintendent and the state board are authorized and encouraged to assist postsecondary educational institutions to use the assessment results of the California Standards Tests, including, but not limited to, the augmented California Standards Tests, for academic credit, placement, or admissions processes.

(*l*) The Superintendent, with the approval of the state board, annually shall release to the public test items from the standards-based achievement tests pursuant to Section 60642.5 administered in previous years. The minimum number of test items released per year shall be equal to 25 percent of the total number of test items on the test administered in the previous year.

(m) This section shall become inoperative on July, 1, 2011.

SEC. 40. Section 99237 of the Education Code is amended to read:

99237. (a) As a condition of receipt of funds for purposes of Section 99234 or 99235, a local educational agency shall submit a certified assurance signed by the appropriate agency official and approved in a public session by the governing body of the agency to the state board that contains its proposal to satisfy the following:

(1) It contracted with a provider whose training curriculum was based upon one of the training models outlined in guidelines and criteria for approval of training providers established by the state board, and was approved by the state board, or the training curriculum of the local educational agency was based upon one of the training models outlined in guidelines and criteria for approval of training providers established by the state board and approved by the state board. Approval by the state board of the training curriculum shall be based on the criteria contained in paragraph (4) and in subdivision (b).

(2) It or the provider with whom it contracted provided professional development training focused primarily on the following:

(A) The mathematics or English language arts content standards adopted by the state board pursuant to Section 60605.

(B) The curriculum frameworks adopted by the state board for mathematics and English language arts.

(C) The use of instructional materials that will be used by pupils and are aligned to the mathematics or English language arts content standards adopted by the state board pursuant to Section 60605.

(D) The training shall include instructional strategies designed to help all pupils gain mastery of the California academic content standards with special emphasis on English language learners and pupils with exceptional needs.

(3) (A) It provides each pupil with instructional materials that are aligned to the state content standards in mathematics and English language arts no later than the first day of the first school term that commences 12 months or less after those materials are adopted by the state board in the case of instructional materials for kindergarten and grades 1 to 8, inclusive, or by the governing board of the school district in the case of instructional materials for grades 9 to 12, inclusive.

(B) For local educational agencies that are piloting or evaluating instructional materials that are aligned to the state content standards in mathematics and English language arts, those materials shall be provided to each pupil no later than the first day of the first school term that commences 24 months or less after those materials were adopted by the state board in the case of instructional materials for grades 1 to 8, inclusive, or by the governing board of the school district in the case of instructional materials for grades 9 to 12, inclusive.

(C) If a local educational agency has not adopted instructional materials as required by subparagraph (A) for one or more grade levels because it is piloting or evaluating those instructional materials, the local educational agency may only claim funding pursuant to Section 99234 for grade levels and subjects where the local educational agency is in compliance with subparagraphs (A) and (B).

(D) For each teacher, in each core area for which funding is claimed pursuant to this article and for which there are not standards-aligned textbooks for each pupil, as determined through an audit, the Superintendent, on a one-time basis, shall adjust the next principal apportionment to withhold from the local educational agency an amount equal to one hundred dollars ($100) for each of those pupils. The funds withheld are deemed to be an offset against the training funds provided pursuant to this article.

(4) It provides in-house professional development that focuses primarily on the following:

(A) The mathematics or English language arts content standards adopted by the state board pursuant to Section 60605.

(B) The curriculum frameworks adopted by the state board for mathematics and English language arts.

(C) The use of instructional materials that will be used by pupils and are aligned to the mathematics or English language arts content standards adopted by the state board pursuant to Section 60605.

(D) The training shall include instructional strategies designed to help all pupils gain mastery of the California academic content standards, with special emphasis on English language learners and pupils with exceptional needs.

(5) It provides the data elements required pursuant to Section 99240.

(b) As an additional condition of receipt of funds for purposes of Section 99234, a local educational agency shall certify that:

(1) Forty hours of professional development based on the statewide academic content standards adopted pursuant to Section 60605, the Mathematics and Reading/English Language Arts frameworks adopted by the state board, and instructional materials adopted by the state board or standards-aligned instructional materials and 80 hours of followup instruction, coaching, or additional schoolsite assistance, in mathematics or reading, based upon the individual school needs, as appropriate, was provided to teachers who meet the criteria specified in paragraphs (1) and (2) of subdivision (a) of Section 99233.

(2) Forty hours of reading or English language arts professional development that includes strategies to help all pupils gain mastery of the California content standards and based on the statewide academic content standards adopted pursuant to Section 60605, the Reading/English Language Arts framework adopted by the state board, and instructional materials adopted by the state board or standards-aligned instructional materials, and 80 hours of followup instruction, coaching, or additional schoolsite assistance, based upon the individual teacher or school needs, was provided to teachers who meet the criteria specified in paragraphs (3) and (4) of subdivision (a) of Section 99233.

(3) Forty hours of professional development in mathematics based on the statewide academic content standards adopted pursuant to Section 60605, the Mathematics framework adopted by the state board, instructional strategies designed to help all pupils gain mastery of the California academic content standards, and instructional materials adopted by the state board or standards-aligned instructional materials, and 80 hours of followup instruction, coaching, or additional schoolsite assistance, based upon the individual teacher or school needs, was provided to teachers who meet the criteria specified in paragraphs (5) and (6) of subdivision (a) of Section 99233.

(c) If, as the result of a program audit, it is found that the participating local educational agency served fewer participants than it was funded to serve, the Superintendent shall adjust the next principal apportionment to withhold from the local educational agency an amount proportional to the amount of funding associated with the number of teachers that were not served.

(d) If, as the result of a program audit, it is found that the training provided by the local educational agency or the provider with whom it contracted did not meet the requirements of paragraph (4) of subdivision (a), the Superintendent shall withhold from the next monthly principal apportionment payment to the local educational agency an amount equal to the amount of funding associated with the training that was not aligned to state standards and curriculum frameworks.

(e) It is the intent of the Legislature that audits referenced in subdivisions (c) and (d) be conducted as part of a compliance audit performed in accordance with Sections 14503, 14508, and 41020.

SEC. 41. It is the intent of the Legislature that funds made available for the purchase of art, music, and physical education supplies and equipment pursuant to paragraph (16) of subdivision (a) of Section 43 of Chapter 79 of the Statutes of 2006, as amended by Chapter 371 of the Statutes of 2006, shall be available also for the costs of installing that equipment.

CHAPTER 731

An act to add Section 52052.1 to the Education Code, relating to pupil achievement.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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 high number of children leaving school without completing their high school education poses a serious threat to children, their families, schools, and communities, and the competitiveness and well-being of the California economy. The potential adverse impacts of the high school dropout crisis include a strain on the social welfare system and a shortage of well educated Californians to fuel the 21st century economy.

(2) New research suggests that fewer than 70 percent of 9th graders in California, and fewer than 50 percent of 9th graders in some school districts, graduate from high school. More than 150,000 California high school pupils may be leaving high school each year without a diploma.

(3) If the dropout crisis is left unchecked, demographic trends suggest that the rate of future dropouts will increase. Latinos are more than twice as likely as whites to leave school before graduation. The Department of Finance estimates that the public school enrollment of Latinos will increase by 18 percent in the next 10 years. The Public Policy Institute of California predicts there will be twice as many high school dropouts in California in 2025 as there will be jobs to support them.

(4) The high school dropout crisis will have detrimental effects on some of the largest industries in California, including computer technology and software engineering, health care, manufacturing, biotechnology, the building and automotive trades, entertainment, and other sectors that rely on an adequately educated workforce with a minimum of a high school education.

(5) Dropouts impose substantial social costs on the state. They are less likely than high school graduates to be employed. The jobs they do find pay substantially lower wages. As a result, dropouts pay lower taxes and are more likely to require public welfare support. Dropouts also have poorer health and are more likely to require public health support.

(6) Dropouts are more likely to commit crimes and become incarcerated. More than 80 percent of the prisoners in California in 2005 did not graduate from high school. In 2006, each inmate cost California taxpayers an average of thirty-four thousand one hundred fifty dollars ($34,150), according to the Department of Corrections and Rehabilitation.

(7) Families and communities play an important role in keeping children on track toward high school graduation. However, schools are responsible for creating programs that engage children of different backgrounds, interests, and skill levels, and for keeping a close watch

on truancy, course failure, and behavior problems that are the markers of a pupil at risk for dropping out of school.

(b) It is the intent of the Legislature in enacting this act to reflect the public's fundamental expectation that public schools engage pupils, keep them on track for graduation, and prepare them for success after high school in college or immediate entry into a career.

SEC. 2. Section 52052.1 is added to the Education Code, to read:

52052.1. (a) Beginning July 1, 2011, in addition to the test scores specified in subparagraph (B) of paragraph (4) of subdivision (a) of Section 52052, the Academic Performance Index (API) for a school or school district shall do all of the following:

(1) Include the test scores and other accountability data of enrolled pupils who were referred by the school or school district of residence to an alternative education program, including community, community day, and continuation high schools and independent study, and be calculated by assigning all accountability data on pupils in alternative education programs, including community, community day, and continuation high schools and independent study, to the school and school district of residence to ensure that placement decisions are in the best interests of affected pupils. If a pupil is referred to an alternative education program by a juvenile court judge or other correctional or judicial official, or if the pupil is expelled pursuant to subdivision (a), (b), or (c) of Section 48915, the test scores of that pupil shall remain with the alternative education program and with the school district or county office of education serving that pupil. This section does not prohibit the alternative education program from counting the test scores of those pupils served in their alternative education program. It is the intent of the Legislature that these alternative education programs remain accountable to the pupils they serve.

(2) Exclude the test scores or other data of those pupils exempt pursuant to federal statute or federal regulation.

(3) Include school and school district dropout rates for pupils who drop out of school while enrolled in grade 8 or 9. If reliable data is not available by July 1, 2011, the Superintendent, on or before that date, shall report to the Legislature the reasons for the delay and date he or she anticipates the specified dropout rates will be included in the API.

(b) The advisory committee established pursuant to Section 52052.5 shall recommend to the Superintendent and the state board all of the following:

(1) The length of time for which the accountability data on pupils in alternative education programs shall be assigned to the school and school district of residence pursuant to paragraph (1) of subdivision (a).

(2) Whether it is appropriate to assign accountability data to the school or the school district, pursuant to paragraph (1) of subdivision (a), if the pupil never attended the school of residence or has been absent for more than one year from the school district of residence due to placement in another school or school district or out of state.

(c) This section shall become operative only if local educational agencies receive a per pupil allocation prior to the 2010–11 fiscal year for implementation of the California Longitudinal Pupil Achievement Data System established pursuant to Section 60900.

CHAPTER 732

An act to amend Section 52378 of the Education Code, relating to school curriculum.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 52378 of the Education Code is amended to read:

52378. The Middle and High School Supplemental Counseling Program is hereby established for the purpose of providing additional counseling services to pupils in grades 7 to 12, inclusive. As a condition of receiving funds, the governing board of each school district maintaining any of grades 7 to 12, inclusive, shall do all of the following:

(a) The program shall be adopted at a public meeting of the governing board of a school district and shall include all of the following:

(1) A provision for individualized review of the academic and deportment records of the pupil.

(2) A provision for individualized review of the career goals of, and the available academic and career technical education opportunities and community and workplace experiences available to, the pupil that may support the pursuit of the goals of the pupil.

(3) A provision for a counselor to meet with each pupil and, if practicable, the parents or legal guardian of the pupil to explain the academic and deportment records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, and eligibility for admission to a four-year institution of postsecondary education, including the University of California and the

California State University, as well as the availability of career technical education. The educational options explained at the meeting, if services are available, shall include the college preparatory program and career technical education programs, including regional occupational centers and programs and any other alternatives available to pupils within the school district.

(b) In addition to the counseling services described in subdivision (a), school districts shall identify pupils who are at risk of not graduating with the rest of their class, are not earning credits at a rate that will enable them to pass the high school exit examination, or do not have sufficient training to allow them to fully engage in their chosen career, and shall do all of the following:

(1) Require each school within its jurisdiction that enrolls pupils in grades 10 and 12 to develop a list of coursework and experience necessary to assist each pupil in his or her respective grade that has not passed one or both parts of the high school exit examination or has not satisfied, or is not on track to satisfy, the curricular requirements for admission to the University of California and the California State University, and to successfully transition to postsecondary education or employment.

(2) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 who is deemed to be at the far below basic level in English language arts or mathematics pursuant to California Standards Tests administered to pupils in grade 6 to successfully transition to high school and meet all graduation requirements, including passing the high school exit examination.

(3) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 to begin to satisfy the curricular requirements for admission to the University of California and the California State University.

(4) Require each school within its jurisdiction to provide a copy of the lists developed pursuant to paragraphs (2) and (3) to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(c) (1) In addition to the items identified in subdivision (b), the list of coursework and experience for a pupil enrolled in grade 12 shall include options for continuing his or her education if he or she fails to meet graduation requirements. These options shall include, but not be limited to, all of the following:

(A) Enrolling in an adult education program.

(B) Enrolling in a community college.

(C) Continuing enrollment in the school district of the pupil.

(2) A copy of the list of coursework and experience necessary shall be provided to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(d) As a condition of receipt of funds pursuant to this article, a school district shall require each school within its jurisdiction to offer and schedule an individual conference with each pupil, identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian, and a school counselor. The individual conference shall be scheduled, to the extent feasible, according to the following requirements:

(1) For a pupil enrolled in grade 7, the conference shall occur before January of that school year in which the pupil is enrolled in grade 7.

(2) For a pupil enrolled in grade 10, the conference shall occur between the spring of that school year in which the pupil is enrolled in grade 10 and the fall of the following school year in which the pupil would be enrolled in grade 11. For a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 10 shall occur in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(3) For a pupil enrolled in grade 12, the conference shall occur after November of that school year in which the pupil is enrolled in grade 12, but before March of the same school year. For a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 12 shall occur in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(e) During the individual conference described in subdivision (d), the school counselor shall apprise the pupil identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian of the following:

(1) Consequences of not passing the high school exit examination.

(2) Programs, courses, and career technical education options available for pupils needed for satisfactory completion of middle or high school.

(3) Cumulative records and transcripts of the pupil.

(4) Performance on standardized and diagnostic assessments of the pupil.

(5) Remediation strategies, high school courses, and alternative education options available to the pupil.

(6) Information on postsecondary education and training.

(7) The score of the pupil on the English language arts or mathematics portion of the California Standards Test administered in grade 6, as applicable.

(8) Eligibility requirements, including coursework and test requirements, and the progress of the pupil toward satisfaction of those requirements for admission to four-year institutions of postsecondary education, including, at least, the University of California and the California State University.

(9) The availability of financial aid for postsecondary education.

SEC. 1.5. Section 52378 of the Education Code is amended to read:

52378. The Middle and High School Supplemental Counseling Program is hereby established for the purpose of providing additional counseling services to pupils in grades 7 to 12, inclusive. As a condition of receiving funds, the governing board of each school district maintaining any of grades 7 to 12, inclusive, shall do all of the following:

(a) The program shall be adopted at a public meeting of the governing board of a school district and shall include all of the following:

(1) A provision for individualized review of the academic and deportment records of the pupil.

(2) A provision for individualized review of the career goals of, and the available academic and career technical education opportunities and community and workplace experiences available to, the pupil that may support the pursuit of the goals of the pupil.

(3) A provision for a counselor to meet with each pupil and if practicable, the parents or legal guardian of the pupil to explain the academic and deportment records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, and eligibility for admission to a four-year institution of postsecondary education, including the University of California and the California State University, as well as the availability of intensive instruction and services as required pursuant to subdivision (c) of Section 37254, for up to two consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, for those pupils who have not passed one or both parts of the high school exit examination by the end of grade 12, and the availability of career technical education. The educational options explained at the meeting, if services are available, shall include the college preparatory program and career technical education programs, including regional occupational centers and programs and any other alternatives available to pupils within the school district.

(b) In addition to the counseling services described in subdivision (a), school districts shall identify pupils who are at risk of not graduating with the rest of their class, are not earning credits at a rate that will enable them to pass the high school exit examination, or do not have sufficient

training to allow them to fully engage in their chosen career, and shall do all of the following:

(1) Require each school within its jurisdiction that enrolls pupils in grades 10 and 12 to develop a list of coursework and experience necessary to assist each pupil in his or her respective grade that has not passed one or both parts of the high school exit examination or has not satisfied, or is not on track to satisfy, the curricular requirements for admission to the University of California and the California State University, and to successfully transition to postsecondary education or employment.

(2) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 who is deemed to be at the far below basic level in English language arts or mathematics pursuant to California Standards Tests administered to pupils in grade 6 to successfully transition to high school and meet all graduation requirements, including passing the high school exit examination.

(3) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 to begin to satisfy the curricular requirements for admission to the University of California and the California State University.

(4) Require each school within its jurisdiction to provide a copy of the lists developed pursuant to paragraphs (2) and (3) to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(5) Inform the pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services.

(c) (1) In addition to the items identified in subdivision (b), the list of coursework and experience for a pupil enrolled in grade 12 shall include options for continuing his or her education if he or she fails to meet graduation requirements. These options shall include, but not be limited to, all of the following:

(A) Enrolling in an adult education program.

(B) Enrolling in a community college.

(C) Continuing enrollment in the school district of the pupil.

(D) Continuing to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(2) A copy of the list of coursework and experience necessary shall be provided to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(d) As a condition of receipt of funds pursuant to this article, a school district shall require each school within its jurisdiction to offer and schedule an individual conference with each pupil, identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian, and a school counselor. The individual conference shall be scheduled, to the extent feasible, according to the following requirements:

(1) For a pupil enrolled in grade 7, the conference shall occur before January of that school year in which the pupil is enrolled in grade 7.

(2) For a pupil enrolled in grade 10, the conference shall occur between the spring of that school year in which the pupil is enrolled in grade 10 and the fall of the following school year in which the pupil would be enrolled in grade 11. For a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 10 shall occur in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(3) For a pupil enrolled in grade 12, the conference shall occur after November of that school year in which the pupil is enrolled in grade 12, but before March of the same school year. For a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 12 shall occur in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(e) During the individual conference described in subdivision (d), the school counselor shall apprise the pupil identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian of the following:

(1) Consequences of not passing the high school exit examination.

(2) Programs, courses, and career technical education options available for pupils needed for satisfactory completion of middle or high school.

(3) Cumulative records and transcripts of the pupil.

(4) Performance on standardized and diagnostic assessments of the pupil.

(5) Remediation strategies, high school courses, and alternative education options available to the pupil, including, but not limited to, informing pupils of the option to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(6) Information on postsecondary education and training.

(7) The score of the pupil on the English language arts or mathematics portion of the California Standards Test administered in grade 6, as applicable.

(8) Eligibility requirements, including coursework and test requirements, and the progress of the pupil toward satisfaction of those requirements for admission to four-year institutions of postsecondary education, including, at least, the University of California and the California State University.

(9) The availability of financial aid for postsecondary education.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 52378 of the Education Code proposed by this bill and AB 347. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) both bills amend Section 52378 of the Education Code, and (3) this bill is enacted after AB 347, in which case Section 52378 of the Education Code, as amended by AB 347, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 733

An act to add Section 7104.2 to the Revenue and Taxation Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 7104.2 is added to the Revenue and Taxation Code, to read:

7104.2. (a) The Transportation Investment Fund (hereafter the fund) in the State Treasury is hereby continued in existence. All revenues transferred to the fund pursuant to Article XIX B of the California Constitution beginning with the 2008–09 fiscal year shall be available for expenditure as provided in this section. Notwithstanding Section 13340 of the Government Code or any other provision of law, moneys in the fund are continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(b) All of the following shall occur on a quarterly basis:

(1) The State Board of Equalization, in consultation with the Department of Finance, shall estimate the amount that is transferred to the General Fund under subdivision (b) of Section 7102 that is attributable to revenue collected for the sale, storage, use, or other consumption in this state of motor vehicle fuel, as defined in Section 7304.

(2) The State Board of Equalization shall inform the Controller, in writing, of the amount estimated under paragraph (1).

(3) Commencing with the 2008–09 fiscal year, the Controller shall transfer the amount estimated under paragraph (1) from the General Fund to the fund.

(c) For each quarter, commencing with the 2008–09 fiscal year, the Controller shall make all of the following transfers and apportionments from the fund:

(1) To the Public Transportation Account, a trust fund in the State Transportation Fund, 20 percent of the revenues deposited in the fund. Funds transferred under this paragraph shall be allocated as follows:

(A) Twenty-five percent to the Department of Transportation for purposes of subdivision (a) and (b) of Section 99315 of the Public Utilities Code.

(B) Thirty-seven and one-half percent to the Controller, for allocation pursuant to Section 99314 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99314 of the Public Utilities Code.

(C) Thirty-seven and one-half percent to the Controller, for allocation pursuant to Section 99313 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99313 of the Public Utilities Code.

(2) To the Department of Transportation for expenditure for transportation capital improvement projects subject to all of the rules governing the State Transportation Improvement Program, 40 percent of the revenues deposited in the fund.

(3) To the Controller for apportionment pursuant to paragraphs (A) and (B), 40 percent of the revenues deposited in the fund.

(A) Of the amount available under this paragraph, 50 percent shall be apportioned by the Controller to the counties, including a city and county, in accordance with the following formulas:

(i) Seventy-five percent of the funds payable under this subparagraph shall be apportioned among the counties in the proportion that the number of fee-paid and exempt vehicles that are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(ii) Twenty-five percent of the funds payable under this subparagraph shall be apportioned among the counties in the proportion that the number

of miles of maintained county roads in each county bears to the total number of miles of maintained county roads in the state. For the purposes of apportioning funds under this subparagraph, any roads within the boundaries of a city and county that are not state highways shall be deemed to be county roads.

(B) Of the amount available under this paragraph, 50 percent shall be apportioned by the Controller to cities, including a city and county, in the proportion that the total population of the city bears to the total population of all the cities in the state.

(d) Funds received under subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall be deposited as follows in order to avoid the commingling of those funds with other local funds:

(1) In the case of a city, into the city account that is designated for the receipt of state funds allocated for transportation purposes.

(2) In the case of a county, into the county road fund.

(3) In the case of a city and county, into a local account that is designated for the receipt of state funds allocated for transportation purposes.

(e) Funds allocated to a city, county, or city and county under subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall be used only for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair. For purposes of this section, the following terms have the following meanings:

(1) "Maintenance" means either or both of the following:

(A) Patching.

(B) Overlay and sealing.

(2) "Reconstruction" includes any overlay, sealing, or widening of the roadway, if the widening is necessary to bring the roadway width to the desirable minimum width consistent with the geometric design criteria of the department for 3R (reconstruction, resurfacing, and rehabilitation) projects that are not on a freeway, but does not include widening for the purpose of increasing the traffic capacity of a street or highway.

(3) "Storm damage repair" is repair or reconstruction of local streets and highways and related drainage improvements that have been damaged due to winter storms and flooding, and construction of drainage improvements to mitigate future roadway flooding and damage problems, in those jurisdictions that have been declared disaster areas by the President of the United States, where the costs of those repairs are ineligible for emergency funding with Federal Emergency Relief (ER) funds or Federal Emergency Management Administration (FEMA) funds.

(f) (1) Cities and counties shall maintain their existing commitment of local funds for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair in order to remain eligible for

the allocation of funds pursuant to subparagraph (A) or (B) of paragraph (3) of subdivision (c).

(2) In order to receive any allocation pursuant to subparagraph (A) or (B) of paragraph (3) of subdivision (c), the city or county shall annually expend from its general fund for street, road, and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 1996–97, 1997–98, and 1998–99 fiscal years, as reported to the Controller pursuant to Section 2151 of the Streets and Highways Code. For purposes of this paragraph, in calculating a city's or county's annual general fund expenditures and its average general fund expenditures for the 1996–97, 1997–98, and 1998–99 fiscal years, any unrestricted funds that the city or county may expend at its discretion, including vehicle in-lieu tax revenues and revenues from fines and forfeitures, expended for street and highway purposes shall be considered expenditures from the general fund. One-time allocations that have been expended for street and highway purposes, but which may not be available on an ongoing basis, including revenue provided under the Teeter Plan Bond Law of 1994 (Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of the Government Code, may not be considered when calculating a city's or county's annual general fund expenditures.

(3) For any city incorporated after July 1, 1996, the Controller shall calculate an annual average of expenditure for the period between July 1, 1996, and December 31, 2000, that the city was incorporated.

(4) For purposes of paragraph (2), the Controller may request fiscal data from cities and counties in addition to data provided pursuant to Section 2151, for the 1996–97, 1997–98, and 1998–99 fiscal years. Each city and county shall furnish the data to the Controller not later than 120 days after receiving the request. The Controller may withhold payment to cities and counties that do not comply with the request for information or that provide incomplete data.

(5) The Controller may perform audits to ensure compliance with paragraph (2) when deemed necessary. Any city or county that has not complied with paragraph (2) shall reimburse the state for the funds it received during that fiscal year. Any funds withheld or returned as a result of a failure to comply with paragraph (2) shall be reallocated to the other counties and cities whose expenditures are in compliance.

(6) If a city or county fails to comply with the requirements of paragraph (2) in a particular fiscal year, the city or county may expend during that fiscal year and the following fiscal year a total amount that is not less than the total amount required to be expended for those fiscal years for purposes of complying with paragraph (2).

(7) The allocation made under subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall be expended not later than the end of the fiscal year following the fiscal year in which the allocation was made, and any funds not expended within that period shall be returned to the Controller and shall be reallocated to the other cities and counties pursuant to the allocation formulas set forth in subparagraph (A) or (B) of paragraph (3) of subdivision (c).

(g) For the purpose of allocating funds under subparagraph (A) or (B) of paragraph (3) of subdivision (c) to counties, cities, and a city and county, the Controller shall use the most recent population estimates prepared by the Demographic Research Unit of the Department of Finance. For a city that incorporated after January 1, 2008, that does not appear on the most recent population estimates prepared by the Demographic Research Unit, the Controller shall use the population determined for that city under Section 11005.3.

CHAPTER 734

An act to repeal and add Title 7.10 (commencing with Section 66540) of the Government Code, and to amend Sections 30913 and 30914 of the Streets and Highways Code, relating to transportation.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Title 7.10 (commencing with Section 66540) of the Government Code is repealed.

SEC. 2. Title 7.10 (commencing with Section 66540) is added to the Government Code, to read:

TITLE 7.10. SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION RESPONSE AND DISASTER RECOVERY ACT

Chapter 1. Findings and Declarations of Policy

66540. This title shall be known and may be cited as the San Francisco Bay Area Water Emergency Transportation Response and Disaster Recovery Act.

66540.1. The Legislature hereby finds and declares all of the following:

(a) In 1999, based on the findings and analyses in a study sponsored by the Bay Area Council, the Legislature created the San Francisco Bay Area Water Transit Authority for the purposes of preparing a bay area water transit implementation and operations plan and operating a comprehensive regional public water transportation system. In 2002, after two years of study, public hearings, collaboration with existing Bay Area transit and public transportation ferry service providers, and peer review, the San Francisco Bay Area Water Transit Authority submitted the required plan to the Legislature. The plan included rationale for expanded ferries, ridership projections and routes, potential terminal locations, capital, operating and maintenance costs, vessel specification, and emergency and safety response capabilities.

(b) While the efforts of the existing San Francisco Bay Area Water Transit Authority to develop a regional water transit plan are commendable, the country has seen several significant disasters, including the 9/11 tragedy and Hurricane Katrina, which have emphasized the need for coordinated emergency response. From the lessons learned from these events, it is apparent that the bay area's current emergency response infrastructure is not sufficient to respond to emergencies of the magnitude witnessed in the past few years and anticipated in the future.

(c) In 2006, the Bay Area Council sponsored a study on the role a comprehensive public water transportation system would play in the bay area's emergency response infrastructure. The 2006 study found that a comprehensive water transportation system is vital to emergency preparedness and response for the region. If bridges, roads, highways, tunnels, and trains are out of service as a result of an emergency, only the waters of the bay are certain to remain open for traffic. However, current infrastructure and equipment capabilities are grossly inadequate. Ferry terminals exist in only a few locations on the bay, and the vessel fleet lacks the capacity to make up for even one out-of-service bridge. The few vessels that exist are in the hands of many different public and private owners and operators, and there is no detailed plan or identified leader to activate and coordinate them.

(d) The study further urged for action to be taken immediately to strengthen and expand the regional public water transportation system so that the bay area would be prepared in the event of a catastrophic emergency. The San Francisco Bay Area is almost certain to experience moderate to severe earthquakes in the foreseeable future. A major earthquake or a series of earthquakes on any of the region's faults would have the potential of closing thousands of area roads and rendering some or all transbay bridges and mass transit lines impassable. With the

regional transportation system disabled, first responders would be unable to help tens of thousands of homeless, injured, and starving victims. A failure of transportation would be particularly devastating to the most vulnerable of our population, the elderly, children, and the poor. The loss of any portion of the regional transportation system, from either natural or man made disaster, would place lives and property at risk and would seriously undermine the San Francisco Bay Area economy

(e) It is the responsibility of the state to protect and preserve the right of its citizens to a safe and peaceful existence. To accomplish this goal and to minimize the destructive impact of disasters and other massive emergencies, the actions of numerous public agencies must be coordinated to effectively manage all four phases of emergency activity: preparedness, mitigation, response, and recovery. It is a matter of statewide interest to establish an expanded and coordinated regional water transportation system to provide necessary security, flexibility, and mobility for disaster response and recovery in the San Francisco Bay Area. This transcends any local interest, and requires a single governmental entity with appropriate powers and scope of authority to serve this statewide interest.

(f) As emergencies and other catastrophic events are certain (only the timing is unpredictable), it is crucial for immediate action to be taken to develop and implement these emergency response strategies. It is not only impractical, but rather impossible, to cobble together an emergency water transportation system after the fact. It is a task of years, not months, to make the real changes and create the essential infrastructure for an integrated and comprehensive water transit emergency system. In light of the ever-present threat, it is imperative to begin this crucial effort without delay.

(g) The public interest requires swift action and steadfast resolve to prepare for the coming earthquakes, as well as other emergencies, with the speed and determination that is due for a threat of this magnitude. The water transit emergency response and recovery system must be fully implemented as quickly as possible, as if the lives of bay area residents depend on it, because they do.

(h) It is a matter of statewide interest to stimulate the maximum use of the San Francisco Bay for emergency response and recovery. The geographical situation of the San Francisco Bay makes it ideal for emergency response and recovery, but at the same time prevents the full utilization of the bay by acting as a physical barrier to an effective transportation system between the various jurisdictions surrounding the bay. Only a specially created local entity of regional government can freely operate in the numerous individual units of county, city and county, and city governments located in the area. In order to protect the lives

and livelihoods of the bay area, the Legislature in this act establishes a new governmental entity specifically charged and empowered with the responsibility to plan, implement, and manage these critical services and facilities, as a matter of the utmost urgency.

66540.2. It is the intent of the Legislature in enacting this title to provide for a unified, comprehensive institutional structure for the ownership and governance of a water transportation system that shall provide comprehensive water transportation and emergency coordination services for the bay area region. It is further the intent of the Legislature that the authority established by this act shall succeed to the powers, duties, obligations, liabilities, immunities, and exemptions of any general purpose local government or special district that operates or sponsors water transit, except the Golden Gate Bridge, Highway and Transportation District.

Chapter 2. Definitions

66540.3. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this title.

(a) "Authority" means the San Francisco Bay Area Water Emergency Transportation Authority created by Section 66540.4.

(b) "Bay area region" means the region described in Section 66502.

(c) "Board" means the board of directors of the authority.

(d) "Public agency" includes, but is not limited to, the federal government or any officer, department, division, bureau, board, and commission or other body or agency thereof; the state government or any officer, department, division, bureau, board, and commission or other body or agency thereof; other state governments or any officer, department, division, bureau, board, and commission or other body or agency thereof; any town, city, county, city and county, and municipal corporation, whether incorporated or not and whether chartered or not, or any officer, department, division, bureau, board, and commission or other body or agency thereof; any school district, political subdivision, district or local agency or any officer, department, division, bureau, board, and commission or other body or agency thereof.

(e) "Public transportation ferries" means ferryboats operated, sponsored, funded, or subsidized by any public agency, including, but not limited to, those ferryboats operated under agreement with a private operator.

(f) "Water transportation services" means the transportation of passengers, their incidental baggage, including wheelchairs and bicycles, and small packages by water-borne vessels, and the loading, unloading, and ancillary activities related thereto. Water transportation services

does not include the continuous transportation of goods in interstate or international commerce.

Chapter 3. San Francisco Bay Area Water Emergency Transportation Authority

66540.4. There is hereby established the San Francisco Bay Area Water Emergency Transportation Authority as a local governmental entity of regional government, with jurisdiction extending throughout the bay area region.

66540.5. The authority shall have the authority to plan, manage, operate, and coordinate the emergency activities of all water transportation and related facilities within the bay area region, except those provided or owned by the Golden Gate Bridge, Highway and Transportation District. During a state of war emergency, a state of emergency, or a local emergency, as described in Section 8558, the authority, in cooperation with the State Office of Emergency Services, the United States Coast Guard, the Federal Emergency Management Agency, and the Metropolitan Transportation Commission, shall coordinate the emergency activities for all water transportation services in the bay area region and, for such purposes, shall be known as the Bay Area Maritime Emergency Transportation Coordinator.

66540.6. (a) In order to establish and secure emergency activities of all water transportation and related facilities within the bay area region, the authority shall have the authority to operate a comprehensive emergency public water transportation system that includes water transportation services, water transit terminals, and any other transport and facilities supportive of the system for the bay area region, provided that any such facilities are consistent with the Bay Plan adopted by the Bay Conservation and Development Commission, as it may be amended from time to time, and that the authority consults in good faith with affected municipalities, counties, and other public agencies that may be affected by a particular facility. The authority shall have authority and control over all public transportation ferries within the bay area region, except those owned and operated by the Golden Gate Bridge, Highway and Transportation District. The planning, management, and operation of any existing or planned public transportation ferries and related facilities and services in the bay area region shall be consolidated under the authority's control.

(b) Because of the importance of an orderly development of a comprehensive bay area region emergency water transportation system, the environmental, health, and public safety issues implicated, and the scarce resources available, the authority shall determine the entry within

its jurisdiction of any water transportation service or facility that will affect public lands or receive or benefit from the use of federal, state, or local funds, except those owned and operated by the Golden Gate Bridge, Highway and Transportation District.

(c) Nothing in this section shall be construed to be in derogation of the existing authority of the California Public Utilities Commission.

66540.7 (a) The authority shall have the responsibility within the area of its jurisdiction to study, plan, and implement any improvements, expansion, or enhancements of existing or future public transportation ferries and related facilities and services.

(b) The authority may commission planning, engineering, economic, and other studies to provide information to the board for making decisions about the location, design, management, and other features of future public transportation ferries and related facilities and services.

(c) (1) Not later than 60 days after the effective date of this title, the San Francisco Bay Area Water Transit Authority shall transfer and assign to the authority all contracts in force for study and development of possible water transportation services in the bay area region.

(2) The transfer of contracts required under this subdivision shall include the contemporaneous transfer of revenue from state or federal grants, local funds, and other sources of revenue committed and adequate to fund the contracts until their completion.

(d) The policy direction for the study described in subdivision (c) shall become the responsibility of the authority. The authority shall consider the concepts and ideas of the San Francisco Bay Area Water Transit Authority, the Metropolitan Transportation Commission, and other entities, both public and private.

(e) The Metropolitan Transportation Commission, or its successor agency, shall cooperate with the authority to include all public transportation ferries plans and facilities selected by the authority in the regional transportation plan consistent with state and federal law.

66540.8. The authority shall have the power to apply for, receive, and expend funds for public transportation ferries and related facilities and services, and emergency water transportation for disaster recovery within the bay area region, including, but not limited to, all direct and indirect distributions of federal, state, and regional funds and the issuance of any future state or local bonds. Any allocation or distribution of federal, state, and regional funds designated for the San Francisco Bay Area Water Transit Authority shall be transferred to the authority and the authority shall be as fully entitled to new allocation or distribution of funds as if it were the San Francisco Bay Area Water Transit Authority, including, without limitation, funds derived from the increase in tolls on state-owned bridges in the bay area pursuant to the

expenditures plan approved by the Legislature in Chapter 715 of the Statutes of 2003. The authority shall be entitled to receive and shall be disbursed funds under subdivision (b) of Section 8879.57 that would have been allocated to any waterborne transit agency that, as of the effective date of that section, would not be or have been eligible to receive State Transit Assistance Funds but for the effect of this act. Pursuant to subdivision (b) of Section 8879.61, if the authority receives grant awards allocated from funds pursuant to subdivision (b) of Section 8879.57, it shall not be eligible to receive grant awards from funds allocated pursuant to subdivision (a) of Section 8879.57.

66540.9. In order to properly plan and provide for emergency water transportation services and facilities, the authority shall have the authority to plan, develop, and operate all aspects of water transportation facilities within the bay area region, including, but not limited to the location and development of terminals, parking lots and structures, and all other facilities and services necessary to serve passengers and other customers of the water transportation services system

66540.10. The San Francisco Bay Area Water Transit Authority shall transfer the title and ownership of all property within its control and ownership to the authority. Funds necessary for the establishment and organization of the authority, as determined by the board of the authority, shall be transferred immediately upon request by the authority. All other transfers shall be consistent with the transition plan required under subdivision (b) of Section 66540.32 and shall include, but not be limited to, all of the following:

(a) All real and personal property, including, but not limited to, all terminals, ferries, vehicles or facilities, parking facilities for passengers and employees, and related buildings and facilities convenient or necessary to operate, support, maintain, and manage the water transportation services system and its services to customers.

(b) All contracts with tenants, concessionaires, leaseholders, and others.

(c) All financial obligations secured by revenues and fees generated from the operations of the water transportation services system, including, but not limited to, bonded indebtedness associated with the water transportation services system.

(d) All financial reserves, including, but not limited to, sinking funds and other credits.

(e) All office equipment, including, but not limited to, computers, records and files, software required for financial management, personnel management, and accounting and inventory systems.

66540.11. (a) All public transportation ferries and related water transportation services and facilities within the bay area region shall be

transferred to the authority in accordance with the transition plan required under subdivision (b) of Section 66540.32, except for the services and facilities owned, operated, and provided by the Golden Gate Bridge, Highway and Transportation District.

(b) The authority may accept the transfer of ownership, operation, and management of any other public transportation ferries and related water transportation services and facilities within the bay area region developed or adopted by any general purpose local government or special district that operates or sponsors water transit, including, but not limited to, those water transportation services provided under agreement with a private operator.

(c) All transfers pursuant to subdivision (a) and (b) shall be consistent with the transition plan required under subdivision (b) of Section 66540.32 and shall include, but not be limited to, all of the following:

(1) All real and personal property, including, but not limited to, all terminals, ferries, vehicles or facilities, parking facilities for passengers and employees, and buildings and facilities used to operate, maintain, and manage the water transportation services system.

(2) All personnel currently employed by the water transportation services system, subject to the provisions of Article 5 (commencing with Section 66540.55) of Chapter 5.

(3) All contracts with tenants, concessionaires, leaseholders, and others.

(4) All subsidies for the water transportation services system, other than the direct subsidy the Golden Gate Bridge, Highway and Transportation District currently provides to the water transportation services system it provides.

(5) All financial obligations secured by revenues and fees generated from the operations of the water transportation services system, including, but not limited to, bonded indebtedness and subsidies associated with the public transportation ferry system.

(d) In accepting a transfer, the authority may assume no financial obligations other than those associated with the operation of the services and facilities being transferred to it.

(e) Reasonable administrative costs incurred by the other public transportation ferries and related water transportation services and facilities related to the transfer shall be borne by the authority.

Chapter 4. Governing Body

66540.12. (a) The authority shall be governed by a board composed of five members, as follows:

(1) Three members shall be appointed by the Governor, subject to confirmation by the Senate. The Governor shall make the initial appointment of these members of the board within 10 days after the effective date of this title.

(2) One member shall be appointed by the Senate Committee on Rules.

(3) One member shall be appointed by the Speaker of the Assembly.

(b) Each member of the board shall be a resident of a county in the bay area region.

(c) Public officers associated with any area of government, including planning or water, whether elected or appointed, may be appointed to serve contemporaneously as members of the board. No local jurisdiction or agency may have more than one representative on the board of the authority.

(d) The Governor shall designate one member as the chair of the board and one member as the vice chair of the board.

(e) The term of a member of the board shall be six years

(f) Vacancies shall be immediately filled by the appointing power for the unexpired portion of the terms in which they occur.

66540.13. A member may be removed only for cause or incapacity and only by the appointing authority.

66540.14. A member may be reappointed to serve additional terms.

66540.15. The board members shall serve without compensation, but shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties. However, in lieu of this reimbursement for attendance at board meetings, each member of the board may receive a per diem of one hundred dollars ($100), but not to exceed a combined total of five meetings in any one calendar month, plus reasonable expenses as may be authorized by the board. The authority shall pay all costs pursuant to this section.

66540.16. (a) The board shall have the power to appoint all of the following officers of the authority:

(1) Executive director.

(2) General counsel.

(3) Auditor.

(b) The Executive Director shall be responsible for operation, maintenance, financing, and planning functions, within the policy guidelines established by the board. The executive director shall prepare and submit an annual budget to the board. The executive director will have the authority to execute contracts, grant documents, and financing documents under the policy guidelines which may be established by the board. The executive director shall appoint all other officers and employees.

66540.17. The board may do all of the following:

(a) Create committees from its membership.

(b) Appoint advisory committees from other interested public and private groups.

(c) Contract for or employ any professional services required by the authority or for the performance of work and services which in the board's opinion cannot satisfactorily be performed by its officers and employees.

(d) Do any and all other things necessary to carry out the purposes of this title.

66540.18. (a) The chair of the board shall do all of the following:

(1) Prepare the agenda for each meeting of the board.

(2) Preside over all meetings of the board, including, but not limited to, setting the dates and times of meetings, declaring the opening and closing of each proceeding of the board, ruling on points of order, regulating the individuals that, except for board members, may address the board at its meetings, and putting issues to the vote and announcing decisions following those votes.

(3) Appoint board members to committees and serve as an ex officio member of all committees.

(4) Propose the annual budget for the authority.

(5) Sign all orders issued by the board and contracts and grant documents as approved by the board.

(6) Represent the authority at all proceedings. The chair may appoint individuals to represent the board on other boards or commissions, subject to ratification by the board. Appointees serve at the pleasure of the board and those appointments will be subject to review by the board at least once every two years.

(7) Have such other powers and duties as may be prescribed from time to time by the board.

(b) The chair may delegate any of the powers described in this section, other than the power to delegate, to any member of the board.

(c) In the absence or disability of the chair of the board, the vice chair shall perform all of the duties of the chair and, in so acting, shall have all the powers of the chair. The vice chair shall have such other powers and perform such other duties as may be prescribed from time to time by the board.

66540.19. (a) The time and place of the first meeting of the board shall be at a time and place within the bay area region fixed by the chair of the board, but no later than April 1, 2008.

(b) After the first meeting described in subdivision (a), the board shall hold meetings at times and places determined by the board.

(c) Meetings of the board are subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

66540.20. The board is the legislative body of the authority and, consistent with the provisions of this title, shall determine all questions of authority policy.

66540.21. The board shall determine what water transportation services facilities should be acquired or constructed for the common benefit of the bay area region as a whole.

66540.22. The board shall supervise and regulate every water transportation services facility owned or operated or controlled by the authority, including the establishment of rates, rentals, charges, and classifications, and the making and enforcement of rules, regulations, contracts, practices, and schedules, for or in connection with any transportation facility owned or operated or controlled by the authority.

66540.23. (a) The board may act either by ordinance or resolution in order to regulate the authority and undertake all acts necessary and convenient for the exercise of the authority's powers.

(b) The board may adopt and enforce rules and regulations for the administration, maintenance, operation, and use of the authority's facilities and services, including, but not limited to, rates, charges, and fees for those purposes.

(c) The board may employ necessary personnel to enforce the rules and regulations adopted by the board pursuant to this section.

66540.24. (a) Three members of the board shall constitute a quorum for the purpose of transacting any business of the board.

(b) Except as otherwise specifically provided to the contrary in this title, a recorded majority vote of the total membership of the board is required on each action.

66540.25. The authority may do any and all things necessary to carry out the purposes of this title.

Chapter 5. Duties and Powers

Article 1. General Provisions

66540.255. The authority may accept grants, contributions, and appropriations from any public agency, private foundation, or individual.

66540.26. The authority has perpetual succession and may adopt a seal and alter it at its pleasure.

66540.27. The authority may provide a comprehensive emergency public water transportation services system and, for this purpose, may have the power to provide all of the following:

(a) Planning, as provided in Article 2 (commencing with Section 66540.32).

(b) Facilities, equipment, and services, as provided in Article 3 (commencing with Section 66540.34).

(c) Funding, as provided in Article 4 (commencing with Section 66540.41).

(d) Employee benefits and retirement, as provide in Article 5 (commencing with Section 66540.55).

66540.28. The authority may sue and be sued.

66540.29. The authority may take by grant, purchase, devise, or lease or otherwise acquire, hold, enjoy, lease, and dispose of, real and personal property within or outside its area of jurisdiction in order to further its purposes.

66540.30. The authority may contract with any department or agency of the United States, with any state or local governmental agency, or with any person upon those terms and conditions that the authority finds are in its best interests.

66540.31. No action taken by the authority pursuant to this title shall require the approval of the Public Utilities Commission.

Article 2. Planning

66540.32. (a) The authority shall create and adopt, on or before July 1, 2009, an emergency water transportation system management plan for water transportation services in the bay area region in the event that bridges, highways, and other facilities are rendered wholly or significantly inoperable.

(b) The authority shall create and adopt, on or before January 1, 2009, a transition plan to facilitate the transfer of existing public transportation ferry services within the bay area region to the authority pursuant to this title. In the preparation of the transition plan, priority shall be given to ensuring continuity in the programs, services, and activities of existing public transportation ferry services.

(c) In developing the plans described in subdivisions (a) and (b), the authority shall cooperate to the fullest extent possible with the Metropolitan Transportation Commission, the State Office of Emergency Services, the Association of Bay Area Governments, and the San Francisco Bay Conservation and Development Commission, and shall, to the fullest extent possible, coordinate its planning with local agencies, including those local agenciess that operated, or contracted for the operation of, public water transportation services as of the effective date of this title.. To avoid duplication of work, the authority shall make maximum use of data and information available from the planning

programs of the Metropolitan Transportation Commission, the State Office of Emergency Services, the Association of Bay Area Governments, the San Francisco Bay Conservation and Development Commission, the cities and counties in the San Francisco Bay area, and other public and private planning agencies. In addition, the authority shall consider both of the following:

(1) The San Francisco Bay Area Water Transit Implementation and Operations Plan adopted by the San Francisco Bay Area Water Transit Authority on July 10, 2003.

(2) Any other plan concerning water transportation within the bay area region developed or adopted by any general purpose local government or special district that operates or sponsors water transit, including, but not limited to, those water transportation services provided under agreement with a private operator.

(d) The authority shall prepare a specific transition plan for any transfer not anticipated by the transition plan required under subdivision (b).

(e) At least 45 days prior to adoption of the plans required by subdivisions (a) and (b), the authority shall provide a copy of the plan adopted pursuant to subdivision (a) and the plan adopted pursuant to subdivision (b) to each city and county in the bay area region. Any of these cities or counties may provide comments on these plans to the authority.

66540.34. The authority shall refer for recommendation the plans of routes, rights of way, terminals, yards, and related facilities and improvements to the city councils and boards of supervisors within whose jurisdiction those facilities and improvements lie and to any other state, regional, and local agencies and commissions as may be deemed appropriate by the authority. The authority shall give due consideration to all recommendations submitted.

Article 3. Facilities, Equipment, and Services

66540.34. The authority may enter into agreements for the joint use or joint development of any property rights, including air rights, owned or controlled by the authority.

66540.35. The authority may acquire, own, lease, construct, and operate water transportation vessels and equipment, including, but not limited to, real and personal property, equipment, and any facilities of the authority, except those facilities providing access to national parks.

66540.36. The authority may select private or public franchisees for those operating elements of the water transportation services system and related facilities of the authority.

66540.37. The authority may accept, through purchase of fee, conveyance of title, long-term lease, or other means deemed appropriate, the vessels, terminals, maintenance and support facilities, and other assets of public water transportation services providers.

66540.38. The authority may lease or contract for the use of its facilities, or any portion thereof, to any operator, and may provide for subleases by that operator upon the terms and conditions that it deems in the public interest. The word "operator," as used in this section, means any city or public agency or any person, firm, or private corporation.

66540.39. The air emission standard for new vessels purchased by the authority shall exceed the federal Environmental Protection Agency's air quality standards for Tier II 2007 marine engines by at least 85 percent.

66540.40. The authority shall dedicate at least one new vessel, subject to engine manufacturers' warranties, to employ biodiesel fuel (B20) to assess the practical application of using renewable fuels. If further funding becomes available for this application from regional, state, or federal funding sources, the authority shall consider increasing the use of biodiesel fuel to demonstrate reduction in greenhouse gas emissions. The air emission standards set by the authority pursuant to this title shall apply to the use of biodiesel fuel.

Article 4. Funding

66540.41. The authority shall prepare and implement annual operating budgets for the operation of the San Francisco Bay Area water transportation services system, associated terminals, and related feeder transportation and support services.

66540.42. The authority shall set fares for travel on the water transportation services system that it operates, and define and set other fares and fees for services related to the water transportation system.

66540.43. (a) The authority may issue bonds, from time to time, payable from revenue of any facility or enterprise operated, acquired, or constructed by the authority, for any of the purposes authorized by this title in accordance with the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5), excluding Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 and the limitations set forth in subdivision (b) of Section 54402 which shall not apply to the issuance and sale of bonds pursuant to this section.

(b) The authority is a local agency within the meaning of Section 54307. The water transportation services system or any or all facilities and all additions and improvements that the authority's governing board

authorizes to be acquired or constructed and any purpose, operation, facility, system, improvement, or undertaking of the authority from which revenues are derived or otherwise allocable, which revenues are, or may by resolution or ordinance be, required to be separately accounted for from other revenues of the authority, shall constitute an enterprise within the meaning of Section 54309.

(c) The board shall authorize the issuance of bonds pursuant to this section by resolution, which resolution shall be adopted by a majority vote and shall specify all of the following:

(1) The purposes for which the bonds are to be issued, which may include one or more purposes permitted by this title.

(2) The maximum principal amount of bonds.

(3) The maximum term of bonds.

(4) The maximum rate of interest, fixed or variable, to be payable upon the bonds.

(5) The maximum discount or premium payable on sale of the bonds.

(d) For purposes of the issuance and sale of bonds pursuant to this section, the following definitions shall be applicable to the Revenue Bond Law of 1941:

(1) "Fiscal agent" means any fiscal agent, trustee, paying agent, depository, or other fiduciary provided for in the resolution providing the terms and conditions for the issuance of the bonds, which fiscal agent may be located within or without the state.

(2) "Resolution" means, unless the context otherwise requires, the instrument providing the terms and conditions for the issuance of bonds, which instrument may be an indenture, trust agreement, installment sale agreement, lease, ordinance, or other instrument in writing.

(e) Each resolution shall provide for the issuance of bonds in the amounts as may be necessary, until the full amount of bonds authorized has been issued. The full amount of bonds may be divided into two or more series with different dates of payment fixed for bonds of each series. A bond need not mature on its anniversary date.

(f) The authority may issue refunding bonds to redeem or retire any bonds issued by the authority upon the terms, at the times, and in the manner which the authority's governing body determines by resolution. Refunding bonds may be issued in a principal amount sufficient to pay all, or any part of, the principal of the outstanding bonds, the premium, if any due upon call redemption thereof prior to maturity, all expenses of redemption, and either of the following:

(1) The interest upon the refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded out of the sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(2) The interest upon the bonds to be refunded from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(g) The authority may enter into any liquidity or credit agreement it may deem necessary in connection with the issuance of bonds authorized by this section.

(h) This section provides a complete, additional, and alternative method of performing the acts authorized by this section, and the issuance of bonds, including refunding bonds, need not comply with any other law applicable to borrowing or the issuance of bonds. Any provision of the Revenue Bond Law of 1941 which is inconsistent with this section or this title shall not be applicable.

(i) Nothing in this section prohibits the authority from availing itself of any procedure provided in this chapter for the issuance of bonds of any type or character for any of the authorized water transportation facilities. All bond proceedings may be carried on simultaneously or, in the alternative, as the authority may determine.

66540.44. The authority may levy special benefit assessments consistent with the requirements of Article XIII D of the California Constitution for operating expenses and to finance capital improvements, including, but not limited to, special benefit assessments levied pursuant to any of the following:

(a) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(b) The Improvement Bond Act of 1915 (Division 15 (commencing with Section 8500) of the Streets and Highways Code).

(c) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(d) The Landscaping and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).

66540.45. The authority may borrow money in accordance with Article 7 (commencing with Section 53820) of, Article 7.6 (commencing with Section 53850) of, or Article 7.7 (commencing with Section 53859) of, Chapter 4 of Part 1 of Division 2 of Title 5.

66540.46. (a) The authority may borrow money in anticipation of the sale of any bonds that have been authorized to be issued, but have not been sold and delivered, and may issue negotiable bond anticipation notes therefor, and may renew the bond anticipation notes from time to time, but the maximum maturity of any bond anticipation notes, including the renewals thereof, may not exceed five years from the date of delivery of the original bond anticipation notes. The bond anticipation notes may

be paid from any money of the authority available therefor and not otherwise pledged.

(b) If not previously otherwise paid, the bond anticipation notes shall be paid from the proceeds of the next sale of the bonds of the authority in anticipation of which they were issued. The bond anticipation notes may not be issued in any amount in excess of the aggregate amount of bonds that the authority has been authorized to issue, less the amount of any bonds of the authorized issue previously sold, and also less the amount of other bond anticipation notes therefore issued and then outstanding. The bond anticipation notes shall be issued and sold in the same manner as the bonds. The bond anticipation notes and the resolution or resolutions authorizing them may contain any provisions, conditions, or limitations that a resolution of the authority authorizing the issuance of bonds may contain.

(c) Exclusively for the purpose of securing financing or refinancing for any of the purposes permitted by this title through the issuance of bonds, notes, or other obligations, including certificates of participation, by a joint powers authority, and, notwithstanding any other provision contained in this title or any other law, the authority may borrow money or purchase or lease property from a joint powers authority and, in connection therewith, may sell or lease property to the joint powers authority, in each case at the interest rate or rates, maturity date or dates, installment payment or rental provisions, security, pledge of revenues and other assets, covenants to increase rates and charges, default, remedy, and other terms or provisions as may be specified in the installment sale, lease, loan, loan purchase, or other agreement or agreements between the authority and the joint powers authority. The authority may enter into any liquidity or credit agreement it may deem necessary or appropriate in connection with any financing or refinancing authorized by this section. This section provides a complete, additional, and alternative method of performing the acts authorized by this section, and the borrowing of money, incurring indebtedness, sale, purchase, or lease of property from or to a joint powers authority, and any agreement for liquidity or credit enhancement entered into in connection therewith, pursuant to this section, need not comply with the requirements of any other law applicable to borrowing, incurring indebtedness, sale, purchase, lease, or credit except for compliance with this section.

66540.47. The authority may bring an action to determine the validity of any of its bonds, equipment trust certificates, warrants, notes, or other evidences of indebtedness or any of its revenues, rates, or charges pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

66540.48. (a) Notwithstanding any other provisions of this title or any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the authority of any bonds, bonds with a pledge of revenues, bonds for improvement districts, revenue bonds, equipment trust certificates, notes, or any and all evidences of indebtedness or liability constitute a contract between the authority and the holders of the bonds, equipment trust certificates, notes, or evidences of indebtedness or liability, and the provisions thereof are enforceable against the authority or any or all of its successors or assigns, by mandamus or any other appropriate suit, action, or proceeding in law or in equity in any court of competent jurisdiction.

(b) Nothing in this title or in any other law shall be held to relieve the authority or the territory included within it from any bonded or other debt or liability contracted by the authority.

(c) Upon dissolution of the authority or upon withdrawal of territory therefrom, that territory formerly included within the authority, or withdrawn therefrom, shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal as if the authority had not been so dissolved nor the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of the bonded and other indebtedness and liabilities.

(d) To the extent provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues, or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the authority may be pledged, charged, assigned, and have a lien thereon for the payment of the bonds as long as the same are outstanding, regardless of any change in ownership, operation, or control of the revenue-producing improvements, works, facilities, or property and it shall, in any later event or events, be the duty of the successors or assigns to continue to maintain and operate the revenue-producing improvements, works, facilities, or property as long as bonds are outstanding.

66540.49. The authority may apply for and receive grants from any and all state and federal agencies.

66540.50. The authority may deposit or invest any moneys of the authority in banks or financial institutions in the state in accordance with state law.

66540.51. The authority may insure against any accident to or destruction of the public transportation ferry system or any part thereof.

66540.52. The authority may insure against loss of revenues from any cause whatsoever.

66540.53. The authority may insure against public liability or property damage, or both. It may provide in the proceedings authorizing the issuance of any bonds for the carrying of such or any other insurance, in such amount and of such character as may be specified, and for the payment of the premiums thereon.

66540.54. (a) The authority shall maintain accounting records and shall report accounting transactions in accordance with generally accepted accounting principles as adopted by the Government Accounting Standards Board (GASB) of the Financial Accounting Foundation for both public reporting purposes and for reporting of activities to the Controller.

(b) The authority shall contract with an independent certified public account for an annual audit of the financial records, books, and performance of the authority. The accountant shall submit a report of the audit to the board and the board shall make copies of the report available to the public and the appropriate policy and fiscal committees of the Legislature.

Article 5. Employee Benefits and Retirement System

66540.55. The authority shall prescribe a method of securing employees, shall adopt rules and regulations governing the employment of employees, and shall prescribe the compensation to be paid to employees, including the provision of compensation based upon successful accomplishment of goals and objectives specified in advance.

66540.56. Represented employees of the San Francisco Bay Area Water Transit Authority shall become employees of the authority and shall suffer no loss of employment or reduction in wages, health and welfare benefits, seniority, retirement benefits or contributions made to retirement plans, or any other term or condition of employment solely as a result of the enactment of this title. No represented employee of the San Francisco Bay Area Water Transit Authority shall suffer loss of employment or reduction in wages or benefits solely as a result of the enactment of this title.

66540.57. The authority may establish a retirement system for the officers and employees of the authority and provide for the payment of annuities, pensions, retirement allowances, disability payments, and death benefits or any of them.

66540.58. The authority may maintain its own retirement fund or may provide for benefits to eligible officers and employees, or their beneficiaries, by means of group insurance or other insurance, or by

those means that in the opinion of the board will satisfactorily provide an adequate and sure method of meeting the payments contemplated by the retirement system.

66540.59. Before establishing any retirement system, the authority shall secure a report from a qualified actuary, which shall show the cost of the benefits provided by the system, and the prospective assets and liabilities of the system.

66540.60. The board may adopt all ordinances and resolutions and perform all acts necessary or convenient to the initiation, maintenance, and administration of the retirement system.

66540.61. As an alternative method of providing a retirement system, the board may contract with the Board of Administration of the Public Employees' Retirement System and enter all or any portion of its employees under that system pursuant to law and under the terms and conditions of that contract, or may contract with the Board of Administration of the Public Employees' Retirement System for reciprocal benefits between the Public Employees' System, or a city, or city and county, or any other public agency contracting with the Public Employees' Retirement System and the authority's retirement system as authorized by Section 20042, and may perform all acts necessary or convenient to provide for those reciprocal benefits.

66540.62. The board may also contract with the Board of Administration of the Public Employees' Retirement System for participation in the Federal Social Security Act and may perform all acts necessary or convenient for that participation.

66540.63. The board may classify and determine the officers and employees who shall be included as members in the retirement system and may change the classification from time to time. Membership of all officers and employees so classified and included in the retirement system is compulsory.

66540.64. The board may prescribe the terms and conditions upon which the officers and employees of the authority or their beneficiaries shall be entitled to benefits and the amounts thereof.

66540.65. Any pension or retirement system adopted by the board shall be on a sound actuarial basis and provide for contributions by both the authority and the employee members of the system which shall be based on percentage of payroll to be changed only by adjustments on account of experience under the system.

66540.66. Contributions shall be in amounts that shall accumulate at retirement a fund sufficient to carry out the promise to pay benefits to the individual on account of his or her service as a member of the system, without further contributions from any source.

66540.67. Nothing in any pension or retirement system or plan shall prevent the board from, at any time, amending, changing, modifying or terminating any provision for benefits, participation, or contributions thereto or thereunder.

66540.68. (a) This article does not apply to any employees of the authority in a bargaining unit that is represented by a labor organization, except as to the protection of the rights of those employees that were employees of the San Francisco Bay Area Water Transit Authority as specifically provided in Section 66540.56.

(b) The adoption, terms, and conditions of the retirement systems covering employees of the authority in a bargaining unit represented by a labor organization shall be pursuant to a collective bargaining agreement between that labor organization and the authority. Any such retirement system adopted pursuant to a collective bargaining agreement shall be on a sound actuarial basis. The authority and the labor organization representing the authority's employees in a bargaining unit shall be equally represented in the administration of that retirement system.

(c) The authority shall assume and be bound by the terms and conditions of employment set forth in any collective bargaining agreement or employment contract between the San Francisco Bay Area Water Transit Authority and any labor organization or employee affected by the creation of that authority, as well as the duties, obligations, and liabilities arising from, or relating to, labor obligations imposed by state or federal law upon the San Francisco Bay Area Water Transit Authority.

Chapter 6. Severability

66540.69. If any chapter, article, section, subdivision, subsection, sentence, clause, or phrase in this title, or the application thereof to any person or circumstances, is for any reason held invalid, the validity of the remainder of the title, or the application of such provision to other persons or circumstances, shall not be affected thereby. The Legislature hereby declares that it would have passed this title and each chapter, article, section, subdivision, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subdivisions, subsections, sentences, clauses, or phrases, or the application thereof to any person or circumstance, be held invalid.

SEC. 3. Section 30913 of the Streets and Highways Code is amended to read:

30913. (a) In addition to any other authorized expenditure of toll bridge revenues, the following major projects may be funded from toll revenues:

(1) Benicia-Martinez Bridge: Widening of the existing bridge.

(2) Benicia-Martinez Bridge: Construction of an additional span parallel to the existing bridge.

(3) Carquinez Bridge: Replacement of the existing western span.

(4) Richmond-San Rafael Bridge: Major rehabilitation of the bridge, and development of a new easterly approach between the toll plaza and Route 80, near Pinole, known as the Richmond Parkway.

(b) The toll increase approved in 1988, which authorized a uniform toll of one dollar ($1) for two-axle vehicles on the bridges and corresponding increases for multi-axle vehicles, resulted in the following toll increases for two-axle vehicles on the bridges:

Bridge	1988 Increase (Two–axle vehicles)
Antioch Bridge	$0.50
Benicia-Martinez Bridge	.60
Carquinez Bridge	.60
Dumbarton Bridge	.25
Richmond-San Rafael Bridge	.00
San Francisco-Oakland Bay Bridge	.25
San Mateo-Hayward Bridge	.25

Portions of the 1988 toll increase were dedicated to transit purposes, and these amounts shall be calculated as up to 2 percent of the revenue generated each year by the collection on all bridges of the base toll at the level established by the 1988 toll increase. The Metropolitan Transportation Commission shall allocate two-thirds of these amounts for transportation projects, other than those specified in Sections 30912 and 30913 and in subdivision (a) of Section 30914, which are designed to reduce vehicular traffic congestion and improve bridge operations on any bridge, including, but not limited to, bicycle facilities and for the planning, construction, operation, and acquisition of rapid water transit systems. The commission shall allocate the remaining one-third solely for the planning, construction, operation, and acquisition of rapid water transit systems. The plans for the projects may also be funded by these moneys. Funds made available for rapid water transit systems pursuant to this subdivision shall be allocated to the San Francisco Bay Area Water Emergency Transportation Authority.

(c) The department shall not include, in the plans for the new Benicia-Martinez Bridge, toll plazas, highways, or other facilities leading to or from the Benicia-Martinez Bridge, any construction that would result in the net loss of any wetland acreage.

(d) With respect to the Benicia-Martinez and Carquinez Bridges, the department shall consider the potential for rail transit as part of the plans for the new structures specified in paragraphs (2) and (3) of subdivision (a).

(e) At the time the first of the new bridges specified in paragraphs (2) and (3) of subdivision (a) is opened to the public, there shall be a lane for the exclusive use of pedestrians and bicycles available on at least, but not limited to, the original span at Benicia or Carquinez, or the additional or replacement spans planned for those bridges. The design of these bridges shall not preclude the subsequent addition of a lane for the exclusive use of pedestrians and bicycles.

SEC. 4. Section 30914 of the Streets and Highways Code is amended to read:

30914. (a) In addition to any other authorized expenditures of toll bridge revenues, the following major projects may be funded from toll revenues of all bridges:

(1) Dumbarton Bridge: Improvement of the western approaches from Route 101 if affected local governments are involved in the planning.

(2) San Mateo-Hayward Bridge and approaches: Widening of the bridge to six lanes, construction of rail transit capital improvements on the bridge structure, and improvements to the Route 92/Route 880 interchange.

(3) Construction of West Grand connector or an alternate project designed to provide comparable benefit by reducing vehicular traffic congestion on the eastern approaches to the San Francisco-Oakland Bay Bridge. Affected local governments shall be involved in the planning.

(4) Not less than 90 percent of the revenues determined by the authority as derived from the toll increase approved in 1988 for class I vehicles on the San Francisco-Oakland Bay Bridge authorized by Section 30917 shall be used exclusively for rail transit capital improvements designed to reduce vehicular traffic congestion on that bridge. This amount shall be calculated as 21 percent of the revenue generated each year by the collection of the base toll at the level established by the 1988 increase on the San Francisco-Oakland Bay Bridge.

(b) Notwithstanding any funding request for the transbay bus terminal pursuant to Section 31015, the Metropolitan Transportation Commission shall allocate toll bridge revenues in an annual amount not to exceed three million dollars ($3,000,000), plus a 3.5-percent annual increase, to the department or to the Transbay Joint Powers Authority after the department transfers the title of the Transbay Terminal Building to that entity, for operation and maintenance expenditures. This allocation shall be payable from funds transferred by the Bay Area Toll Authority. This transfer of funds is subordinate to any obligations of the authority, now

or hereafter existing, having a statutory or first priority lien against the toll bridge revenues. The first annual 3.5-percent increase shall be made on July 1, 2004. The transfer is further subject to annual certification by the department or the Transbay Joint Powers Authority that the total Transbay Terminal Building operating revenue is insufficient to pay the cost of operation and maintenance without the requested funding.

(c) If the voters approve a toll increase in 2004 pursuant to Section 30921, the authority shall, consistent with the provisions of subdivisions (d) and (f), fund the projects described in this subdivision and in subdivision (d) that shall collectively be known as the Regional Traffic Relief Plan by bonding or transfers to the Metropolitan Transportation Commission. These projects have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors, from toll revenues of all bridges:

(1) BART/MUNI Connection at Embarcadero and Civic Center Stations. Provide direct access from the BART platform to the MUNI platform at the above stations and equip new fare gates that are TransLink ready. Three million dollars ($3,000,000). The project sponsor is BART.

(2) MUNI Metro Third Street Light Rail Line. Provide funding for the surface and light rail transit and maintenance facility to support MUNI Metro Third Street Light Rail service connecting to Caltrain stations and the E-Line waterfront line. Thirty million dollars ($30,000,000). The project sponsor is MUNI.

(3) MUNI Waterfront Historic Streetcar Expansion. Provide funding to rehabilitate historic streetcars and construct trackage and terminal facilities to support service from the Caltrain Terminal, the Transbay Terminal, and the Ferry Building, and connecting the Fisherman's Wharf and northern waterfront. Ten million dollars ($10,000,000). The project sponsor is MUNI.

(4) East to West Bay Commuter Rail Service over the Dumbarton Rail Bridge. Provide funding for the necessary track and station improvements and rolling stock to interconnect the BART and Capitol Corridor at Union City with Caltrain service over the Dumbarton Rail Bridge, and interconnect and provide track improvements for the ACE line with the same Caltrain service at Centerville. Provide a new station at Sun Microsystems in Menlo Park. One hundred thirty-five million dollars ($135,000,000). The project is jointly sponsored by the San Mateo County Transportation Authority, Capitol Corridor, the Alameda County Congestion Management Agency, and the Alameda County Transportation Improvement Authority.

(5) Vallejo Station. Construct intermodal transportation hub for bus and ferry service, including parking structure, at site of Vallejo's current

ferry terminal. Twenty-eight million dollars ($28,000,000). The project sponsor is the City of Vallejo.

(6) Solano County Express Bus Intermodal Facilities. Provide competitive grant fund source, to be administered by the Metropolitan Transportation Commission. Eligible projects are Curtola Park and Ride, Benicia Intermodal Facility, Fairfield Transportation Center and Vacaville Intermodal Station. Priority to be given to projects that are fully funded, ready for construction, and serving transit service that operates primarily on existing or fully funded high-occupancy vehicle lanes. Twenty million dollars ($20,000,000). The project sponsor is Solano Transportation Authority.

(7) Solano County Corridor Improvements near Interstate 80/Interstate 680 Interchange. Provide funding for improved mobility in corridor based on recommendations of joint study conducted by the Department of Transportation and the Solano Transportation Authority. Cost-effective transit infrastructure investment or service identified in the study shall be considered a high priority. One hundred million dollars ($100,000,000). The project sponsor is Solano Transportation Authority.

(8) Interstate 80: Eastbound High-Occupancy Vehicle (HOV) Lane Extension from Route 4 to Carquinez Bridge. Construct HOV-lane extension. Fifty million dollars ($50,000,000). The project sponsor is the Department of Transportation.

(9) Richmond Parkway Transit Center. Construct parking structure and associated improvements to expand bus capacity. Sixteen million dollars ($16,000,000). The project sponsor is Alameda-Contra Costa Transit District, in coordination with West Contra Costa Transportation Advisory Committee, Western Contra Costa Transit Authority, City of Richmond, and the Department of Transportation.

(10) Sonoma-Marin Area Rail Transit District (SMART) Extension to Larkspur or San Quentin. Extend rail line from San Rafael to a ferry terminal at Larkspur or San Quentin. Thirty-five million dollars ($35,000,000). Up to five million dollars ($5,000,000) may be used to study, in collaboration with the Water Transit Authority, the potential use of San Quentin property as an intermodal water transit terminal. The project sponsor is SMART.

(11) Greenbrae Interchange/Larkspur Ferry Access Improvements. Provide enhanced regional and local access around the Greenbrae Interchange to reduce traffic congestion and provide multimodal access to the Richmond-San Rafael Bridge and Larkspur Ferry Terminal by constructing a new full service diamond interchange at Wornum Drive south of the Greenbrae Interchange, extending a multiuse pathway from the new interchange at Wornum Drive to East Sir Francis Drake Boulevard and the Cal Park Hill rail right-of-way, adding a new lane to

East Sir Francis Drake Boulevard and rehabilitating the Cal Park Hill Rail Tunnel and right-of-way approaches for bicycle and pedestrian access to connect the San Rafael Transit Center with the Larkspur Ferry Terminal. Sixty-five million dollars ($65,000,000). The project sponsor is Marin County Congestion Management Agency.

(12) Direct High-Occupancy Vehicle (HOV) lane connector from Interstate 680 to the Pleasant Hill or Walnut Creek BART stations or in close proximity to either station or as an extension of the southbound Interstate 680 High-Occupancy Vehicle Lane through the Interstate 680/State Highway Route 4 interchange from North Main in Walnut Creek to Livorna Road. The County Connection shall utilize up to one million dollars ($1,000,000) of the funds described in this paragraph to develop options and recommendations for providing express bus service on the Interstate 680 High-Occupancy Vehicle Lane south of the Benicia Bridge in order to connect to BART. Upon completion of the plan, the Contra Costa Transportation Authority shall adopt a preferred alternative provided by the County Connection plan for future funding. Following adoption of the preferred alternative, the remaining funds may be expended either to fund the preferred alternative or to extend the high-occupancy vehicle lane as described in this paragraph. Fifteen million dollars ($15,000,000). The project is sponsored by the Contra Costa Transportation Authority.

(13) Rail Extension to East Contra Costa/E-BART. Extend BART from Pittsburg/Bay Point Station to Byron in East Contra Costa County. Ninety-six million dollars ($96,000,000). Project funds may only be used if the project is in compliance with adopted BART policies with respect to appropriate land use zoning in vicinity of proposed stations. The project is jointly sponsored by BART and Contra Costa Transportation Authority.

(14) Capitol Corridor Improvements in Interstate 80/Interstate 680 Corridor. Fund track and station improvements, including the Suisun Third Main Track and new Fairfield Station. Twenty-five million dollars ($25,000,000). The project sponsor is Capitol Corridor Joint Powers Authority and the Solano Transportation Authority.

(15) Central Contra Costa Bay Area Rapid Transit (BART) Crossover. Add new track before Pleasant Hill BART Station to permit BART trains to cross to return track towards San Francisco. Twenty-five million dollars ($25,000,000). The project sponsor is BART.

(16) Benicia-Martinez Bridge: New Span. Provide partial funding for completion of new five-lane span between Benicia and Martinez to significantly increase capacity in the I-680 corridor. Fifty million dollars ($50,000,000). The project sponsor is the Bay Area Toll Authority.

(17) Regional Express Bus North. Competitive grant program for bus service in Richmond-San Rafael Bridge, Carquinez, Benicia-Martinez and Antioch Bridge corridors. Provide funding for park and ride lots, infrastructure improvements, and rolling stock. Eligible recipients include Golden Gate Bridge Highway and Transportation District, Vallejo Transit, Napa VINE, Fairfield-Suisun Transit, Western Contra Costa Transit Authority, Eastern Contra Costa Transit Authority, and Central Contra Costa Transit Authority. The Golden Gate Bridge Highway and Transportation District shall receive a minimum of one million six hundred thousand dollars ($1,600,000). Napa VINE shall receive a minimum of two million four hundred thousand dollars ($2,400,000). Twenty million dollars ($20,000,000). The project sponsor is the Metropolitan Transportation Commission.

(18) TransLink. Integrate the Bay Area's regional smart card technology, TransLink, with operator fare collection equipment and expand system to new transit services. Twenty-two million dollars ($22,000,000). The project sponsor is the Metropolitan Transportation Commission.

(19) Real-Time Transit Information. Provide a competitive grant program for transit operators for assistance with implementation of high-technology systems to provide real-time transit information to riders at transit stops or via telephone, wireless, or Internet communication. Priority shall be given to projects identified in the commission's connectivity plan adopted pursuant to subdivision (d) of Section 30914.5. Twenty million dollars ($20,000,000). The funds shall be administered by the Metropolitan Transportation Commission.

(20) Safe Routes to Transit: Plan and construct bicycle and pedestrian access improvements in close proximity to transit facilities. Priority shall be given to those projects that best provide access to regional transit services. Twenty-two million five hundred thousand dollars ($22,500,000). City Car Share shall receive two million five hundred thousand dollars ($2,500,000) to expand its program within approximately one-quarter mile of transbay regional transit terminals or stations. The City Car Share project is sponsored by City Car Share and the Safe Routes to Transit project is jointly sponsored by the East Bay Bicycle Coalition and the Transportation and Land Use Coalition. These sponsors must identify a public agency cosponsor for purposes of specific project fund allocations.

(21) BART Tube Seismic Strengthening. Add seismic capacity to existing BART tube connecting the east bay with San Francisco. One hundred forty-three million dollars ($143,000,000). The project sponsor is BART.

(22) Transbay Terminal/Downtown Caltrain Extension. A new Transbay Terminal at First and Mission Streets in San Francisco providing added capacity for transbay, regional, local, and intercity bus services, the extension of Caltrain rail services into the terminal, and accommodation of a future high-speed passenger rail line to the terminal and eventual rail connection to the east bay. Eligible expenses include project planning, design and engineering, construction of a new terminal and its associated ramps and tunnels, demolition of existing structures, design and development of a temporary terminal, property and right-of-way acquisitions required for the project, and associated project-related administrative expenses. A bus- and train-ready terminal facility, including purchase and acquisition of necessary rights-of-way for the terminal, ramps, and rail extension, is the first priority for toll funds for the Transbay Terminal/Downtown Caltrain Extension Project. The temporary terminal operation shall not exceed five years. One hundred fifty million dollars ($150,000,000). The project sponsor is the Transbay Joint Powers Authority.

(23) Oakland Airport Connector. New transit connection to link BART, Capitol Corridor and AC Transit with Oakland Airport. The Port of Oakland shall provide a full funding plan for the connector. Thirty million dollars ($30,000,000). The project sponsors are the Port of Oakland and BART.

(24) AC Transit Enhanced Bus-Phase 1 on Telegraph Avenue, International Boulevard, and East 14th Street (Berkeley-Oakland-San Leandro). Develop enhanced bus service on these corridors, including bus bulbs, signal prioritization, new buses, and other improvements. Priority of investment shall improve the AC connection to BART on these corridors. Sixty-five million dollars ($65,000,000). The project sponsor is AC Transit.

(25) Transbay Commute Ferry Service. Purchase two vessels for transbay ferry services. Second vessel funds to be released upon demonstration of appropriate terminal locations, new transit-oriented development, adequate parking, and sufficient landside feeder connections to support ridership projections. Twelve million dollars ($12,000,000). The project sponsor is San Francisco Bay Area Water Emergency Transportation Authority. If the San Francisco Bay Area Water Emergency Transportation Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements or for consolidation of existing ferry operations.

(26) Commute Ferry Service for Berkeley/Albany. Purchase two vessels for ferry services between the Berkeley/Albany Terminal and

San Francisco. Parking access and landside feeder connections must be sufficient to support ridership projections. Twelve million dollars ($12,000,000). The project sponsor is the San Francisco Bay Area Water Emergency Transportation Authority. If the San Francisco Bay Area Water Emergency Transportation Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements. If the San Francisco Bay Area Water Emergency Transportation Authority does not have an entitled terminal site within the Berkeley/Albany catchment area by 2010 that meets its requirements, the funds described in this paragraph and the operating funds described in paragraph (7) of subdivision (d) shall be transferred to another site in the East Bay. The City of Richmond shall be given first priority to receive this transfer of funds if it has met the planning milestones identified in its special study developed pursuant to paragraph (28).

(27) Commute Ferry Service for South San Francisco. Purchase two vessels for ferry services to the Peninsula. Parking access and landside feeder connections must be sufficient to support ridership projections. Twelve million dollars ($12,000,000). The project sponsor is the San Francisco Bay Area Water Emergency Transportation Authority. If the San Francisco Bay Area Water Emergency Transportation Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements.

(28) Water Transit Facility Improvements, Spare Vessels, and Environmental Review Costs. Provide two backup vessels for water transit services, expand berthing capacity at the Port of San Francisco, and expand environmental studies and design for eligible locations. Forty-eight million dollars ($48,000,000). The project sponsor is San Francisco Bay Area Water Emergency Transportation Authority. Up to one million dollars ($1,000,000) of the funds described in this paragraph shall be made available for the San Francisco Bay Area Water Emergency Transportation Authority to study accelerating development and other milestones that would potentially increase ridership at the City of Richmond ferry terminal.

(29) Regional Express Bus Service for San Mateo, Dumbarton, and Bay Bridge Corridors. Expand park and ride lots, improve HOV access, construct ramp improvements, and purchase rolling stock. Twenty-two million dollars ($22,000,000). The project sponsors are AC Transit and Alameda County Congestion Management Agency.

(30) I-880 North Safety Improvements. Reconfigure various ramps on I-880 and provide appropriate mitigations between 29th Avenue and

16th Avenue. Ten million dollars ($10,000,000). The project sponsors are Alameda County Congestion Management Agency, City of Oakland, and the Department of Transportation.

(31) BART Warm Springs Extension. Extension of the existing BART system from Fremont to Warm Springs in southern Alameda County. Ninety-five million dollars ($95,000,000). Up to ten million dollars ($10,000,000) shall be used for grade separation work in the City of Fremont necessary to extend BART. The project would facilitate a future rail service extension to the Silicon Valley. The project sponsor is BART.

(32) I-580 (Tri Valley) Rapid Transit Corridor Improvements. Provide rail or High-Occupancy Vehicle lane direct connector to Dublin BART and other improvements on I-580 in Alameda County for use by express buses. Sixty-five million dollars ($65,000,000). The project sponsor is Alameda County Congestion Management Agency.

(33) Regional Rail Master Plan. Provide planning funds for integrated regional rail study pursuant to subdivision (f) of Section 30914.5. Six million five hundred thousand dollars ($6,500,000). The project sponsors are Caltrain and BART.

(34) Integrated Fare Structure Program. Provide planning funds for the development of zonal monthly transit passes pursuant to subdivision (e) of Section 30914.5. One million five hundred thousand dollars ($1,500,000). The project sponsor is the Translink Consortium.

(35) Transit Commuter Benefits Promotion. Marketing program to promote tax-saving opportunities for employers and employees as specified in Section 132(f)(3) or 162(a) of the Internal Revenue Code. Goal is to increase the participation rate of employers offering employees a tax-free benefit to commute to work by transit. The project sponsor is the Metropolitan Transportation Commission. Five million dollars ($5,000,000).

(36) Caldecott Tunnel Improvements. Provide funds to plan and construct a fourth bore at the Caldecott Tunnel between Contra Costa and Alameda Counties. The fourth bore will be a two-lane bore with a shoulder or shoulders north of the current three bores. The County Connection shall study all feasible alternatives to increase transit capacity in the westbound corridor of State Highway Route 24 between State Highway Route 680 and the Caldecott Tunnel, including the study of the use of an express lane, high-occupancy vehicle lane, and an auxiliary lane. The cost of the study shall not exceed five hundred thousand dollars ($500,000) and shall be completed not later than January 15, 2006. Fifty million five hundred thousand dollars ($50,500,000). The project sponsor is the Contra Costa Transportation Authority.

(d) Not more than 38 percent of the revenues generated from the toll increase shall be made available annually for the purpose of providing

operating assistance for transit services as set forth in the authority's annual budget resolution. The funds shall be made available to the provider of the transit services subject to the performance measures described in Section 30914.5. If the funds cannot be obligated for operating assistance consistent with the performance measures, these funds shall be obligated for other operations consistent with this chapter.

Except for operating programs that do not have planned funding increases and subject to the 38-percent limit on total operating cost funding in any single year, following the first year of scheduled operations, an escalation factor, not to exceed 1.5 percent per year, shall be added to the operating cost funding through fiscal year 2015–16, to partially offset increased operating costs. The escalation factors shall be contained in the operating agreements described in Section 30914.5. Subject to the limitations of this paragraph, the Metropolitan Transportation Commission may annually fund the following operating programs as another component of the Regional Traffic Relief Plan:

(1) Golden Gate Express Bus Service over the Richmond Bridge (Route 40). Two million one hundred thousand dollars ($2,100,000).

(2) Napa Vine Service terminating at the Vallejo Intermodal Terminal. Three hundred ninety thousand dollars ($390,000).

(3) Regional Express Bus North Pool serving the Carquinez and Benicia Bridge Corridors. Three million four hundred thousand dollars ($3,400,000).

(4) Regional Express Bus South Pool serving the Bay Bridge, San Mateo Bridge, and Dumbarton Bridge Corridors. Six million five hundred thousand dollars ($6,500,000).

(5) Dumbarton Rail. Five million five hundred thousand dollars ($5,500,000).

(6) San Francisco Bay Area Water Emergency Transportation Authority, Alameda/Oakland/Harbor Bay, Berkeley/Albany, South San Francisco, Vallejo, or other transbay ferry service. A portion of the operating funds may be dedicated to landside transit operations. Fifteen million three hundred thousand dollars ($15,300,000).

(7) Owl Bus Service on BART Corridor. One million eight hundred thousand dollars ($1,800,000).

(8) MUNI Metro Third Street Light Rail Line. Two million five hundred thousand dollars ($2,500,000) without escalation.

(9) AC Transit Enhanced Bus Service on Telegraph Avenue, International Boulevard, and East 14th Street in Berkeley-Oakland-San Leandro. Three million dollars ($3,000,000) without escalation.

(10) TransLink, three-year operating program. Twenty million dollars ($20,000,000) without escalation.

(11) San Francisco Bay Area Water Emergency Transportation Authority, regional planning and operations. Three million dollars ($3,000,000) without escalation.

(e) For all projects authorized under subdivision (c), the project sponsor shall submit an initial project report to the Metropolitan Transportation Commission before July 1, 2004. This report shall include all information required to describe the project in detail, including the status of any environmental documents relevant to the project, additional funds required to fully fund the project, the amount, if any, of funds expended to date, and a summary of any impediments to the completion of the project. This report, or an updated report, shall include a detailed financial plan and shall notify the commission if the project sponsor will request toll revenue within the subsequent 12 months. The project sponsor shall update this report as needed or requested by the commission. No funds shall be allocated by the commission for any project authorized by subdivision (c) until the project sponsor submits the initial project report, and the report is reviewed and approved by the commission.

If multiple project sponsors are listed for projects listed in subdivision (c), the commission shall identify a lead sponsor in coordination with all identified sponsors, for purposes of allocating funds. For any projects authorized under subdivision (c), the commission shall have the option of requiring a memorandum of understanding between itself and the project sponsor or sponsors that shall include any specific requirements that must be met prior to the allocation of funds provided under subdivision (c).

(f) The Metropolitan Transportation Commission shall annually assess the status of programs and projects and shall allocate a portion of funding made available under Section 30921 or 30958 for public information and advertising to support the services and projects identified in subdivisions (c) and (d). If a program or project identified in subdivision (c) has cost savings after completion, taking into account construction costs and an estimate of future settlement claims, or cannot be completed or cannot continue due to delivery or financing obstacles making the completion or continuation of the program or project unrealistic, the commission shall consult with the program or project sponsor. After consulting with the sponsor, the commission shall hold a public hearing concerning the program or project. After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, or reassign some or all of the funds to another project within the same bridge corridor. If a program or project identified in subdivision (c) is to be implemented with other funds not derived from tolls, the commission shall follow the same consultation and hearing process described above and may vote thereafter to reassign the funds to another

project consistent with the intent of this chapter. If an operating program or project as identified in subdivision (d) cannot achieve its performance objectives described in subdivision (a) of Section 30914.5 or cannot continue due to delivery or financing obstacles making the completion or continuation of the program or project unrealistic, the commission shall consult with the program or the project sponsor. After consulting with the sponsor, the commission shall hold a public hearing concerning the program or project. After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, or to reassign some or all of the funds to another or an additional regional transit program or project within the same corridor. If a program or project does not meet the required performance measures, the commission shall give the sponsor a time certain to achieve the performance measures before reassigning its funding.

(g) If the voters approve a toll increase pursuant to Section 30921, the authority shall within 24 months of the election date, include the projects in a long-range plan that are consistent with the commission's findings required by this section and Section 30914.5. The authority shall update its long-range plan as required to maintain its viability as a strategic plan for funding projects authorized by this section. The authority shall by January 1, 2007, submit its updated long-range plan to the transportation policy committee of each house of the Legislature for review.

(h) If the voters approve a toll increase pursuant to Section 30921, and if additional funds from this toll increase are available following the funding obligations of subdivisions (c) and (d), the authority may set aside a reserve to fund future rolling stock replacement to enhance the sustainability of the services enumerated in subdivision (d). The authority shall, by January 1, 2020, submit a 20-year toll bridge expenditure plan to the Legislature for adoption. This expenditure plan shall have, as its highest priority, replacement of transit vehicles purchased pursuant to subdivision (c).

SEC. 5. 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 735

An act to add Chapter 5.2 (commencing with Section 13367) to Division 7 of the Water Code, relating to water quality.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(a) The increasing problem of marine debris can be harmful to marine resources, particularly species that ingest or become entangled in that debris.

(b) Thermoplastic resin pellets, plastic powders, and production scrap can be mistaken as food by marine life.

(c) Approximately 60 billion pounds of resin pellets are manufactured annually in the United States alone.

(d) The presence of plastic resin pellets and other litter is not unique to United States beaches and waters. Studies have shown plastic resin pellets and other litter in the international marine environment.

(e) Litter found on our beaches represents a threat to California's $46 billion ocean-dependent, tourism-oriented economy, and in certain circumstances may pose a public health threat.

(f) State and local agencies spend millions of dollars per year in litter collection.

(g) The majority of trash capture best management practices, such as catch basin inserts, are not designed to capture resin pellets. The typical mesh in a catch basin insert is five millimeters while the diameter of resin pellets is one to two millimeters.

(h) A coordinated effort among state agencies is necessary to create a comprehensive response to reduce the presence of marine debris litter.

(i) Increased control over industrial discharges will reduce the amount of plastics entering the aquatic environment.

(j) Eliminating marine debris litter from the world's oceans is a universal goal for government, industry, businesses, and individuals.

(k) Stormwater discharges containing preproduction plastic are a significant contributor of pollutants to waters of the state. The state board shall designate, as appropriate, stormwater discharges of preproduction plastic from plastic manufacturing, handling, and transportation facilities as contributors of pollutants pursuant to Section 1342(p)(2)(E) of Title 33 of the United States Code of the federal Clean Water Act.

SEC. 2. Chapter 5.2 (commencing with Section 13367) is added to Division 7 of the Water Code, to read:

Chapter 5.2. Preproduction Plastic Debris Program

13367. (a) For purposes of this chapter, "preproduction plastic" includes plastic resin pellets and powdered coloring for plastics.

(b) (1) The state board and the regional boards shall implement a program to control discharges of preproduction plastic from point and nonpoint sources. The state board shall determine the appropriate regulatory methods to address the discharges from these point and nonpoint sources.

(2) The state board, when developing this program, shall consult with any regional board with plastic manufacturing, handling, and transportation facilities located within the regional board's jurisdiction that has already voluntarily implemented a program to control discharges of preproduction plastic.

(c) The program control measures shall, at a minimum, include waste discharge, monitoring, and reporting requirements that target plastic manufacturing, handling, and transportation facilities.

(d) The program shall, at a minimum, require plastic manufacturing, handling, and transportation facilities to implement best management practices to control discharges of preproduction plastics. A facility that handles preproduction plastic shall comply with either subdivision (e) or the criteria established pursuant to subdivision (f).

(e) At a minimum, the state board shall require the following best management practices in all permits issued under the national pollutant discharge elimination system (NPDES) program that regulate plastic manufacturing, handling, or transportation facilities:

(1) Appropriate containment systems shall be installed at all onsite storm drain discharge locations that are down-gradient of areas where preproduction plastic is present or transferred. A facility shall install a containment system that is defined as a device or series of devices that traps all particles retained by a one millimeter mesh screen and has a design treatment capacity of not less than the peak flowrate resulting from a one-year, one-hour storm in each of the down-gradient drainage areas. When the installation of a containment system is not appropriate because one or more of a facility's down-gradient drainage areas is not discharged through a stormwater conveyance system, or when the regional board determines that a one millimeter or similar mesh screen is not appropriate at one or more down-gradient discharge locations, the regulated facility shall identify and propose for approval by the regional board technically feasible alternative storm drain control measures that

are designed to achieve the same performance as a one millimeter mesh screen.

(2) At all points of preproduction plastic transfer, measures shall be taken to prevent discharge, including, but not limited to, sealed containers durable enough so as not to rupture under typical loading and unloading activities.

(3) At all points of preproduction plastic storage, preproduction plastic shall be stored in sealed containers that are durable enough so as not to rupture under typical loading and unloading activities.

(4) At all points of storage and transfer of preproduction plastic, capture devices shall be in place under all transfer valves and devices used in loading, unloading, or other transfer of preproduction plastic.

(5) A facility shall make available to its employees a vacuum or vacuum type system, for quick cleanup of fugitive preproduction plastic.

(f) The state board shall include criteria for submitting a no exposure certification pursuant to Section 122.26(g) of Title 40 of the Code of Federal Regulations in all NPDES permits regulating plastic manufacturing, handling, or transportation facilities. Facilities that satisfy the no exposure certification criteria are conditionally exempt from the permitting requirements pursuant to Section 122.26 of Title 40 of the Code of Federal Regulations. The no exposure certification shall be required every five years or more frequently as determined by the state board or a regional board.

(g) The state board and the regional boards shall implement this chapter by January 1, 2009.

(h) Nothing in this chapter limits the authority of the state board or the regional boards to establish requirements in addition to the best management practices for the elimination of discharges of preproduction plastic.

CHAPTER 736

An act to amend, repeal, and add Section 12112 of the Public Contract Code, relating to public contracts.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 12112 of the Public Contract Code is amended to read:

12112. (a) Any contract for information technology goods or services, to be manufactured or performed by the contractor especially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on the terms and conditions that the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services.

(b) The department, in consultation with the Department of Finance, shall develop and maintain criteria for the evaluation of risk to the state that results from the acquisition of information technology. This risk analysis shall determine the need for financial protection that is in the best interest of the state, including, but not limited to, any of the following:

(1) An acceptable performance bond as described in Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure.

(2) Any surety as defined in Section 2787 of the Civil Code.

(3) A letter of credit as described in Division 5 (commencing with Section 5101) of the Commercial Code.

(4) Protection in the form of contract terms.

(5) Any other form of security or guaranty of performance in an amount sufficient to protect the state in the case of default by the contractor providing information technology, or any other breach or malfunction of the goods or services, or both.

(c) The department shall, on or before June 1, 2008, submit the criteria developed and maintained pursuant to subdivision (b) to the Joint Legislative Budget Committee and to the State Chief Information Officer.

(d) The State Chief Information Officer shall, on or before July 1, 2012, do both of the following:

(1) Review and report to the Legislature on all contracts approved pursuant to this section on and after January 1, 2008.

(2) Report to the Legislature any recommendations for changes to this section or changes to the criteria developed and maintained by the department pursuant to subdivision (b).

(e) For purposes of this section, "information technology" means information technology goods or services, or both, as appropriate.

(f) This section shall become inoperative on July 1, 2013, and shall be repealed on January 1, 2014.

SEC. 2. Section 12112 is added to the Public Contract Code, to read:

12112. (a) Any contract for information technology goods or services, to be manufactured or performed by the contractor especially

for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on the terms and conditions that the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

(b) This section shall become operative on July 1, 2013.

CHAPTER 737

An act to add Section 2786.1 to the Penal Code, relating to convict labor.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 2786.1 is added to the Penal Code, to read:

2786.1. The secretary shall make weight training equipment available to inmates assigned to fire suppression efforts pursuant to this article. The weight training equipment shall be used in accordance with the provisions of Section 5010.

CHAPTER 738

An act to amend Section 6321 of the Business and Professions Code, to amend Section 1714.1 of the Civil Code, to amend Sections 116.230, 116.320, 411.21, 1502, 2031.210, 2031.270, and 2031.280 of the Code of Civil Procedure, to amend Sections 2142 and 14310 of the Elections Code, to amend Sections 304 and 3204 of the Family Code, to amend Sections 53069.4, 68076, 68084.1, 68085.1, 68085.4, 68152, 68516, 68666, 70603, 70612, 70617, 70621, 70624, 70633, 70650, 70651, 70653, 70654, 70655, 70657, 70658, and 70677 of, and to add Sections 68506.5, 70613.5, 70615, 70657.5, and 70658.5 to, the Government Code, to amend Section 98.2 of the Labor Code, to amend Section 1214.1

of the Penal Code, to amend Section 99582 of the Public Utilities Code, to amend Sections 40230, 40307, 40508, 40509, 40509.5, 40512, 40512.6, 40515, 40521, 42006, and 42007 of, and to add Section 40510.5 to, the Vehicle Code, and to amend Section 395 of the Welfare and Institutions Code, relating to courts.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 6321 of the Business and Professions Code is amended to read:

6321. (a) On and after January 1, 2006, as described in Section 68085.1 of the Government Code, the Administrative Office of the Courts shall make monthly distributions from superior court filing fees to the law library fund in each county in the amounts described in this section and Section 6322.1. From each first paper filing fee as provided under Section 70611, 70612, 70613, 70614, or 70670 of the Government Code, each first paper or petition filing fee in a probate matter as provided under Section 70650, 70651, 70652, 70653, 70654, 70655, 70656, or 70658 of the Government Code, Section 103470 of the Health and Safety Code, or Section 7660 of the Probate Code, each filing fee for a small claim or limited civil case appeal as provided under Section 116.760 of the Code of Civil Procedure or Section 70621 of the Government Code, and each vehicle forfeiture petition fee as provided under subdivision (e) of Section 14607.6 of the Vehicle Code, that is collected in each of the following counties, the amount indicated in this subdivision shall be paid to the law library fund in that county:

Jurisdiction	Amount
Alameda	$31.00
Alpine	4.00
Amador	20.00
Butte	29.00
Calaveras	26.00
Colusa	17.00
Contra Costa	29.00
Del Norte	20.00
El Dorado	26.00
Fresno	31.00
Glenn	20.00
Humboldt	40.00

Imperial	20.00
Inyo	23.00
Kern	21.00
Kings	23.00
Lake	23.00
Lassen	25.00
Los Angeles	18.00
Madera	26.00
Marin	32.00
Mariposa	27.00
Mendocino	29.00
Merced	23.00
Modoc	20.00
Mono	20.00
Monterey	25.00
Napa	20.00
Nevada	23.00
Orange	29.00
Placer	29.00
Plumas	23.00
Riverside	26.00
Sacramento	44.00
San Benito	23.00
San Bernardino	23.00
San Diego	35.00
San Francisco	36.00
San Joaquin	23.00
San Luis Obispo	31.00
San Mateo	32.50
Santa Barbara	35.00
Santa Clara	26.00
Santa Cruz	29.00
Shasta	20.00
Sierra	20.00
Siskiyou	26.00
Solano	26.00
Sonoma	29.00
Stanislaus	18.00
Sutter	7.00
Tehama	20.00
Trinity	20.00
Tulare	29.00
Tuolumne	20.00

Ventura	26.00
Yolo	29.00
Yuba	7.00

(b) If a board of supervisors in any county acted before January 1, 2006, to increase the law library fee in that county effective January 1, 2006, the amount distributed to the law library fund in that county under subdivision (a) shall be increased by the amount that the board of supervisors acted to increase the fee, up to three dollars ($3). Notwithstanding subdivision (b) of Section 6322.1, as it read on January 1, 2005, the maximum increase permitted under this subdivision in Los Angeles County is three dollars ($3), rather than two dollars ($2).

(c) The amounts of twenty-three dollars ($23) for Inyo County, twenty-nine dollars ($29) for Mendocino County, twenty-three dollars ($23) for Plumas County, and twenty-three dollars ($23) for San Benito County listed in subdivision (a) shall apply to distributions made under subdivision (a) beginning January 1, 2006.

SEC. 2. Section 1714.1 of the Civil Code is amended to read:

1714.1. (a) Any act of willful misconduct of a minor that results in injury or death to another person or in any injury to the property of another shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct.

Subject to the provisions of subdivision (c), the joint and several liability of the parent or guardian having custody and control of a minor under this subdivision shall not exceed twenty-five thousand dollars ($25,000) for each tort of the minor, and in the case of injury to a person, imputed liability shall be further limited to medical, dental and hospital expenses incurred by the injured person, not to exceed twenty-five thousand dollars ($25,000). The liability imposed by this section is in addition to any liability now imposed by law.

(b) Any act of willful misconduct of a minor that results in the defacement of property of another with paint or a similar substance shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, including court costs, and attorney's fees, to the prevailing party, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct, not to exceed twenty-five thousand dollars ($25,000), except as provided in subdivision (c), for each tort of the minor.

(c) The amounts listed in subdivisions (a) and (b) shall be adjusted every two years by the Judicial Council to reflect any increases in the

cost of living in California, as indicated by the annual average of the California Consumer Price Index. The Judicial Council shall round this adjusted amount up or down to the nearest hundred dollars. On or before July 1 of each odd-numbered year, the Judicial Council shall compute and publish the amounts listed in subdivisions (a) and (b), as adjusted according to this subdivision.

(d) The maximum liability imposed by this section is the maximum liability authorized under this section at the time that the act of willful misconduct by a minor was committed.

(e) Nothing in this section shall impose liability on an insurer for a loss caused by the willful act of the insured for purposes of Section 533 of the Insurance Code. An insurer shall not be liable for the conduct imputed to a parent or guardian by this section for any amount in excess of ten thousand dollars ($10,000).

SEC. 3. Section 116.230 of the Code of Civil Procedure is amended to read:

116.230. (a) In a small claims case, the clerk of the court shall charge and collect only those fees authorized under this chapter.

(b) If the party filing a claim has filed 12 or fewer small claims in the state within the previous 12 months, the filing fee is the following:

(1) Thirty dollars ($30) if the amount of the demand is one thousand five hundred dollars ($1,500) or less.

(2) Fifty dollars ($50) if the amount of the demand is more than one thousand five hundred dollars ($1,500) but less than or equal to five thousand dollars ($5,000).

(3) Seventy-five dollars ($75) if the amount of the demand is more than five thousand dollars ($5,000).

(c) If the party has filed more than 12 other small claims in the state within the previous 12 months, the filing fee is one hundred dollars ($100).

(d) (1) If, after having filed a claim and paid the required fee under paragraph (1) of subdivision (b), a party files an amended claim or amendment to a claim that raises the amount of the demand so that the filing fee under paragraph (2) of subdivision (b) would be charged, the filing fee for the amended claim or amendment is twenty dollars ($20).

(2) If, after having filed a claim and paid the required fee under paragraph (2) of subdivision (b), a party files an amended claim or amendment to a claim that raises the amount of the demand so that the filing fee under paragraph (3) of subdivision (b) would be charged, the filing fee for the amended claim or amendment is twenty-five dollars ($25).

(3) If, after having filed a claim and paid the required fee under paragraph (1) of subdivision (b), a party files an amended claim or

amendment to a claim that raises the amount of the demand so that the filing fee under paragraph (3) of subdivision (b) would be charged, the filing fee for the amended claim or amendment is forty-five dollars ($45).

(4) The additional fees paid under this subdivision are due upon filing. The court shall not reimburse a party if the party's claim is amended to demand a lower amount that falls within the range for a filing fee lower than that originally paid.

(e) Each party filing a claim shall file a declaration with the claim stating whether that party has filed more than 12 other small claims in the state within the last 12 months.

(f) The clerk of the court shall deposit fees collected under this section into a bank account established for this purpose by the Administrative Office of the Courts and maintained under rules adopted by or trial court financial policies and procedures authorized by the Judicial Council under subdivision (a) of Section 77206 of the Government Code. The deposits shall be made as required under Section 68085.1 of the Government Code and trial court financial policies and procedures authorized by the Judicial Council.

(g) (1) The Administrative Office of the Courts shall distribute six dollars ($6) of each thirty-dollar ($30) fee, eight dollars ($8) of each fifty-dollar ($50) fee, ten dollars ($10) of each seventy-five-dollar ($75) fee, and fourteen dollars ($14) of each one hundred-dollar ($100) fee collected under subdivision (b) or (c) to a special account in the county in which the court is located to be used for the small claims advisory services described in Section 116.940, or, if the small claims advisory services are administered by the court, to the court. The Administrative Office of the Courts shall also distribute two dollars ($2) of each seventy-five-dollar ($75) fee collected under subdivision (b) to the law library fund in the county in which the court is located.

(2) From the fees collected under subdivision (d), the Administrative Office of the Courts shall distribute two dollars ($2) to the law library fund in the county in which the court is located, and three dollars ($3) to the small claims advisory services described in Section 116.940, or, if the small claims advisory services are administered by the court, to the court.

(3) Records of these moneys shall be available from the Administrative Office of the Courts for inspection by the public on request.

(4) Nothing in this section precludes the court or county from contracting with a third party to provide small claims advisory services as described in Section 116.940.

(h) The remainder of the fees collected under subdivisions (b), (c), and (d) shall be transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

(i) All money distributed under this section to be used for small claims advisory services shall be used only for providing those services as described in Section 116.940. Nothing in this section shall preclude the county or the court from procuring other funding to comply with the requirements of Section 116.940.

SEC. 4. Section 116.320 of the Code of Civil Procedure is amended to read:

116.320. (a) A plaintiff may commence an action in the small claims court by filing a claim under oath with the clerk of the small claims court in person, by mail, by facsimile transmission if authorized pursuant to Section 1010.5, or by electronic means as authorized by Section 1010.6.

(b) The claim form shall be a simple nontechnical form approved or adopted by the Judicial Council. The claim form shall set forth a place for (1) the name and address of the defendant, if known; (2) the amount and the basis of the claim; (3) that the plaintiff, where possible, has demanded payment and, in applicable cases, possession of the property; (4) that the defendant has failed or refused to pay, and, where applicable, has refused to surrender the property; and (5) that the plaintiff understands that the judgment on his or her claim will be conclusive and without a right of appeal.

(c) The form or accompanying instructions shall include information that the plaintiff (1) may not be represented by an attorney, (2) has no right of appeal, and (3) may ask the court to waive fees for filing and serving the claim on the ground that the plaintiff is unable to pay them, using the forms approved by the Judicial Council for that purpose.

SEC. 5. Section 411.21 of the Code of Civil Procedure is amended to read:

411.21. (a) If a complaint or other first paper is accompanied by payment by check in an amount less than the required fee, the clerk shall accept the paper for filing, but shall not issue a summons until the court receives full payment of the required fee. The clerk shall, by mail, notify the party tendering the check that (1) the check was made out for an amount less than the required filing fee, (2) the administrative charge specified in subdivision (g) has been imposed to reimburse the court for the costs of processing the partial payment and providing the notice specified in this subdivision, and (3) the party has 20 days from the date of mailing of the notice within which to pay the remainder of the required fee and the administrative charge, except as provided in subdivision (f). If the person who tendered the check is not a party to the action or proposed action, but only is acting on behalf of a party, the clerk shall notify not only the person who tendered the check, and also the party or that party's attorney, if the party is represented. The clerk's certificate as to the mailing of notice pursuant to this section establishes a rebuttable

presumption that the fees were not paid. This presumption is a presumption affecting the burden of producing evidence. This subdivision does not apply to an unlawful detainer action.

(b) The clerk shall void the filing if the party who tendered a check in an amount less than the required filing fee or on whose behalf a check in an amount less than the required filing fee was tendered has not paid the full amount of the fee and the administrative charge by a means specified in subdivision (a) within 20 days of the date on which the notice required by subdivision (a) was mailed. Any filing voided by this section may be disposed of immediately after the 20 days have elapsed without preserving a copy in the court records notwithstanding Section 68152 of the Government Code.

(c) If a check for less than the required fee was tendered, the remainder of the required fee and the administrative charge were not paid within the period specified in subdivision (a), and a refund of the partial payment has not been requested in a writing mailed or presented by the party or person who tendered the check within 20 days from the date on which the remainder of the required fee was due, the partial payment shall be remitted to the State Treasurer to be deposited in the Trial Court Trust Fund, except for the amount of the administrative charge described in subdivision (g), that shall be deducted from the partial payment and shall be distributed as described in subdivision (g) to the court which incurred the charge. If the party or person who tendered the check for partial payment requests a refund of the partial payment, in writing, within the time specified in this subdivision, the clerk shall refund the amount of the partial payment less the amount of the administrative charge imposed by that court. All partial payments that the court received before January 1, 2006, and that remain on deposit for filings that the clerk voided pursuant to this section, once three years have passed from the date that the filing was voided, shall be remitted to the State Treasurer for deposit into the Trial Court Trust Fund.

(d) If an adverse party files a response to a complaint or other first paper referred to in subdivision (a), together with a filing fee, and the original filing is voided pursuant to subdivision (b), the responsive filing is not required and shall be voided. The court shall, by mail, provide notice to the parties that the initial paper and the response have been voided. The responding party's filing fee shall be refunded upon request, provided that the request for a refund is made in writing within 20 days from the date on which the notice was mailed. Upon receipt of the request, the court shall reimburse the responding party's filing fee without imposing any administrative charge. A refund under this subdivision is available if the adverse party has filed only a responsive pleading, but

not if the party has also filed a cross-complaint or other first paper seeking affirmative relief for which there is a filing fee.

(e) If an adverse party, or a person acting on behalf of the adverse party, tenders a check for a required filing fee in an amount less than the required fee, the procedures in subdivisions (a), (b), and (c) shall apply.

(f) If any trial or other hearing is scheduled to be heard prior to the expiration of the 20-day period provided for in subdivision (a), the fee shall be paid prior to the trial or hearing. Failure of the party to pay the fee prior to the trial or hearing date shall cause the court to void the filing and proceed as if it had not been filed.

(g) The clerk shall impose an administrative charge for providing notice that a check submitted for a filing fee is in an amount less than the required fee and for all related administrative, clerical, and other costs incurred under this section. The administrative charge shall, in each instance, be either twenty-five dollars ($25) or a reasonable amount that does not exceed the actual cost incurred by the court, as determined by the court. The notices provided by the court under subdivision (a) shall state the specific amount of the administrative charge that shall be paid to the court. Each administrative charge collected shall be distributed to the court that incurred the charge as described in Section 68085.1 of the Government Code. When a partial payment is to be remitted to the State Treasurer under subdivision (c), the court shall notify the Administrative Office of the Courts of the amount of (1) the partial payment collected, and (2) the administrative charge to be deducted from the payment and to be distributed to the court.

SEC. 6. Section 1502 of the Code of Civil Procedure is amended to read:

1502. (a) This chapter does not apply to any of the following:

(1) Any property in the official custody of a municipal utility district.

(2) Any property in the official custody of a local agency if such property may be transferred to the general fund of such agency under the provisions of Sections 50050-50053 of the Government Code.

(3) Any property in the official custody of a court if the property may be transferred to the Trial Court Operations Fund under Section 68084.1 of the Government Code.

(b) None of the provisions of this chapter applies to any type of property received by the state under the provisions of Chapter 1 (commencing with Section 1300) to Chapter 6 (commencing with Section 1440), inclusive, of this title.

SEC. 7. Section 2031.210 of the Code of Civil Procedure is amended to read:

2031.210. (a) The party to whom an inspection demand has been directed shall respond separately to each item or category of item by any of the following:

(1) A statement that the party will comply with the particular demand for inspection by the date set for inspection pursuant to paragraph (2) of subdivision (c) of Section 2031.030 and any related activities.

(2) A representation that the party lacks the ability to comply with the demand for inspection of a particular item or category of item.

(3) An objection to the particular demand.

(b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party.

(c) Each statement of compliance, each representation, and each objection in the response shall bear the same number and be in the same sequence as the corresponding item or category in the demand, but the text of that item or category need not be repeated.

SEC. 8. Section 2031.270 of the Code of Civil Procedure is amended to read:

2031.270. (a) The party demanding an inspection and the responding party may agree to extend the date for inspection or the time for service of a response to a set of inspection demands, or to particular items or categories of items in a set, to a date or dates beyond those provided in Sections 2031.030, 2031.210, 2031.260, and 2031.280.

(b) This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for inspection or service of a response.

(c) Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any item or category of item in the demand to which the agreement applies in any manner specified in Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

SEC. 9. Section 2031.280 of the Code of Civil Procedure is amended to read:

2031.280. (a) Any documents produced in response to an inspection demand shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand.

(b) The documents shall be produced on the date specified in the inspection demand pursuant to paragraph (2) of subdivision (c) of Section 2031.030, unless an objection has been made to that date. If the date for inspection has been extended pursuant to Section 2031.270, the documents shall be produced on the date agreed to pursuant to that section.

(c) If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form.

SEC. 10. Section 2142 of the Elections Code is amended to read:

2142. (a) If the county elections official refuses to register any qualified elector in the county, the elector may proceed by action in the superior court to compel his or her registration. In an action under this section, as many persons may join as plaintiffs as have causes of action.

(b) If the county elections official has not registered any qualified elector who claims to have registered to vote through the Department of Motor Vehicles or any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the elector may proceed by action in the superior court to compel his or her registration. In an action under this section, as many persons may join as plaintiffs as have causes of action.

(c) No fee shall be charged by the clerk of the court for services rendered in an action under this section.

SEC. 11. Section 14310 of the Elections Code is amended to read:

14310. (a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot as follows:

(1) An election official shall advise the voter of the voter's right to cast a provisional ballot.

(2) The voter shall be provided a provisional ballot, written instructions regarding the process and procedures for casting the provisional ballot, and a written affirmation regarding the voter's registration and eligibility to vote. The written instructions shall include the information set forth in subdivisions (c) and (d).

(3) The voter shall be required to execute, in the presence of an elections official, the written affirmation stating that the voter is eligible to vote and registered in the county where the voter desires to vote.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for absentee ballots, and shall be completed in the same manner as absentee envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the

procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters. No fee shall be charged to the claimant by the clerk of the court for services rendered in an action under this section.

(3) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official.

(A) If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct, the elections official shall count the votes for the entire ballot.

(B) If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or her assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.

(d) The Secretary of State shall establish a free access system that any voter who casts a provisional ballot may access to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.

(e) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(f) This section shall apply to any absent voter described by Section 3015 who is unable to surrender his or her unvoted absent voter's ballot.

(g) Any existing supply of envelopes marked "special challenged ballot" may be used until the supply is exhausted.

SEC. 11.5. Section 14310 of the Elections Code is amended to read:

14310. (a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct

or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot as follows:

(1) An elections official shall advise the voter of the voter's right to cast a provisional ballot.

(2) The voter shall be provided a provisional ballot, written instructions regarding the process and procedures for casting the provisional ballot, and a written affirmation regarding the voter's registration and eligibility to vote. The written instructions shall include the information set forth in subdivisions (c) and (d).

(3) The voter shall be required to execute, in the presence of an elections official, the written affirmation stating that the voter is eligible to vote and registered in the county where the voter desires to vote.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for vote by mail ballots, and shall be completed in the same manner as vote by mail envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on vote by mail ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters. No fee shall be charged to the claimant by the clerk of the court for services rendered in an action under this section.

(3) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official.

(A) If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or

her assigned precinct, the elections official shall count the votes for the entire ballot.

(B) If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or her assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.

(d) The Secretary of State shall establish a free access system that any voter who casts a provisional ballot may access to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.

(e) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(f) This section shall apply to any vote by mail voter described by Section 3015 who is unable to surrender his or her unvoted vote by mail voter's ballot.

(g) Any existing supply of envelopes marked "special challenged ballot" may be used until the supply is exhausted.

SEC. 12. Section 304 of the Family Code is amended to read:

304. As part of the court order granting permission to marry under Section 302 or 303, the court shall require the parties to the prospective marriage of a minor to participate in premarital counseling concerning social, economic, and personal responsibilities incident to marriage, if the court considers the counseling to be necessary. The parties shall not be required, without their consent, to confer with counselors provided by religious organizations of any denomination. In determining whether to order the parties to participate in the premarital counseling, the court shall consider, among other factors, the ability of the parties to pay for the counseling. The court may impose a reasonable fee to cover the cost of any premarital counseling provided by the county or the court. The fees shall be used exclusively to cover the cost of the counseling services authorized by this section.

SEC. 13. Section 3204 of the Family Code is amended to read:

3204. (a) The Judicial Council shall annually submit an application to the federal Administration for Children and Families, pursuant to Section 669B of the "1996 Federal Personal Responsibility and Work Opportunity Recovery Act" (PRWORA), for a grant to fund child custody and visitation programs pursuant to this chapter.

The Judicial Council shall be charged with the administration of the grant funds.

(b) (1) It is the intention of the Legislature that, effective October 1, 2000, the grant funds described in subdivision (a) shall be used to fund the following three types of programs: supervised visitation and exchange

services, education about protecting children during family disruption, and group counseling for parents and children, as set forth in this chapter. Contracts shall follow a standard request for proposal procedure, that may include multiple year funding. Requests for proposals shall meet all state and federal requirements for receiving access and visitation grant funds.

(2) The grant funds shall be awarded with the intent of approving as many requests for proposals as possible while assuring that each approved proposal would provide beneficial services and satisfy the overall goals of the program under this chapter. The Judicial Council shall determine the final number and amount of grants. Requests for proposals shall be evaluated based on the following criteria:

(A) Availability of services to a broad population of parties.

(B) The ability to expand existing services.

(C) Coordination with other community services.

(D) The hours of service delivery.

(E) The number of counties or regions participating.

(F) Overall cost-effectiveness.

(G) The purpose of the program to promote and encourage healthy parent and child relationships between noncustodial parents and their children, while ensuring the health, safety, and welfare of the children.

(3) Special consideration for grant funds shall be given to proposals that coordinate supervised visitation and exchange services, education, and group counseling with existing court-based programs and services.

(c) The family law division of the superior court in each county shall approve sliding scale fees that are based on the ability to pay for all parties, including low-income families, participating in a supervised visitation and exchange, education, and group counseling programs under this chapter.

(d) The Judicial Council shall, on March 1, 2002, and on the first day of March of each subsequent even-numbered year, report to the Legislature on the programs funded pursuant to this chapter and whether and to what extent those programs are achieving the goal of promoting and encouraging healthy parent and child relationships between noncustodial or joint custodial parents and their children while ensuring the health, safety, and welfare of children, and the other goals described in this chapter.

SEC. 14. Section 53069.4 of the Government Code is amended to read:

53069.4. (a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by

ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1) shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(b) (1) Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

SEC. 15. Section 68076 of the Government Code is amended to read:

68076. The seals of the superior courts shall:

(a) Be circular.

(b) Be not less than one and one-fourth inches in diameter.

(c) Have in the center any word, words, or design adopted by the judges of the superior court.

(d) Have inscribed around the central words or design "Superior Court of California, County of [____]," inserting the name of the county.

The seal of any such court, which has been adopted before April 1, 1880, shall be the seal of such court until another is adopted.

SEC. 16. Section 68084.1 of the Government Code is amended to read:

68084.1. (a) Except as otherwise provided by law, any money, excluding restitution to victims, that has been deposited with a superior court, or that a superior court is holding in trust for the lawful owner, in a court bank account or in a court trust account in a county treasury, that remains unclaimed for three years shall become the property of the superior court if, after published notice pursuant to this section, the money is not claimed or no verified complaint is filed and served.

(b) At any time after the expiration of the three-year period specified in subdivision (a), the executive officer of the superior court may cause a notice to be published once a week for two successive weeks in a newspaper of general circulation published in the county in which the court is located. The notice shall state the amount of money, the fund in which it is held, and that it is proposed that the money will become the property of the court on a designated date not less than 45 days nor more than 60 days after the first publication of the notice.

(c) Before or after publication, a party of interest may file a claim with the court executive officer that shall include the claimant's name, address, amount of claim, the grounds on which the claim is founded, and any other information that may be required by the court executive officer. The claim shall be filed before the designated date on which unclaimed money becomes the property of the court as provided under subdivision (b), and the executive officer shall accept or reject that claim.

(d) If the superior court executive officer rejects the claim, or takes no action on the claim within 30 days after it is filed, the party that submitted the claim may file a verified complaint seeking to recover all,

or a specified part, of the money in the court in the county in which the notice is published. The copy of the complaint and summons shall be served on the court executive officer. The court executive officer shall withhold the release of the portion of unclaimed money for which a court action has been filed as provided in this section until the court renders a decision or the claim is settled. Any portion of the unclaimed money not covered by the verified complaint shall become the property of the court if no other claim or verified complaint has been filed regarding it within the time specified in this section. If the party that submitted the claim does not file a verified complaint within 30 days after the date that the court mailed notice that the claim was rejected or within 60 days after the claim was filed, the money shall become the property of the court.

(e) Notwithstanding subdivisions (c) and (d), the court executive officer may release the unclaimed money to the depositor of the unclaimed money, or the depositor's heir, beneficiary, or duly appointed representative, if the depositor or the depositor's heir, beneficiary, or duly appointed representative claims the money before the date that the money becomes the property of the superior court, upon submitting proof satisfactory to the court executive officer.

(f) If no claim is filed under subdivision (c) and the time for filing claims has expired, the money shall become the property of the court. If a claim or claims are filed with respect to a portion of the money, but not the remainder of the money, and the time for filing claims under subdivision (c) has expired, the remainder of the money shall become the property of the court.

(g) Notwithstanding any other provision of this section, the presiding judge may direct the transfer of any individual deposit of twenty dollars ($20) or less, or any amount if the name of the original depositor is unknown, that remains unclaimed for one year to the Trial Court Operations Fund without the need for publication of notice.

(h) The court executive officer may delegate the responsibilities provided in this section to appropriate superior court staff.

(i) When any money deposited and held under this section becomes the property of a superior court, the presiding judge shall transfer it to the Trial Court Operations Fund.

SEC. 17. Section 68085.1 of the Government Code is amended to read:

68085.1. (a) This section applies to all fees and fines that are collected on or after January 1, 2006, under all of the following:

(1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150, 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of, subdivision (g) of Section 411.20 and subdivisions (c) and (g) of Section 411.21 of, and

Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.

(2) Section 3112 of the Family Code.

(3) Section 31622 of the Food and Agricultural Code.

(4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, subdivision (d) of Section 68511.3, Sections 68926.1 and 69953.5, and Chapter 5.8 (commencing with Section 70600).

(5) Section 103470 of the Health and Safety Code.

(6) Subdivisions (b) and (c) of Section 166 and Section 1214.1 of the Penal Code.

(7) Sections 1835, 1851.5, 2343, 7660, and 13201 of the Probate Code.

(8) Sections 14607.6 and 16373 of the Vehicle Code.

(9) Section 71386 of this code, Sections 304, 7851.5, and 9002 of the Family Code, and Section 1513.1 of the Probate Code, if the reimbursement is for expenses incurred by the court.

(10) Section 3153 of the Family Code, if the amount is paid to the court for the cost of counsel appointed by the court to represent a child.

(b) On and after January 1, 2006, each superior court shall deposit all fees and fines listed in subdivision (a), as soon as practicable after collection and on a regular basis, into a bank account established for this purpose by the Administrative Office of the Courts. Upon direction of the Administrative Office of the Courts, the county shall deposit civil assessments under Section 1214.1 of the Penal Code and any other money it collects under the sections listed in subdivision (a) as soon as practicable after collection and on a regular basis into the bank account established for this purpose and specified by the Administrative Office of the Courts. The deposits shall be made as required by rules adopted by, and financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206. Within 15 days after the end of the month in which the fees and fines are collected, each court, and each county that collects any fines or fees under subdivision (a), shall provide the Administrative Office of the Courts with a report of the fees by categories as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the Administrative Office of the Courts shall make the following distributions:

(A) To the small claims advisory services, as described in subdivision (f) of Section 116.230 of the Code of Civil Procedure.

(B) To dispute resolution programs, as described in subdivision (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

(C) To the county law library funds, as described in Sections 116.230 and 116.760 of the Code of Civil Procedure, subdivision (b) of Section 68085.3, subdivision (b) of Section 68085.4, and Section 70621 of this code, and Section 14607.6 of the Vehicle Code.

(D) To the courthouse construction funds in the Counties of Riverside, San Bernardino, and San Francisco, as described in Sections 70622, 70624, and 70625.

(2) If any distribution under this subdivision is delinquent, the Administrative Office of the Courts shall add a penalty to the distribution as specified in subdivision (i).

(d) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the amounts remaining after the distributions in subdivision (c) shall be transmitted to the State Treasury for deposit in the Trial Court Trust Fund and other funds as required by law. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund or other fund to which it is to be deposited. Upon the receipt of any delinquent payment required under this subdivision, the Controller shall calculate a penalty as provided under subdivision (i).

(e) From the money transmitted to the State Treasury under subdivision (d), the Controller shall make deposits as follows:

(1) Into the State Court Facilities Construction Fund, the Judges' Retirement Fund, and the Equal Access Fund, as described in subdivision (c) of Section 68085.3 and subdivision (c) of Section 68085.4.

(2) Into the Health Statistics Special Fund, as described in subdivision (b) of Section 70670 of this code and Section 103730 of the Health and Safety Code.

(3) Into the Family Law Trust Fund, as described in Section 70674.

(4) The remainder of the money shall be deposited into the Trial Court Trust Fund.

(f) The amounts collected by each superior court under Section 116.232, subdivision (g) of Section 411.20, and subdivision (g) of Section 411.21 of the Code of Civil Procedure, Sections 304, 3112, 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of Section 6103.5, subdivision (d) of Section 68511.3 and Sections 68926.1, 69953.5, 70627, 70631, 70640, 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835, 1851.5, and 2343 of the Probate Code, shall be added to

the monthly apportionment for that court under subdivision (a) of Section 68085.

(g) If any of the fees provided in subdivision (a) are partially waived by court order or otherwise reduced, and the fee is to be divided between the Trial Court Trust Fund and any other fund or account, the amount of the reduction 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. If the fee is paid by installment payments, the amount distributed to each fund or account from each installment shall bear the same proportion to the installment payment as the full distribution to that fund or account does to the full fee. If a court collects a fee that was incurred before January 1, 2006, under a provision that was the predecessor to one of the paragraphs contained in subdivision (a), the fee may be deposited as if it were collected under the paragraph of subdivision (a) that corresponds to the predecessor of that paragraph and distributed in prorated amounts to each fund or account to which the fee in subdivision (a) must be distributed.

(h) Except as provided in Sections 470.5 and 6322.1 of the Business and Professions Code, and Sections 70622, 70624, and 70625 of this code, no agency may take action to change the amounts allocated to any of the funds described in subdivision (c), (d), or (e).

(i) The amount of the penalty on any delinquent payment under subdivision (c) or (d) shall be calculated by multiplying the amount of the delinquent payment at a daily rate equivalent to $1\frac{1}{2}$ percent per month for the number of days the payment is delinquent. The penalty shall be paid from the Trial Court Trust Fund. Penalties on delinquent payments under subdivision (d) shall be calculated only on the amounts to be distributed to the Trial Court Trust Fund and the State Court Facilities Construction Fund, and each penalty shall be distributed proportionately to the funds to which the delinquent payment was to be distributed.

(j) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a superior court under subdivision (b), the court shall reimburse the Trial Court Trust Fund for the amount of the penalty. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse pursuant to this section shall be paid from the court operations fund for that court. The penalty shall be paid by the court to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated. If the penalty is not paid within the specified time, the Administrative Office of the Courts may reduce the amount of a subsequent monthly allocation to the court by the amount of the penalty on the delinquent payment.

(k) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a county in transmitting fees and fines listed in subdivision (a) to the bank account established for this purpose, as described in subdivision (b), the county shall reimburse the Trial Court Trust Fund for the amount of the penalty. The penalty 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.

SEC. 18. Section 68085.4 of the Government Code is amended to read:

68085.4. (a) Fees collected under Sections 70613, 70614, 70621, 70654, 70656, and 70658 of this code, Section 103470 of the Health and Safety Code, and Section 7660 of the Probate Code, shall be deposited in a bank account established by the Administrative Office of the Courts for deposit of fees collected by the courts.

(b) For each three hundred-dollar ($300) fee and each one hundred eighty-dollar ($180) fee listed in subdivision (a), the Administrative Office of the Courts shall distribute specified amounts in each county as follows:

(1) To the county law library fund, the amount described in Sections 6321 and 6322.1 of the Business and Professions Code.

(2) To the account to support dispute resolution programs, the amount described in Section 470.5 of the Business and Professions Code.

(c) The remainder of the fees in subdivision (a) shall be transmitted monthly to the Treasurer for deposit. For each three hundred-dollar ($300) fee and each one hundred eighty-dollar ($180) fee listed in subdivision (a), the Controller shall make deposits as follows:

(1) To the State Court Facilities Construction Fund, as provided in Article 6 (commencing with Section 70371) of Chapter 5.7, twenty-five dollars ($25) if the fee is three hundred dollars ($300), and twenty dollars ($20) if the fee is one hundred eighty dollars ($180).

(2) To the Judges' Retirement Fund, as established in Section 75100, two dollars and fifty cents ($2.50).

(3) To the Trial Court Trust Fund for use as part of the Equal Access Fund program administered by the Judicial Council, four dollars and eighty cents ($4.80).

(4) To the Trial Court Trust Fund, as provided in Section 68085.1, the remainder of the fee.

(d) If any of the fees listed in subdivision (a) are reduced or partially waived, the amount of the reduction or partial waiver shall be deducted from the amount to be distributed to each fund or account in the same proportion as the amount of each distribution bears to the total amount of the fee.

(e) As used in this section, "law library fund" includes a law library account described in Section 6320 of the Business and Professions Code.

SEC. 19. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: 10 years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Misdemeanor action resulting in a requirement that the defendant register as a sex offender pursuant to Section 290 of the Penal Code: 75 years. This paragraph shall apply to records relating to a person convicted on or after September 20, 2006, the effective date of Senate Bill 1128 of the 2005–06 Regular Session.

(11) Infraction, except as otherwise specified: three years.

(12) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under

subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate division of the superior court: five years.

(j) Other records.

(1) Applications in forma pauperis: any time after the disposition of the underlying case.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.

(13) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of any of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or any interested member of the public for good cause shown and on those terms as are just. A fee shall not be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 19.5. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: 10 years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Misdemeanor action resulting in a requirement that the defendant register as a sex offender pursuant to Section 290 of the Penal Code: 75 years. This paragraph shall apply to records relating to a person convicted on or after September 20, 2006.

(11) Infraction, except as otherwise specified: three years.

(12) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate division of the superior court: five years.

(j) Other records.

(1) Applications in forma pauperis: any time after the disposition of the underlying case.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.

(13) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or an interested member of the public for good cause shown and on those terms as are just. A fee shall not be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 20. Section 68506.5 is added to the Government Code, to read:

68506.5. The Judicial Council shall, after receiving comment from the courts, court employee organizations, and other interested groups, adopt fiscally responsible travel reimbursement policies, procedures, and rates for the judicial branch that provide for appropriate accountability.

SEC. 20.5. Section 68516 of the Government Code is amended to read:

68516. (a) The Judicial Council is authorized to establish a tax-exempt public benefit nonprofit corporation, or other tax-exempt entity, qualified under federal and state law to raise revenues and receive grants or other financial support from private or public sources, for the purposes of undertaking or funding any survey, study, publication, proceeding, or other activity authorized by law to be undertaken by the Judicial Council. Financial support sought by the nonprofit corporation or other tax-exempt entity shall be used solely for the governmental purposes approved by the Judicial Council for activities within the scope of authority of the Judicial Council.

(b) The Administrative Office of the Courts may provide administrative support and oversight services to a tax-exempt public benefit nonprofit corporation or other tax-exempt entity established under this section. These support and oversight services shall be limited to ministerial support for meetings, and preparing, maintaining, and presenting financial records as needed for audits and other reporting requirements. Any services provided shall be consistent with current limitations and practices of public employment.

SEC. 21. Section 68666 of the Government Code is amended to read:

68666. (a) The Supreme Court may compensate counsel representing indigent defendants in automatic appeals arising out of a judgment of death or for state postconviction proceedings in those cases, at a rate of at least one hundred twenty-five dollars ($125) per allowable hour, as defined by the court's Payment Guidelines for Appointed Counsel

Representing Indigent Criminal Appellants. However, nothing in this section is intended to prohibit the hiring of counsel under a flat-fee arrangement.

(b) The Supreme Court may set a guideline limitation on investigative and other expenses allowable for counsel to adequately investigate and present collateral claims of up to fifty thousand dollars ($50,000) without an order to show cause.

(c) It is the intent of the Legislature that payments to appointed counsel be made within 60 days of submission of a billing.

SEC. 22. Section 70603 of the Government Code is amended to read:

70603. (a) Except as provided in this section, the fees charged for filings and services under this chapter are intended to be uniform statewide and to be the only allowable fees for those services and filings. The only charges that may be added to the fees in this chapter are the following:

(1) In a complex case, the fee provided for in Section 70616 may be added to the first paper and first responsive paper filing fees in Sections 70611, 70612, 70613, and 70614.

(2) In an unlawful detainer action subject to Section 1161.2 of the Code of Civil Procedure, a charge of fifteen dollars ($15) as provided under that section may be added to the fee in Section 70613 for filing a first appearance by a plaintiff.

(3) In Riverside County, a surcharge as provided in Section 70622 may be added to the first paper and first responsive paper filing fees in Sections 70611, 70612, 70613, 70614, 70650, 70651, 70652, 70653, 70655, and 70670.

(4) In San Bernardino County, a surcharge as provided in Section 70624 may be added to the first paper and first responsive paper filing fees in Sections 70611, 70612, 70613, 70614, 70650, 70651, 70652, 70653, 70655, and 70670. This paragraph applies to fees collected under Sections 70611, 70612, 70613, 70614, 70650, 70651, 70652, 70653, 70655, and 70670, beginning January 1, 2006.

(5) In the City and County of San Francisco, a surcharge as provided in Section 70625 may be added to the first paper and first responsive paper filing fees in Sections 70611, 70612, 70613, 70614, 70650, 70651, 70652, 70653, 70655, and 70670.

(b) Notwithstanding paragraph (1) of subdivision (c) of Section 68085.3 and paragraph (1) of subdivision (c) of Section 68085.4, when a charge for courthouse construction in the County or City and County of San Francisco, Riverside, or San Bernardino is added to the uniform filing fee as provided under paragraph (3), (4), or (5) of subdivision (a), the amount distributed to the State Court Facilities Construction Fund under Section 68085.3 or 68085.4 shall be reduced by an amount equal

to the charge added under paragraph (3), (4), or (5) of subdivision (a), up to the amount that would otherwise be distributed to the State Court Facilities Construction Fund. If the amount added under paragraph (3), (4), or (5) of subdivision (a) is greater than the amount that would be distributed to the State Court Facilities Construction Fund under Section 68085.3 or 68085.4, no distribution shall be made to the State Court Facilities Construction Fund, but the amount charged to the party may be greater than the amount of the uniform fee otherwise allowed, in order to collect the surcharge under paragraph (3), (4), or (5) of subdivision (a).

(c) If a filing fee is reduced by fifteen dollars ($15) under subdivision (c) of Section 6322.1 of the Business and Professions Code, and a courthouse construction surcharge is added to the filing fee as provided under paragraph (3), (4), or (5) of subdivision (a), the amount distributed to the State Court Facilities Construction Fund under Section 68085.4 shall be reduced as provided in subdivision (b). If the amount added under paragraph (3), (4), or (5) of subdivision (a) is greater than the amount that would be distributed to the State Court Facilities Construction Fund under Section 68085.4, no distribution shall be made to the State Court Facilities Construction Fund, but the amount charged to the party may be greater than one hundred sixty-five dollars ($165), in order to collect the surcharge under paragraph (3), (4), or (5) of subdivision (a).

SEC. 23. Section 70612 of the Government Code is amended to read:

70612. (a) The uniform fee for filing the first paper in the action or proceeding described in Section 70611 on behalf of any defendant, intervenor, respondent, or adverse party, whether separately or jointly, except for the purpose of making disclaimer, is three hundred twenty dollars ($320). The fee shall be distributed as provided in Section 68085.3.

(b) As used in this section, the term "paper" does not include a stipulation for the appointment of a temporary judge or of a court investigator, or the report made by the court investigator.

SEC. 24. Section 70613.5 is added to the Government Code, to read:

70613.5. (a) Notwithstanding Section 472 of the Code of Civil Procedure, if a plaintiff or petitioner who previously was charged the filing fee under subdivision (b) of Section 70613 files an amended complaint or other initial pleading that increases the amount demanded to an amount that exceeds ten thousand dollars ($10,000) but does not exceed twenty-five thousand dollars ($25,000), so that the higher filing fee under subdivision (a) of Section 70613 would have been required if such a demand had been made in the original pleading, a fee equal to the difference between the fee for the original filing fee and the filing

fee for the new amount demanded shall be charged to make up the difference between the filing fees. This fee shall be distributed to the Trial Court Trust Fund.

(b) Notwithstanding Section 472 of the Code of Civil Procedure, if a party who previously was charged the filing fee under subdivision (b) of Section 70614 files a cross-complaint, amended cross-complaint, or amendment to a cross-complaint demanding an amount that exceeds ten thousand dollars ($10,000) but does not exceed twenty-five thousand dollars ($25,000), a fee equal to the difference between the fee for the original filing fee and the filing fee under subdivision (a) of Section 70614 shall be charged to make up the difference between the filing fees. This fee shall be distributed to the Trial Court Trust Fund.

(c) The court shall not reimburse a party if the party's complaint or cross-complaint is amended to demand a lower amount that falls within the range for a filing fee lower than that originally paid.

SEC. 25. Section 70615 is added to the Government Code, to read:

70615. The fee for filing any of the following appeals to the superior court is twenty-five dollars ($25):

(a) An appeal of a local agency's decision regarding an administrative fine or penalty under Section 53069.4.

(b) An appeal under Section 40230 of the Vehicle Code of an administrative agency's decision regarding a parking violation.

(c) An appeal under Section 99582 of the Public Utilities Code of a hearing officer's determination regarding an administrative penalty for fare evasion or a passenger conduct violation.

SEC. 26. Section 70617 of the Government Code is amended to read:

70617. (a) Except as provided in subdivision (d), the uniform fee for filing a motion, application, or any other paper requiring a hearing subsequent to the first paper, is forty dollars ($40). Papers for which this fee shall be charged include the following:

(1) A motion listed in paragraphs (1) to (12), inclusive, of subdivision (a) of Section 1005 of the Code of Civil Procedure.

(2) A motion or application to continue a trial date.

(3) An application for examination of a third person controlling defendant's property under Section 491.110 or 491.150 of the Code of Civil Procedure.

(4) Discovery motions under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

(5) A motion for a new trial of any civil action or special proceeding.

(6) An application for an order for a judgment debtor examination under Section 708.110 or 708.160 of the Code of Civil Procedure.

(7) An application for an order of sale of a dwelling under Section 704.750 of the Code of Civil Procedure.

(8) An ex parte application that requires a party to give notice of the ex parte appearance to other parties.

(b) There shall be no fee under subdivision (a) or (c) for filing any of the following:

(1) A motion, application, demurrer, request, notice, or stipulation and order that is the first paper filed in an action and on which a first paper filing fee is paid.

(2) An amended notice of motion.

(3) A civil case management statement.

(4) A request for trial de novo after judicial arbitration.

(5) A stipulation that does not require an order.

(6) A request for an order to prevent civil harassment.

(7) A request for an order to prevent domestic violence.

(8) A request for entry of default or default judgment.

(9) A paper requiring a hearing on a petition for emancipation of a minor.

(10) A paper requiring a hearing on a petition for an order to prevent abuse of an elder or dependent adult.

(11) A paper requiring a hearing on a petition for a writ of review, mandate, or prohibition.

(12) A paper requiring a hearing on a petition for a decree of change of name or gender.

(13) A paper requiring a hearing on a petition to approve the compromise of a claim of a minor.

(c) The fee for filing the following papers not requiring a hearing is twenty dollars ($20):

(1) A request, application, or motion for, or a notice of, the continuance of a hearing or case management conference. The fee shall be charged no more than once for each continuance. The fee shall not be charged if the continuance is required by the court.

(2) A stipulation and order.

(3) A request for an order authorizing service of summons by posting or by publication under Section 415.45 or 415.50 of the Code of Civil Procedure.

(d) The fee for filing a motion for summary judgment or summary adjudication of issues is two hundred dollars ($200).

(e) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required by subdivisions (a), (c), and (d) apply separately to each motion or other paper filed. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

SEC. 27. Section 70621 of the Government Code is amended to read:

70621. (a) (1) The fee for filing a notice of appeal to the appellate division of the superior court in a limited civil case is three hundred dollars ($300), except as provided in subdivision (b).

(2) The fee for filing a petition for a writ within the original jurisdiction of the appellate division of the superior court is three hundred dollars ($300), except as provided in subdivision (b).

(b) If the amount demanded in the limited civil case, excluding attorney's fees and costs, is ten thousand dollars ($10,000) or less, the fee for filing a petition for a writ or a notice of appeal to the appellate division of the superior court is one hundred eighty dollars ($180).

(c) The fees provided for in this section shall be distributed as provided in Section 68085.4.

(d) The Judicial Council may make rules governing the time and method of payment of the fees in this section and providing for excuse.

SEC. 28. Section 70624 of the Government Code is amended to read:

70624. (a) In addition to the uniform filing fee authorized pursuant to Section 70611, 70612, 70613, 70614, 70650, 70651, 70652, 70653, 70655, or 70670, after giving notice and holding a public hearing on the proposal, the Board of Supervisors of San Bernardino County may impose a surcharge not to exceed thirty-five dollars ($35) for the filing in superior court of (1) a complaint, petition, or other first paper in a civil, family, or probate action or special proceeding, and (2) a first paper on behalf of any defendant, respondent, intervenor, or adverse party. The county shall notify in writing the superior court and the Administrative Office of the Courts of any change in a surcharge under this section. If a surcharge under this section is imposed on a filing fee, the distribution that would otherwise be made to the State Court Facilities Construction Fund under subdivision (c) of Section 68085.3 or subdivision (c) of Section 68085.4 shall be reduced as provided in Section 70603. This section shall apply to fees collected under Sections 70611, 70612, 70613, 70614, 70650, 70651, 70652, 70653, 70655, and 70670, beginning January 1, 2006.

(b) The surcharge shall be in an amount determined to be necessary by the board of supervisors to supplement the Courthouse Construction Fund, to be deposited in that fund and used solely for the purposes authorized for expenditures from that fund, including, but not limited to, earthquake retrofitting, renovation, and remodeling of all portions of the Central San Bernardino Courthouse in need of retrofitting, renovation, or remodeling, whether or not necessitated by the retrofitting work, including the original courthouse built in 1926 and all subsequent additions thereto. Expenditures made from the Courthouse Construction Fund that are funded from the surcharge shall be made in order of priority to ensure that all necessary earthquake retrofitting of the Central San

Bernardino Courthouse will be completed. Collection of the surcharge authorized by this section shall terminate upon repayment of the amortized costs incurred, or 30 years from the sale of the bond, whichever occurs first. However, the surcharge shall not apply in instances in which no filing fee is charged or the filing fee is waived. If the amortized costs have been repaid, or 30 years have passed since the sale of the bond, the county shall notify in writing the superior court and the Administrative Office of the Courts.

SEC. 29. Section 70633 of the Government Code is amended to read:

70633. (a) No fee shall be charged by the clerk for service rendered to the petitioner in any adoption proceeding except as provided in Section 103730 of the Health and Safety Code, nor shall any fees be charged for any service to the state or for any proceeding brought pursuant to Section 7841 of the Family Code to declare a minor free from parental custody or control. No fee shall be charged by the clerk for services rendered in an action to compel registration of a voter under Section 2142 of the Elections Code or to compel counting of provisional ballots under Section 14310 of the Elections Code.

(b) No fee shall be charged by the clerk for services rendered in any criminal action unless otherwise specifically authorized by law, except that the clerk may charge the fee specified in Section 70627 for making or certifying to a copy of any filed paper, record, or proceeding in a criminal action. If a criminal defendant has been granted a fee waiver or the court finds that the defendant does not have the ability to pay the fee, the court may reduce or waive the fee.

(c) Except as permitted in subdivision (b), no fee shall be charged by the clerk for service to any municipality or county in the state, to the state government, nor to the United States of America or any of its officers acting in his or her official capacity.

SEC. 30. Section 70650 of the Government Code is amended to read:

70650. (a) The uniform filing fee for the first petition for letters of administration or letters testamentary, or the first petition for special letters of administration with the powers of a general personal representative pursuant to Section 8545 of the Probate Code, or a first account of a trustee of a testamentary trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9 of the Probate Code is, as follows:

(1) Three hundred twenty dollars ($320) for estates or trusts under two hundred fifty thousand dollars ($250,000).

(2) Three hundred eighty-five dollars ($385) for estates or trusts of at least two hundred fifty thousand dollars ($250,000) and less than five hundred thousand dollars ($500,000).

(3) Four hundred eighty-five dollars ($485) for estates or trusts of at least five hundred thousand dollars ($500,000) and less than seven hundred fifty thousand dollars ($750,000).

(4) Six hundred thirty-five dollars ($635) for estates or trusts of at least seven hundred fifty thousand dollars ($750,000) and less than one million dollars ($1,000,000).

(5) One thousand one hundred thirty-five dollars ($1,135) for estates or trusts of at least one million dollars ($1,000,000) and less than one million five hundred thousand dollars ($1,500,000).

(6) Two thousand one hundred thirty-five dollars ($2,135) for estates or trusts of at least one million five hundred thousand dollars ($1,500,000) and less than two million dollars ($2,000,000).

(7) Two thousand six hundred thirty-five dollars ($2,635) for estates or trusts of at least two million dollars ($2,000,000) and less than two million five hundred thousand dollars ($2,500,000).

(8) Three thousand six hundred thirty-five dollars ($3,635) for estates or trusts of at least two million five hundred thousand dollars ($2,500,000) and less than three million five hundred thousand dollars ($3,500,000).

(9) Three thousand six hundred thirty-five dollars ($3,635) plus 0.2 percent of the amount over three million five hundred thousand dollars ($3,500,000) for estates or trusts of three million five hundred thousand dollars ($3,500,000) or more.

(b) The full uniform filing fee for a petition for letters in a decedent's estate or the first account of a trustee under subdivision (a) shall be determined based on the final appraised value of the estate without reference to encumbrances or other obligations on estate property, or the value of the trust shown in the first account, and is payable as follows:

(1) The petitioner for letters under subdivision (a) shall pay the sum of three hundred twenty dollars ($320) at the time of filing the petition.

(2) In a decedent's estate under subdivision (a), the balance of the uniform filing fee, if any, shall be paid by the general personal representative of the estate no later than the date the general personal representative files its final account or report and petition for settlement or for final distribution, under rules adopted by the Judicial Council, without regard to whether the representative was appointed by the court on a petition under subdivision (a) or a petition under subdivision (d).

(3) The full uniform filing fee for a trust under subdivision (a) shall be paid when the first account is filed.

(c) The uniform filing fee for the first objections to the probate of any will or codicil under Section 8250 of the Probate Code, or the first petition for revocation of probate of any will or codicil under Section 8270 of the Probate Code, is three hundred twenty dollars ($320). The

uniform filing fee for the first petition for special letters of administration without the powers of a general personal representative is the fee provided in Section 70657.5. Where objections to the probate of a will or codicil or a petition for revocation of probate of a will or codicil are filed together with a petition for appointment of a personal representative described in subdivision (d) filed by the same person, only the fee provided in subdivision (d) shall be charged to that person.

(d) A fee of three hundred twenty dollars ($320) shall also be charged for filing each subsequent petition or objections of a type described in subdivision (a) in the same proceeding by a person other than the original petitioner or contestant. The same fee as provided in subdivision (c) shall be charged for filing each subsequent petition or objections of a type described in that subdivision in the same proceeding by a person other than the original petitioner or contestant.

(e) Notwithstanding Section 70658.5, if a petition for special letters of administration without the powers of a general personal representative is filed together with a petition for appointment of an administrator with general powers under subdivision (a) or subdivision (d) by the same person, the person filing the petitions shall be charged the applicable filing fees for both petitions.

(f) The first three hundred twenty dollars ($320) of the filing fee charged under this section shall be distributed as provided in Section 68085.3. The remainder shall be distributed to the Trial Court Trust Fund.

SEC. 31. Section 70651 of the Government Code is amended to read:

70651. (a) The uniform filing fee for objections or any other paper in opposition to a petition or account described in subdivision (a) of Section 70650, other than a petition described in subdivision (d) of Section 70650, is three hundred twenty dollars ($320). If objections or any other paper in opposition are filed together with a petition described in subdivision (d) of Section 70650 by the same person, only the fee provided in subdivision (d) of Section 70650 shall be charged to that person.

(b) The uniform filing fee charged under this section shall be distributed as provided in Section 68085.3.

SEC. 32. Section 70653 of the Government Code is amended to read:

70653. (a) The uniform filing fee for a petition for appointment of a conservator, a guardian of the estate, or a guardian of the person and estate, pursuant to Division 4 (commencing with Section 1400) of the Probate Code, is three hundred twenty dollars ($320).

(b) Except as provided in subdivision (f), the uniform filing fee for objections or any other paper in opposition to a petition under subdivision (a) or (d) is three hundred twenty dollars ($320).

(c) If a competing petition for appointment of a guardian or conservator subject to the fee under subdivision (a) is filed together with opposition to the petition of another by the same person, the person filing the competing petition and opposition shall be charged a filing fee only for the competing petition.

(d) Notwithstanding Section 70658.5, if a petition for appointment of a temporary guardian or conservator is filed together with a petition for appointment of a guardian or conservator under subdivision (a), or a competing petition under subdivision (c) by the same person, the person filing the petitions shall be charged the applicable filing fees for both petitions.

(e) The uniform filing fee charged under this section shall be distributed as provided in Section 68085.3.

(f) No fee under this section shall be charged for objections or any other paper in opposition filed by or on behalf of the proposed conservatee, or the minor or a parent of the minor who is the subject of a guardianship proceeding.

SEC. 33. Section 70654 of the Government Code is amended to read:

70654. (a) The uniform filing fee for a petition for appointment of a guardian of the person only, is one hundred eighty dollars ($180).

(b) Except as provided in subdivision (e), the uniform filing fee for objections or any other paper in opposition to a petition under subdivision (a) is one hundred eighty dollars ($180).

(c) If a competing petition for appointment of a guardian subject to the fee under subdivision (a) is filed together with opposition to the petition of another by the same person, the person filing the competing petition and opposition shall be charged a filing fee only for the competing petition.

(d) Notwithstanding Section 70658.5, if a petition for appointment of a temporary guardian is filed together with a petition for appointment of a guardian under subdivision (a), or a competing petition under subdivision (c) by the same person, the person filing the petitions shall be charged the applicable filing fees for both petitions.

(e) No fee under this section shall be charged for objections or any other paper in opposition filed by or on behalf of the minor or a parent of the minor who is the subject of the proceeding.

(f) The uniform filing fee charged under this section shall be distributed as provided in Section 68085.4.

(g) No other fees shall be charged for filing a paper under this section in addition to the uniform filing fee provided for in this section.

SEC. 34. Section 70655 of the Government Code is amended to read:

70655. (a) The uniform filing fee for a petition that commences any of the proceedings under the Probate Code listed in subdivision (c) is three hundred twenty dollars ($320).

(b) The uniform filing fee for objections or any other paper filed in opposition to a petition under subdivision (a) is three hundred twenty dollars ($320).

(c) This section applies to petitions or opposition concerning the following proceedings:

(1) A petition for compromise of a minor's claim pursuant to Section 3600 of the Probate Code.

(2) A petition to determine succession to real property pursuant to Section 13151 of the Probate Code.

(3) A spousal or domestic partnership property petition pursuant to Section 13650 of the Probate Code, except as provided in Section 13652 of the Probate Code.

(4) A petition to establish the fact of death to determine title to real property under Section 200 of the Probate Code.

(5) A petition for an order concerning a particular transaction pursuant to Section 3100 of the Probate Code.

(6) A petition concerning capacity determination and health care decision for adult without conservator pursuant to Section 3200 of the Probate Code.

(7) A petition concerning an advance health care directive pursuant to Section 4766 of the Probate Code.

(8) A petition concerning a power of attorney pursuant to Section 4541 of the Probate Code.

(9) A petition for approval, compromise, or settlement of claims against a deceased settlor, or for allocation of amounts due between trusts, pursuant to Section 19020 of the Probate Code.

(10) Any other petition that commences a proceeding under the Probate Code not otherwise provided for in this article.

(d) The uniform filing fee charged under this section shall be distributed as provided in Section 68085.3.

SEC. 35. Section 70657 of the Government Code is amended to read:

70657. (a) Except as provided in subdivision (c), the uniform fee for filing a motion or other paper requiring a hearing subsequent to the first paper in a proceeding under the Probate Code, other than a petition or application or opposition described in Sections 70657.5 and 70658, is forty dollars ($40). This fee shall be charged for the following papers:

(1) Papers listed in subdivision (a) of Section 70617.

(2) Applications for ex parte relief, whether or not notice of the application to any person is required, except an ex parte petition for discharge of a personal representative, conservator, or guardian upon

completion of a court-ordered distribution or transfer, for which no fee shall be charged.

(b) There shall be no fee under subdivision (a) for filing any of the papers listed under subdivision (b) of Section 70617.

(c) The summary judgment fee provided in subdivision (d) of Section 70617 shall apply to summary judgment motions in proceedings under the Probate Code.

(d) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required by subdivisions (a) and (c) apply separately to each motion or other paper filed. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

SEC. 36. Section 70657.5 is added to the Government Code, to read:

70657.5. (a) The uniform fee for filing the following petitions or applications, and objections or other opposition, is forty dollars ($40):

(1) Petitions or applications, or opposition, concerning the internal affairs of a trust that are not subject to the filing fees provided in Section 70650, 70651, or 70652.

(2) Petitions or applications, or objections, filed subsequent to issuance of temporary letters of conservatorship or guardianship or letters of conservatorship or guardianship that are not subject to the filing fee provided in subdivision (a) of Section 70658.

(3) Petitions or applications, or objections, filed subsequent to issuance of special letters of administration or letters testamentary or of administration in decedent's estate proceedings that are not subject to the filing fee provided in subdivision (a) of Section 70658.

(4) The first or subsequent petition for special letters of administration without the powers of a general personal representative.

(5) The first or subsequent petition for temporary letters of conservatorship or guardianship.

(b) No fee is payable under this section for any of the following:

(1) A petition or opposition filed subsequent to issuance of letters of temporary guardianship or letters of guardianship in a guardianship described in Section 70654.

(2) A petition filed by a personal representative of a decedent's estate commenced on or after August 18, 2003, that is described or referred to in subdivision (d) of Section 70658.

(3) A disclaimer of an interest in a decedent's estate.

SEC. 37. Section 70658 of the Government Code is amended to read:

70658. (a) Except as provided in subdivisions (c) and (d), the uniform fee for filing a petition or application, or objections or any other paper in opposition to a petition or application listed in this subdivision, filed after issuance of letters testamentary, letters of administration, letters of

special administration to a personal representative of a decedent's estate, or letters of guardianship or conservatorship, or letters of temporary guardianship or conservatorship to a guardian or conservator, is one hundred eighty dollars ($180). This section shall apply to the following petitions or applications, or opposition:

(1) Petition or application for or opposition to an order directing, authorizing, approving, or confirming the sale, lease, encumbrance, grant of an option, purchase, conveyance, or exchange of property.

(2) Petition or application for or opposition to an order settling an account of a fiduciary.

(3) Petition or application for or opposition to an order authorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary.

(4) Petition or application for or opposition to an order fixing, authorizing, allowing, or directing payment of compensation or expenses of an attorney.

(5) Petition or application for or opposition to an order fixing, authorizing, allowing, or directing payment of compensation or expenses of a fiduciary.

(6) Petition or application for or opposition to an order surcharging or removing a fiduciary.

(7) Petition or application for or opposition to an order transferring or authorizing the transfer of the property of an estate to a fiduciary in another jurisdiction.

(8) Petition or application for or opposition to an order allowing a fiduciary's request to resign.

(9) Petition or application for or opposition to an order adjudicating the merits of a claim made under Part 19 (commencing with Section 850) of Division 2 of the Probate Code.

(10) Petition or application for or opposition to an order granting permission to fix the residence of a ward or conservatee at a place not within this state.

(11) Petition or application for or opposition to an order directing, authorizing, approving, or modifying payments for support, maintenance, or education of a ward or conservatee or for a person entitled to support, maintenance, or education from a ward or conservatee.

(12) Petition or application for or opposition to an order granting or denying a request under Section 2423, concerning payment of surplus income to the relatives of a conservatee, or Section 2580, concerning substituted judgment, of the Probate Code.

(13) Petition or application for or opposition to an order affecting the legal capacity of a conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3 of Division 4 of the Probate Code.

(14) Petition or application for or opposition to an order adjudicating the merits of a claim under Article 5 (commencing with Section 2500) of Chapter 6 of Part 4 of Division 4 of the Probate Code.

(b) The uniform fee in subdivision (a) shall be distributed as provided in Section 68085.4. No other fee shall be charged for filing a paper under this section in addition to the uniform filing fee provided for in this section.

(c) The fee provided in this section shall not be charged for filing any of the following papers:

(1) A petition or application, or opposition, in a guardianship proceeding under Section 70654.

(2) A disclaimer of an interest in a decedent's estate.

(d) The fee provided in this section shall not be charged to a personal representative of a decedent's estate in a proceeding commenced on or after August 18, 2003, for any petition or application filed in the proceeding by the personal representative concerning any of the following actions:

(1) Allowance of the personal representative's compensation.

(2) Allowance of the compensation for the attorney for the personal representative.

(3) Settlement of accounts.

(4) Preliminary and final distributions and discharge.

(5) Sale of property of the estate to the personal representative or to the attorney for the personal representative.

(6) Exchange of property of the estate for property of the personal representative or property of the attorney for the personal representative.

(7) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.

(8) Allowance, payment, or compromise of a claim of the personal representative, or the attorney for the personal representative, against the estate.

(9) Compromise or settlement of a claim, action, or proceeding by the estate against the personal representative or the attorney for the personal representative.

(10) Extension, renewal, or modification of the terms of a debt or other obligation of the personal representative or the attorney for the personal representative owing to or in favor of the decedent or the estate.

(11) Sale, exchange, or grant of an option to purchase real property.

(12) Borrowing money with the loan secured by an encumbrance on real property.

SEC. 38. Section 70658.5 is added to the Government Code, to read:

70658.5. If a petition or application, or opposition to a petition or application, described in Sections 70650 to 70656, inclusive, or Sections

70657.5 to 70658, inclusive, is filed combining requests for relief or opposition to relief that could have been stated in separate petitions or applications, or objections or other opposition, only one filing fee shall be charged under this article. If a filing combines petitions, applications, or objections, or other opposition to a petition or application, that would be subject to different filing fees under this article, the higher of the applicable filing fees shall be charged.

SEC. 39. Section 70677 of the Government Code is amended to read:

70677. (a) The uniform fee for filing any motion, application, order to show cause, or any other paper requiring a hearing subsequent to the first paper is forty dollars ($40). Papers for which this fee shall be charged include the following:

(1) Papers listed in subdivision (a) of Section 70617.

(2) An order to show cause or notice of motion seeking temporary prejudgment or postjudgment orders, including, but not limited to, orders to establish, modify, or enforce child, spousal, or partner support, custody and visitation of children, division and control of property, attorney's fees, and bifurcation of issues.

(b) There shall be no fee under subdivision (a) of this section for filing any of the following:

(1) A motion, motion to quash proceeding, application, or demurrer that is the first paper filed in an action and on which a first paper filing fee is paid.

(2) An amended notice of motion or amended order to show cause.

(3) A statement to register foreign support under Section 4951 of the Family Code.

(4) An application to determine the judgment after entry of default.

(5) A request for an order to prevent domestic violence.

(6) A paper requiring a hearing on a petition for writ of review, mandate, or prohibition that is the first paper filed in an action and on which a first paper filing fee has been paid.

(7) A stipulation that does not require an order.

(c) The uniform fee for filing the following papers not requiring a hearing is twenty dollars ($20):

(1) A request, application, or motion for the continuance of a hearing or case management conference.

(2) A stipulation and order.

(d) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required under paragraph (1) of subdivision (a) and under subdivision (c) apply separately to each motion or other paper filed. If an order to show cause or notice of motion is filed as specified in paragraph (2) of subdivision (a) combining requests for relief or opposition to relief on more than one issue, only one filing

fee shall be charged under this section. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

SEC. 40. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the superior court, where the appeal shall be heard de novo. The court shall charge the first paper filing fee under Section 70611 of the Government Code to the party seeking review. The fee shall be distributed as provided in Section 68085.3 of the Government Code. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure is applicable.

(b) Whenever an employer files an appeal pursuant to this section, the employer shall post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award. The employer shall provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee, the employer shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, is forfeited to the employee.

(c) If the party seeking review by filing an appeal to the superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal. An employee is successful if the court awards an amount greater than zero.

(d) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(e) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (d), a certified copy of the final

order with the clerk of the superior court of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(f) (1) In order to ensure that judgments are satisfied, the Labor Commissioner may serve upon the judgment debtor, personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (a) of Section 116.830 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

(2) The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(g) Notwithstanding subdivision (e), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award that has become final upon good cause appearing therefor and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(h) When a judgment is satisfied in fact, other than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(i) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(j) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, is entitled to court costs and reasonable attorney's fees for enforcing the judgment that is rendered pursuant to this section.

SEC. 41. Section 1214.1 of the Penal Code is amended to read:

1214.1. (a) In addition to any other penalty in infraction, misdemeanor, or felony cases, the court may impose a civil assessment of up to three hundred dollars ($300) against any defendant who fails, after notice and without good cause, to appear in court for any proceeding authorized by law or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail as agreed to under Section 40510.5 of the Vehicle Code. This assessment shall be deposited in the Trial Court Trust Fund, as provided in Section 68085.1 of the Government Code.

(b) The assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the defendant by first-class mail to the address shown on the notice to appear or to the defendant's last known address. If the defendant appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine or installment of bail, the court shall vacate the assessment.

(c) If a civil assessment is imposed under this section, no bench warrant or warrant of arrest shall be issued with respect to the failure to appear at the proceeding for which the assessment is imposed or the failure to pay the fine or installment of bail. An outstanding, unserved bench warrant or warrant of arrest for a failure to appear or for a failure to pay a fine or installment of bail shall be recalled prior to the subsequent imposition of a civil assessment.

(d) The assessment imposed under subdivision (a) shall be subject to the due process requirements governing defense and collection of civil money judgments generally.

(e) Each court and county shall maintain the collection program that was in effect on July 1, 2005, unless otherwise agreed to by the court and county. If a court and a county do not agree on a plan for the collection of civil assessments imposed pursuant to this section, or any other collections under Section 1463.010, after the implementation of Sections 68085.6 and 68085.7 of the Government Code, the court or the county may request arbitration by a third party mutually agreed upon by the Administrative Director of the Courts and the California State Association of Counties.

SEC. 42. Section 99582 of the Public Utilities Code is amended to read:

99582. (a) Within 30 calendar days after the mailing or personal delivery of the decision described in subdivision (c) of Section 99581, the person may seek review by filing an appeal to be heard by the superior court where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of fare evasion or passenger conduct violation shall

be admitted into evidence as prima facie evidence of the facts stated therein establishing a rebuttable presumption affecting the burden of producing evidence. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the person filing the appeal. For purposes of computing the 30-calendar-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) Notwithstanding any other provision of law, the fee for filing the notice of appeal shall be as provided in Section 70615 of the Government Code. The court shall request that the processing agency's file on the case be forwarded to the court, to be received within 15 calendar days of the request. The court shall notify the appellant of the appearance date by mail or personal delivery. The court shall retain the fee regardless of the outcome of the appeal. If the court finds in favor of the appellant, the amount of the filing fee shall be reimbursed to the appellant by the processing agency. Any deposit of fare evasion or passenger conduct penalty shall be refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by a commissioner and other subordinate judicial officers at the direction of the presiding judge of the court.

(d) If a notice of appeal of the processing agency's decision described in subdivision (c) of Section 99581 is not filed within the period set forth in subdivision (a), that decision shall be deemed final.

SEC. 43. Section 40230 of the Vehicle Code is amended to read:

40230. (a) Within 30 calendar days after the mailing or personal delivery of the final decision described in subdivision (b) of Section 40215, the contestant may seek review by filing an appeal to be heard by the superior court where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of parking violation or, if the citation was issued electronically, a true and correct abstract containing the information set forth in the notice of parking violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 30-calendar-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) The fee for filing the notice of appeal is as provided in Section 70615 of the Government Code. The court shall request that the processing agency's file on the case be forwarded to the court, to be

received within 15 calendar days of the request. The court shall notify the contestant of the appearance date by mail or personal delivery. The court shall retain the fee under Section 70615 of the Government Code regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the processing agency. Any deposit of parking penalty shall be refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(d) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the parking penalty has not been deposited and the decision is against the contestant, the processing agency shall, after the decision becomes final, proceed to collect the penalty pursuant to Section 40220.

SEC. 44. Section 40307 of the Vehicle Code is amended to read:

40307. (a) When an arresting officer attempts to take a person arrested for a misdemeanor or infraction of this code before a magistrate and the magistrate or person authorized to act for him or her is not available, the arresting officer shall take the person arrested, without unnecessary delay, before one of the following:

(1) The clerk of the magistrate, who shall admit the person to bail for the full amount set for the offense in a schedule fixed as provided in Section 1269b of the Penal Code.

(2) The officer in charge of the most accessible county or city jail or other place of detention within the county, who shall admit the person to bail for the full amount set for the offense in a schedule fixed as provided in Section 1269b of the Penal Code or may, in lieu of bail, release the person on his or her written promise to appear as provided in subdivisions (a) to (f), inclusive, of Section 853.6 of the Penal Code.

(b) Whenever a person is taken into custody pursuant to subdivision (a) of Section 40302 and is arrested for a misdemeanor or infraction of this code pertaining to the operation of a motor vehicle, the officer in charge of the most accessible county or city jail or other place of detention within the county may detain the person arrested for a reasonable period of time, not to exceed two hours, in order to verify his or her identity.

SEC. 45. Section 40508 of the Vehicle Code is amended to read:

40508. (a) A person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to

appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(b) A person willfully failing to pay bail in installments as agreed to under Section 40510.5 or a lawfully imposed fine for a violation of a provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the bail or fine is due is guilty of a misdemeanor regardless of the full payment of the bail or fine after that time.

(c) A person willfully failing to comply with a condition of a court order for a violation of this code, other than for failure to appear or failure to pay a fine, is guilty of a misdemeanor, regardless of his or her subsequent compliance with the order.

(d) If a person convicted of an infraction fails to pay bail in installments as agreed to under Section 40510.5, or a fine or an installment thereof, within the time authorized by the court, the court may, except as otherwise provided in this subdivision, impound the person's driver's license and order the person not to drive for a period not to exceed 30 days. Before returning the license to the person, the court shall endorse on the reverse side of the license that the person was ordered not to drive, the period for which that order was made, and the name of the court making the order. If a defendant with a class C or M driver's license satisfies the court that impounding his or her driver's license and ordering the defendant not to drive will affect his or her livelihood, the court shall order that the person limit his or her driving for a period not to exceed 30 days to driving that is essential in the court's determination to the person's employment, including the person's driving to and from his or her place of employment if other means of transportation are not reasonably available. The court shall provide for the endorsement of the limitation on the person's license. The impounding of the license and ordering the person not to drive or the order limiting the person's driving does not constitute a suspension of the license, but a violation of the order constitutes contempt of court.

SEC. 46. Section 40509 of the Vehicle Code is amended to read:

40509. (a) Except as required under subdivision (c) of Section 40509.5, if any person has violated a written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, or any violation that can be

heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If any person has willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) (1) Notwithstanding subdivisions (a) and (b), the court may notify the department of the total amount of bail, fines, assessments, and fees authorized or required by this code, including Section 40508.5, which are unpaid by any person.

(2) Once a court has established the amount of bail, fines, assessments, and fees, and notified the department, the court shall not further enhance or modify that amount.

(3) This subdivision applies only to violations of this code that do not require a mandatory court appearance, are not contested by the defendant, and do not require proof of correction certified by the court.

(d) With respect to a violation of this code, this section is applicable to any court which has not elected to be subject to the notice requirements of subdivision (b) of Section 40509.5.

(e) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 47. Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), any person has violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of

any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), any person has willfully failed to pay a lawfully imposed fine, or bail in installments as agreed to under Section 40510.5, within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine or bail is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine or bail has been paid.

(c) If any person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine or bail pursuant to subdivision (a) or (b), no arrest warrant shall be issued for an alleged violation of subdivision (a) or (b) of Section 40508, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.

(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

(4) The driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

(f) Except as required under subdivision (c), in addition to the proceedings described in this section, the court may elect to notify the department pursuant to subdivision (c) of Section 40509.

(g) This section is applicable to courts which have elected to provide notice pursuant to subdivision (b). The method of commencing or terminating an election to proceed under this section shall be prescribed by the department.

(h) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 47.5. Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), a person has violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for a violation of this code, a violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or a violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), a person has willfully failed to pay a lawfully imposed fine, or bail in installments as agreed to under Section 40510.5, within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for a violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine or bail is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine or bail has been paid.

(c) If a person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or subdivision (a) of Section 192.5 of that code has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine or bail pursuant to subdivision (a) or (b), no arrest warrant shall be issued for an alleged violation of subdivision (a) or (b) of Section 40508, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.

(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

(4) The driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

(f) Except as required under subdivision (c), in addition to the proceedings described in this section, the court may elect to notify the department pursuant to subdivision (c) of Section 40509.

(g) This section is applicable to courts that have elected to provide notice pursuant to subdivision (b). The method of commencing or terminating an election to proceed under this section shall be prescribed by the department.

(h) A violation subject to Section 40001, that is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 48. Section 40510.5 is added to the Vehicle Code, to read:

40510.5. (a) The clerk of the court may accept a payment and forfeiture of at least 25 percent of the total bail amount for each infraction violation of this code prior to the date on which the defendant promised

to appear, or prior to the expiration of any lawful continuance of that date, or upon receipt of information that an action has been filed and prior to the scheduled court date, if all of the following circumstances exist:

(1) The defendant is charged with a nonparking infraction violation of this code or an infraction violation of an ordinance adopted pursuant to this code.

(2) The defendant submits proof of correction, when proof of correction is required to be certified by the court for a correctable offense.

(3) The offense does not require an appearance in court.

(4) The defendant signs a written agreement to pay and forfeit the remainder of the required bail according to an installment schedule as agreed upon with the court. The Judicial Council shall prescribe the form of the agreement for payment and forfeiture of bail in installments for infraction violations.

(b) When a clerk accepts an agreement for payment and forfeiture of bail in installments, the clerk shall continue the appearance date of the defendant to the date to complete payment and forfeiture of bail in the agreement.

(c) Except for subdivisions (b) and (c) of Section 1269b and Section 1305.1, the provisions of Chapter 1 (commencing with Section 1268) of Title 10 of Part 2 of the Penal Code do not apply to an agreement to pay and forfeit bail in installments under this section.

(d) For the purposes of reporting violations of this code to the department under Section 1803, the date that the defendant signs an agreement to pay and forfeit bail in installments shall be reported as the date of conviction.

(e) When the defendant fails to make an installment payment according to an agreement under subdivision (a) above, the court may charge a failure to appear or pay under Section 40508 and impose a civil assessment as provided in Section 1214.1 of the Penal Code or issue an arrest warrant for a failure to appear.

(f) Payment of a bail amount under this section is forfeited when collected and shall be distributed by the court in the same manner as other fines, penalties, and forfeitures collected for infractions.

(g) The defendant shall pay to the clerk of the court or the collecting agency a fee for the processing of installment accounts. This fee shall equal the administrative and clerical costs, as determined by the board of supervisors, except that the fee shall not exceed thirty-five dollars ($35).

SEC. 49. Section 40512 of the Vehicle Code is amended to read:

40512. (a) (1) Except as specified in paragraph (2) and subdivision (b), if at the time the case is called for arraignment before the magistrate

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 be had in the case, unless the defendant has been charged with a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of the same offense, except if 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 shall be had in the case.

(2) If the defendant has posted surety bail and the magistrate has ordered the bail forfeited and that no further proceedings shall be had in the case, the bail retains the right to obtain relief from the forfeiture as provided in Section 1305 of the Penal Code if the amount of the bond, money, or property deposited exceeds seven hundred dollars ($700).

(b) (1) If, at the time the case is called for a compliance appearance before the magistrate, the defendant has entered into a bail installment agreement pursuant to Section 40510.5 but has not made an installment payment as agreed and does not appear, either in person or by counsel, the court may continue the arraignment to a date beyond the last agreed upon installment payment, issue a warrant of arrest, or impose a civil assessment as provided in Section 1214.1 of the Penal Code for the failure to appear.

(2) If, at the time the case is called for a compliance appearance before the magistrate, the defendant has paid all required bail funds and the defendant does not appear, either in person or by counsel, the court may order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of the same offense, except that if the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may order that no further proceedings shall be had in the case.

(c) Upon the making of the order that no further proceedings shall be had, all sums deposited as bail shall be paid into the city or county treasury, as the case may be.

(d) If a guaranteed traffic arrest bail bond certificate has been filed, the clerk of the court shall bill the issuer for the amount of bail fixed by the uniform countywide schedule of bail required under subdivision (c) of Section 1269b of the Penal Code.

(e) Upon presentation by a court of the bill for a fine or bail assessed against an individual covered by a guaranteed traffic arrest bail bond certificate, the issuer shall pay to the court the amount of the fine or

forfeited bail that is within the maximum amount guaranteed by the terms of the certificate.

(f) The court shall return the guaranteed traffic arrest bail bond certificate to the issuer upon receipt of payment in accordance with subdivision (d).

SEC. 50. Section 40512.6 of the Vehicle Code is amended to read:

40512.6. If a defendant who elects to attend a traffic violator school in accordance with Section 42005 and has paid the full traffic violator school fee under Section 42007 fails to submit proof of completion within the time ordered by the court or any extension thereof, the court may, following notice to the defendant, order that the fee paid by the defendant be converted to bail and declare the bail forfeited. The bail forfeiture under this section shall be distributed as provided by Section 42007. Upon forfeiture of the bail, the court may order that no further proceedings shall be had in the case.

SEC. 51. Section 40515 of the Vehicle Code is amended to read:

40515. (a) When a person signs a written promise to appear or is granted a continuance of his or her promise to appear at the time and place specified in the written promise to appear or the continuance thereof, and has not posted full bail or has failed to pay an installment of bail as agreed to under Section 40510.5, the magistrate may issue and have delivered for execution a warrant for his or her arrest within 20 days after his or her failure to appear before the magistrate or pay an installment of bail as agreed, or if the person promises to appear before an officer authorized to accept bail other than a magistrate and fails to do so on or before the date on which he or she promised to appear, then, within 20 days after the delivery of the written promise to appear by the officer to a magistrate having jurisdiction over the offense.

(b) When the person violates his or her promise to appear before an officer authorized to receive bail other than a magistrate, the officer shall immediately deliver to a magistrate having jurisdiction over the offense charged the written promise to appear and the complaint, if any, filed by the arresting officer.

SEC. 52. Section 40521 of the Vehicle Code is amended to read:

40521. (a) Except when personal appearance is required by the bail schedule established under Section 1269b of the Penal Code, a person to whom a notice to appear has been issued under Section 40500, who intends to forfeit bail and to pay any assessment may forward by United States mail the full amount fixed as bail, together with the appropriate amount of any assessment, to the person authorized to receive a deposit of bail. The amounts may be paid in the form of a personal check which meets the criteria established pursuant to subdivision (c) of Section 40510, or a bank cashier's check or a money order. Bail and any

assessment shall be paid not later than the day of appearance set forth in the notice to appear or prior to the expiration of any lawful continuance of that date.

(b) Bail forwarded by mail is effective only when the funds are actually received.

(c) Paragraph (1) of subdivision (a) of Section 40512 is applicable to bail paid pursuant to this section. Upon the making of the order pursuant to Section 40512 that no further proceedings be had, the amount paid as bail shall be paid into the city or county treasury, as the case may be, and the assessment shall be transmitted to the State Treasury in the manner provided in Section 1464 of the Penal Code.

SEC. 53. Section 42006 of the Vehicle Code is amended to read:

42006. (a) Except as provided in subdivision (c), there may be levied a special assessment in an amount equal to one dollar ($1) for every fine, forfeiture, and traffic violator school fee imposed and collected by any court that conducts a night or weekend session of the court, on all offenses involving a violation of a section of this code or any local ordinance adopted pursuant to this code, except offenses relating to parking.

(b) When a person makes a deposit of bail for an offense to which this section applies, in a case in which the person is required to appear in a court that conducts a night or weekend session, the person making the deposit shall also deposit a sufficient amount to include the assessment prescribed in this section for forfeited bail. If bail is forfeited, the amount of the assessment shall be transmitted by the clerk of the court to the county treasury for disposition as prescribed by subdivision (d).

(c) If a court conducts night or weekend sessions at two or more locations, the court may do either of the following:

(1) Levy assessments only on those persons who are required to appear at the location where night or weekend sessions are held.

(2) Levy assessments on persons who have the option to appear at a location where night or weekend court sessions are held and that is within 25 miles of the location of the court where the person is otherwise required to appear.

(d) After a determination by the court of the amount of the assessment due, the clerk of the court shall collect the amount and transmit it to the county treasury to be deposited in the night court session fund, and the money in the fund shall be expended by the county for maintaining courts in the county that have night or weekend sessions for traffic offenses.

(e) In any case where a person convicted of any offense to which this section applies is imprisoned until the fine is satisfied, the court shall waive the penalty assessment.

SEC. 54. Section 42007 of the Vehicle Code is amended to read:

42007. (a) (1) The clerk of the court shall collect a fee from every person who is ordered or permitted to attend a traffic violator school pursuant to Section 42005 or who attends any other court-supervised program of traffic safety instruction. The fee shall be in an amount equal to the total bail set forth for the eligible offense on the uniform countywide bail schedule. As used in this subdivision, "total bail" means the amount established pursuant to Section 1269b of the Penal Code in accordance with the Uniform Statewide Bail Schedule adopted by the Judicial Council, including all assessments, surcharges, and penalty amounts. Where multiple offenses are charged in a single notice to appear, the "total bail" is the amount applicable for the greater of the qualifying offenses. However, the court may determine a lesser fee under this subdivision upon a showing that the defendant is unable to pay the full amount.

The fee shall not include the cost, or any part thereof, of traffic safety instruction offered by the school or other program.

(2) The clerk may accept from a defendant who is ordered or permitted to attend traffic violator school a payment of at least 25 percent of the fee required by paragraph (1) upon filing a written agreement by the defendant to pay the remainder of the fee according to an installment payment schedule of no more than 90 days as agreed upon with the court. The Judicial Council shall prescribe the form of the agreement for payment of the fee in installments. When the defendant signs the Judicial Council form for payment of the fee in installments, the court shall continue the case to the date in the agreement to complete payment of the fee and submit the certificate of completion of traffic violator school to the court. The clerk shall collect a fee of up to thirty-five dollars ($35) to cover the cost of processing an installment payment of the traffic violator school fee under this paragraph.

(3) When a defendant fails to make an installment payment of the fee according to an installment agreement, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under Section 1803. The court may also charge a failure to pay under Section 40508 and impose a civil assessment as provided in Section 1214.1 of the Penal Code or issue an arrest warrant for a failure to pay.

(b) Revenues derived from the fee collected under this section shall be deposited in accordance with Section 68084 of the Government Code in the general fund of the county and, as may be applicable, distributed as follows:

(1) In any county in which a fund is established pursuant to Section 76100 or 76101 of the Government Code, the sum of one dollar ($1) for

each fund so established shall be deposited with the county treasurer and placed in that fund.

(2) In any county that has established a Maddy Emergency Medical Services Fund pursuant to Section 1797.98a of the Health and Safety Code, an amount equal to the sum of each two dollars ($2) for every seven dollars ($7) that would have been collected pursuant to Section 76000 of the Government Code shall be deposited in that fund. Nothing in the act that added this paragraph shall be interpreted in a manner that would result in either of the following:

(A) The utilization of penalty assessment funds that had been set aside, on or before January 1, 2000, to finance debt service on a capital facility that existed before January 1, 2000.

(B) The reduction of the availability of penalty assessment revenues that had been pledged, on or before January 1, 2000, as a means of financing a facility which was approved by a county board of supervisors, but on January 1, 2000, is not under construction.

(3) The amount of the fee that is attributable to Section 70372 of the Government Code shall be transferred pursuant to subdivision (f) of that section.

(c) For fees resulting from city arrests, an amount equal to the amount of base fines that would have been deposited in the treasury of the appropriate city pursuant to paragraph (3) of subdivision (b) of Section 1463.001 of the Penal Code shall be deposited in the treasury of the appropriate city.

(d) As used in this section, "court-supervised program" includes, but is not limited to, any program of traffic safety instruction the successful completion of which is accepted by the court in lieu of adjudicating a violation of this code.

(e) The clerk of the court, in a county that offers traffic school shall include in any courtesy notice mailed to a defendant for an offense that qualifies for traffic school attendance the following statement:

NOTICE: If you are eligible and decide not to attend traffic school your automobile insurance may be adversely affected.

SEC. 55. Section 395 of the Welfare and Institutions Code is amended to read:

395. (a) (1) A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment. However, that order or judgment shall not be stayed by the appeal, unless, pending the appeal, suitable provision is made for the maintenance, care, and custody of the person alleged or found to come within the provisions of Section 300, and unless the provision is approved by an order of the juvenile court.

The appeal shall have precedence over all other cases in the court to which the appeal is taken.

(2) A judgment or subsequent order entered by a referee shall become appealable whenever proceedings pursuant to Section 252, 253, or 254 have become completed or, if proceedings pursuant to Section 252, 253, or 254 are not initiated, when the time for initiating the proceedings has expired.

(3) An appellant unable to afford counsel, shall be provided a free copy of the transcript in any appeal.

(4) The record shall be prepared and transmitted immediately after filing of the notice of appeal, without advance payment of fees. If the appellant is able to afford counsel, the county may seek reimbursement for the cost of the transcripts under subdivision (d) of Section 68511.3 of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

(b) (1) In any appellate proceeding in which the child is an appellant, the court of appeal shall appoint separate counsel for the child. If the child is not an appellant, the court of appeal shall appoint separate counsel for the child if the court of appeal determines, after considering the recommendation of the trial counsel or guardian ad litem appointed for the child pursuant to subdivision (e) of Section 317, Section 326.5, and California Rule of Court 1448, that appointment of counsel would benefit the child. In order to assist the court of appeal in making its determination under this subdivision, the trial counsel or guardian ad litem shall make a recommendation to the court of appeal that separate counsel be appointed in any case in which the trial counsel or guardian ad litem determines that, for the purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel, and shall set forth the reasons why the appointment is in the child's best interests. The court of appeal shall consider that recommendation when determining whether the child would benefit from the appointment of counsel. The Judicial Council shall implement this provision by adopting a rule of court on or before July 1, 2007, to set forth the procedures by which the trial counsel or guardian ad litem may participate in an appeal, as well as the factors to be considered by the trial counsel or guardian ad litem in making a recommendation to the court of appeal, including, but not limited to, the extent to which there exists a potential conflict between the interests of the child and the interests of any respondent.

(2) The Judicial Council shall report to the Legislature on or before July 1, 2008, information regarding the status of appellate representation of dependent children, the results of implementing this subdivision, any recommendations regarding the representation of dependent children in appellate proceedings made by the California Judicial Council's Blue

Ribbon Commission on Children in Foster Care, any actions taken, including rules of court proposed or adopted, in response to those recommendations or taken in order to comply with the Child Abuse Prevention and Treatment Act, as well as any recommendations for legislative change that are deemed necessary to protect the best interests of dependent children in appellate proceedings or ensure compliance with the Child Abuse Prevention and Treatment Act.

SEC. 56. Section 11.5 of this bill incorporates amendments to Section 14310 of the Elections Code proposed by both this bill and AB 1243. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 14310 of the Evidence Code, and (3) this bill is enacted after AB 1243, in which case Section 11 of this bill shall not become operative.

SEC. 57. Section 19.5 of this bill incorporates amendments to Section 68152 of the Government Code proposed by both this bill and AB 430. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 68152 of the Government Code, and (3) this bill is enacted after AB 430, in which case Section 19 of this bill shall not become operative.

SEC. 58. Section 47.5 of this bill incorporates amendments to Section 40509.5 of the Vehicle Code proposed by both this bill and AB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 40509.5 of the Vehicle Code, and (3) this bill is enacted after AB 678, in which case Section 47 of this bill shall not become operative.

CHAPTER 739

An act to amend Section 44010.5 of, and to amend, repeal, and add Sections 44011 and 44012 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 44010.5 of the Health and Safety Code is amended to read:

44010.5. (a) The department shall implement a program with the capacity to commence, by January 1, 1995, the testing at test-only facilities, in accordance with this chapter, of 15 percent of that portion

of the total state vehicle fleet consisting of vehicles subject to inspection each year in the biennial program and that are registered in the enhanced program area, as established pursuant to paragraph (1) of subdivision (a) of Section 44003.

(b) (1) The department shall increase the capacity of the program so that the capacity exists to commence, by January 1, 1996, the testing at test-only facilities of that portion of the state vehicle fleet that is subject to inspection and is registered in the enhanced program area, which is sufficient to meet the emission reduction performance standards established by the Environmental Protection Agency in regulations adopted pursuant to the Clean Air Act Amendments of 1990, taking into account the results of the pilot demonstration program established pursuant to Section 44081.6.

(2) Upon increasing the capacity of the program pursuant to paragraph (1), the department shall afford smog check stations that are licensed and certified pursuant to Sections 44014 and 44014.2 the initial opportunity to perform the required inspections. The department shall adopt, by regulation, the requirements to provide that initial opportunity.

(3) If the department determines that there is an insufficient number of licensed test-only smog check stations operating in an enhanced area to meet the increased demand for test-only inspections, the department may increase the capacity of the program by utilizing existing contracts.

(c) The program shall utilize the testing procedures described in Section 44012.

(d) Vehicles that are not diesel-powered in the enhanced program area which are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 that use loaded mode dynamometers. Diesel-powered vehicles in the enhanced program area that are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 using appropriate testing procedures as determined by the department.

(e) (1) The department may implement the program established pursuant to subdivision (a) through a network of privately operated test-only facilities established pursuant to contracts to be awarded pursuant to this section.

(2) The initial contracts awarded pursuant to this section shall terminate not later than seven years from the date that the contracts were executed.

(f) No person shall be a contractor of the department for test-only facilities in all air basins, exclusively, where the enhanced program is in effect unless the department determines, after a public hearing, that there is not more than one qualified contractor. The South Coast Air

Basin shall have at least two contractors, and the combined enhanced program area that includes Bakersfield, Fresno, and Sacramento shall have at least two contractors. The department may operate test-only facilities on an interim basis while contractors are being sought.

(g) (1) In awarding contracts under this section, the department shall request bids through the issuance of a request for proposal.

(2) The department shall first determine which bidders are qualified, and then award the contract to the qualified bidder, giving priority to the test cost and convenience to motorists.

(3) The department shall provide a contractual preference, as determined by the department, not to exceed 10 percent of the total proposal evaluation score, based on the following factors:

(A) Up to 5 percent to bidders providing firm commitments to employ businesses that are licensed or otherwise substantially participating in the smog check program after January 1, 1994.

(B) Up to 5 percent to bidders based on the extent to which bidders maximize the potential economic benefit of the smog check program on this state over the term of the contract. That potential economic benefit shall include the percentage of work performed by California-based firms, the potential of the total project workforce who will be California residents, and the percentage of subcontracts that will be awarded to California-based firms.

(4) Any contract executed by the department for the operation of a test-only facility shall expressly require compliance with this chapter and any regulations adopted by the department pursuant to this chapter.

(h) The department shall ensure that there is a sufficient number of test-only facilities, and that they are properly located, to ensure reasonable accessibility and convenience to all persons within an enhanced program area, and that the waiting time for consumers is minimized. The department may operate test-only facilities on an interim basis to ensure convenience to consumers. The department shall specify in the request for proposal the minimum number of test-only facilities that are required for the program. Any contracts initially awarded pursuant to this section shall ensure that the contractors are capable of fulfilling the requirements of subdivision (a).

(i) Any data generated at a test-only facility shall be the property of the state, and shall be fully accessible to the department at any time. The department may set contract specifications for the storage of that data in a central data storage system or facility designated by the department.

(j) The department shall ensure an effective transition to the new program by implementing an effective public education program and may specify in the request for proposal a dollar amount that bidders are

required to include in their bids for public education activities, to be implemented pursuant to Section 44070.5.

(k) The department shall ensure the effective management of the test-only facilities and shall specify in the request for proposal that a manager be present during all hours of station operation.

(*l*) The department shall ensure and facilitate the effective transition of employees of businesses that are licensed or otherwise substantially participating in the smog check program and may specify in the request for proposal that test-only facility management be Automotive Service Excellence (ASE) certified, or be certified by a comparable program as determined by the department.

(m) As part of the contracts to be awarded pursuant to subdivision (e), the department may require contractors to perform functions previously undertaken by referee stations throughout the state, as determined by the department, at some or all of the affected stations in enhanced areas, and at additional stations outside enhanced areas only to the extent necessary to provide appropriate access to referee functions.

(n) Notwithstanding any other provision of law, to avoid delays to the program implementation timeline required by this chapter or the Clean Air Act, the Department of General Services, at the request of the department, may exempt contracts awarded pursuant to this section from existing laws, rules, resolutions, or procedures that are otherwise applicable, including, but not limited to, restrictions on awarding contracts for more than three years. The department shall identify any exemptions requested and granted pursuant to this subdivision and report thereon to the Legislature.

(o) The department shall implement the program established in this section only in urbanized areas classified by the Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm, and shall not implement the program in any other area.

(p) If existing smog check stations, in order to participate in the enhanced program, have been required to make additional investments of more than ten thousand dollars ($10,000), the department shall submit recommendations to the Governor and the Legislature for any appropriate mitigation measures.

SEC. 2. Section 44011 of the Health and Safety Code is amended to read:

44011. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle that has been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change of ownership or initial registration in this state during the preceding six months.

(3) Any motor vehicle manufactured prior to the 1976 model-year.

(4) (A) Except as provided in subparagraph (B), any motor vehicle four or less model-years old.

(B) Beginning January 1, 2005, any motor vehicle six or less model-years old, unless the state board finds that providing an exception for these vehicles will prohibit the state from meeting the requirements of Section 176(c) of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or the state's commitments with respect to the state implementation plan required by the federal Clean Air Act.

(C) Any motor vehicle excepted by this paragraph shall be subject to testing and to certification requirements as determined by the department, if any of the following apply:

(i) The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 44012.

(ii) The vehicle was previously registered outside this state and is undergoing initial registration in this state.

(iii) The vehicle is being registered as a specially constructed vehicle.

(iv) The vehicle has been selected for testing pursuant to Section 44014.7 or any other provision of this chapter authorizing out-of-cycle testing.

(5) In addition to the vehicles exempted pursuant to paragraph (4), any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of Section 44024.5. It is the intent of the Legislature that the department, pursuant to the authority granted by this paragraph, exempt at least 15 percent of the lowest emitting motor vehicles from the biennial smog check inspection.

(6) Any motor vehicle that the department determines would present prohibitive inspection or repair problems.

(7) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(c) For purposes of subdivision (a), any collector motor vehicle, as defined in Section 259 of the Vehicle Code, is exempt from those portions of the test required by subdivision (f) of Section 44012 if the collector motor vehicle meets all of the following criteria:

(1) Submission of proof that the motor vehicle is insured as a collector motor vehicle, as shall be required by regulation of the bureau.

(2) The motor vehicle is at least 35 model-years old.

(3) The motor vehicle complies with the exhaust emissions standards for that motor vehicle's class and model-year as prescribed by the department, and the motor vehicle passes a functional inspection of the fuel cap and a visual inspection for liquid fuel leaks.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed.

SEC. 3. Section 44011 is added to the Health and Safety Code, to read:

44011. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for the following:

(1) All motorcycles until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles.

(2) All motor vehicles that have been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change of ownership or initial registration in this state during the preceding six months.

(3) All motor vehicles manufactured prior to the 1976 model-year.

(4) (A) Except as provided in subparagraph (B), all motor vehicles four or less model-years old.

(B) Beginning January 1, 2005, all motor vehicles six or less model-years old, unless the state board finds that providing an exception for these vehicles will prohibit the state from meeting the requirements of Section 176(c) of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or the state's commitments with respect to the state implementation plan required by the federal Clean Air Act.

(C) All motor vehicles excepted by this paragraph shall be subject to testing and to certification requirements as determined by the department, if any of the following apply:

(i) The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 44012.

(ii) The vehicle was previously registered outside this state and is undergoing initial registration in this state.

(iii) The vehicle is being registered as a specially constructed vehicle.

(iv) The vehicle has been selected for testing pursuant to Section 44014.7 or any other provision of this chapter authorizing out-of-cycle testing.

(D) This paragraph does not apply to diesel-powered vehicles.

(5) In addition to the vehicles exempted pursuant to paragraph (4), any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of Section 44024.5. It is the intent of the Legislature that the department, pursuant to the authority granted by this paragraph, exempt at least 15 percent of the lowest emitting motor vehicles from the biennial smog check inspection.

(6) All motor vehicles that the department determines would present prohibitive inspection or repair problems.

(7) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(8) (A) All diesel-powered vehicles manufactured prior to the 1998 model-year.

(B) All diesel-powered vehicles that have a gross vehicle weight rating of 8,501 to 10,000 pounds, inclusive, until the department, in consultation with the state board, pursuant to Section 44012, implements test procedures applicable to these vehicles.

(C) All diesel-powered vehicles that have a gross vehicle weight rating from 10,001 pounds to 13,999 pounds, inclusive, until the state board and the Department of Motor Vehicles determine the best method for identifying these vehicles, and until the department, in consultation with the state board, pursuant to Section 44012, implements test procedures applicable to these vehicles.

(D) All diesel-powered vehicles that have a gross vehicle weight rating of 14,000 pounds or greater.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(c) For purposes of subdivision (a), a collector motor vehicle, as defined in Section 259 of the Vehicle Code, is exempt from those portions of the test required by subdivision (f) of Section 44012 if the collector motor vehicle meets all of the following criteria:

(1) Submission of proof that the motor vehicle is insured as a collector motor vehicle, as shall be required by regulation of the bureau.

(2) The motor vehicle is at least 35 model-years old.

(3) The motor vehicle complies with the exhaust emissions standards for that motor vehicle's class and model-year as prescribed by the

department, and the motor vehicle passes a functional inspection of the fuel cap and a visual inspection for liquid fuel leaks.

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

SEC. 4. Section 44012 of the Health and Safety Code is amended to read:

44012. The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, and shall require, at a minimum, for all vehicles that are not diesel-powered, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas. The department shall ensure all of the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the department, that may include, but are not limited to, on-board diagnostic testing. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

(i) This section shall remain in effect only until January 1, 2010, and as of that date is repealed.

SEC. 5. Section 44012 is added to the Health and Safety Code, to read:

44012. The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, and shall require, at a minimum, for all vehicles that are not diesel-powered, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas. The department shall ensure all of the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, a visual inspection is made of emission control devices and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the department, that may include, but are not limited to, on-board diagnostic testing. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

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

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 740

An act to amend Section 1170 of the Penal Code, relating to sentencing.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 1170 of the Penal Code, as amended by Section 2 of Chapter 3 of the Statutes of 2007, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of

sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation. In determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall select the term which, in the court's discretion, best serves the interests of justice. The court shall set forth on the record the reasons for imposing the term selected and the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraph (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph

(2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 2. Section 1170 of the Penal Code, as added by Section 3 of Chapter 3 of the Statutes of 2007, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last

legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in

paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request

consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) This section shall become operative on January 1, 2009.

CHAPTER 741

An act to add Article 3.5 (commencing with Section 69550) to Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, relating to student financial aid, and making an appropriation therefor.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Article 3.5 (commencing with Section 69550) is added to Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, to read:

Article 3.5. Cash for College Program

69550. (a) It is the intent of the Legislature that California students with financial need be made aware of the opportunities afforded to them through the various state and federal financial aid programs, including the Cal Grant Program established pursuant to Chapter 1.7 (commencing with Section 69430).

(b) Since the creation of the Cal Grant A and Cal Grant B entitlement programs under Article 2 (commencing with Section 69434) of, and Article 3 (commencing with Section 69435) of, Chapter 1.7, efforts to provide information to students have been developed and implemented by various organizations and institutions. However, there is a need to consolidate, incorporate, expand, and improve these programs as a statewide effort in order to ensure access to workshops, information, and assistance.

69551. (a) The Legislature finds and declares all of the following:

(1) The Cash for College Program has successfully established local regional partnerships that annually provide hands-on help in filling out financial aid forms necessary to receive financial assistance for college. This program was initiated by private foundations and the Student Aid Commission in 2002 with the goal of increasing the number of students who successfully complete the financial aid process and enroll in college. In 2007, the Cash for College Program succeeded in serving over 20,000 students and their families in 44 of the 58 counties in California, thereby helping the state to access tens of millions of dollars in federal Pell Grant

financial aid for low-income students and increasing the number of students participating in the state's Cal Grant program.

(2) The intersegmental cooperative nature of the Cash for College Program has proved to be a highly effective mechanism to coordinate existing services and to foster the cooperation of the various educational segments, community, and business partners involved.

(3) The Cash for College Program has been successful because of the financial and volunteer contributions of local partners in private business and industry, the financial aid, admissions and outreach communities, and student groups. Additional funding has been provided through these local and regional partnerships, and through one million five hundred thousand dollars ($1,500,000) in private foundation grant funds that have supported the initial development of the program, as well as funded local scholarships offered to workshop participants who complete the financial aid process by the state filing deadline.

(4) The Cash for College Program has assisted high school and community college students whose families were unfamiliar with the financial aid process. The program focuses on assisting students and their families who are first or second generation college-bound students who have little or no access to college advising because of limited resources at the schoolsite or the perception that college is not an option.

(5) The Cash for College Program seeks to provide all California students who desire to attend college the opportunity to enroll by providing tangible assistance in accessing the available state and federal resources to make higher education possible.

(6) A college or postsecondary education is a requirement for a working wage job. The wage disparity between a high school graduate and a college graduate is one million dollars ($1,000,000) over an individual's lifespan.

(7) California reflects the ethnic and cultural diversity of today's world. Evidence of this change is most pronounced within our public elementary and secondary education system. As California continues into the 21st century, there is no single group that represents a majority of elementary and secondary enrollment. These changing demographics present great challenges and great opportunities.

(8) California must invest in higher education and in the future of its young people so they can acquire skills and knowledge necessary to continue the state's economic recovery.

(9) The Cash for College Program provides access to the college financial aid process for students of varied backgrounds and socioeconomic status.

(b) (1) Beginning January 1, 2008, the Cash for College Program is established and is administered by the Student Aid Commission, in

partnership with private business and industry and local community and educational organizations. The Student Aid Commission may allocate funds for support of local Cash for College financial aid workshop efforts that are designed to accomplish the following goals:

(A) Targeted outreach to, and assistance for, low-income and first generation college-bound students with state and federal financial aid applications.

(B) Targeted outreach to, and assistance for, students who are enrolled in schools or geographic regions with low college eligibility or participation rates, with state and federal financial aid applications.

(2) The projects and organizations funded under this article shall implement the following activities:

(A) Organize and conduct free local and regional workshops that help students and families to fill out the Free Application for Federal Student Aid (FAFSA) and the Cal Grant GPA verification form required for Cal Grants.

(B) Convene advisory board meetings to develop regional partnerships with local partners in private business and industry, admissions and outreach communities, and student groups, to foster financial and volunteer contributions.

(c) The Student Aid Commission shall, by December 1 of each year, provide a report to the fiscal and policy committees of the Legislature on the Cash for College Program detailing program data, expenditures, and the findings of an independent evaluation on the extent to which program goals have been met. Program data shall include the number of completed FAFSA applications, the number of submitted grade point average verifications, and the number of Cal Grant recipients using their Cal Grant at California postsecondary institutions.

(d) The Student Aid Commission shall contract with an external evaluator to conduct the independent evaluation.

(e) (1) The commission may accept voluntary contributions or donations in cash to pay for the costs of implementing the program pursuant to this article. Voluntary contributions shall be deposited into the Cash for College Fund, which is hereby created in the State Treasury. Only moneys contributed or donated for the purposes of this article may be deposited into the fund. The fund shall be credited with all investment income earned by moneys in the fund. All moneys received in contributions or donations for the purposes of this article are not part of the General Fund as defined in Section 16300 of the Government Code. Voluntary contributions or donations are special funds held in trust for purposes of meeting the purposes of this article. Notwithstanding Section 13340 of the Government Code, moneys in the fund from voluntary contributions or donations are hereby continuously appropriated to the

commission without regard to fiscal year for the purposes enumerated in this article.

(2) Additional funds may be appropriated in the annual Budget Act for the purposes of this article.

(f) (1) As used in this subdivision, "regional coordinating organization" means a coalition of entities led by a designated organization, which may include nonprofit organizations, local education or other government agencies, or public or private higher education institutions.

(2) The Student Aid Commission shall allocate funds to regional coordinating organizations to plan, coordinate, or conduct Cash for College workshop series within specified regions within the state.

(3) The Student Aid Commission shall require a regional coordinating organization to contribute equal or greater resources to match the Cash for College funds allocated to it by the commission. Funds allocated to a regional coordinating organization under this subdivision shall be based on demonstrated ability to contribute equal or greater matching resources or funds. The Student Aid Commission may require advance payment, if it determines that it is necessary to ensure that funds provided pursuant to this article are available each year before the start of the program.

(4) The Student Aid Commission may partner with regional coordinating organizations or other entities to facilitate additional nonstate funding or donations of property, or both, for the Cash for College Program.

(5) Notwithstanding Section 11005 of the Government Code, the Student Aid Commission may accept gifts of personal property without approval of the Director of Finance.

(g) The commission may use the moneys appropriated for the program, including reasonable administrative costs, marketing, and external evaluation. Administrative costs shall include appropriate staffing to support the program including, but not limited to, a Cash for College Coordinator. The commission shall annually establish the total amount of funding to assist regional coordinating organizations. Allocation of funds shall be established based upon the best use of funding for that year, as determined by the commission in consultation with a Cash for College statewide advisory board which may include, but is not limited to, partners in private business and industry, admissions and outreach communities, and student groups.

CHAPTER 742

An act to add Section 439.1 to the Military and Veterans Code, relating to the state militia.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 439.1 is added to the Military and Veterans Code, to read:

439.1. (a) The Legislature hereby finds and declares that the Military Department is unable to perform its security, emergency response, and social and community missions due to deficiencies in the physical condition and suitability of some of its armories, and according to a 2006 Bureau of State Audit report, at least 87 percent of the 109 armories in California are in need of improvement.

(b) It is the intent of the Legislature to ensure that the Military Department has adequate facilities to perform its security, emergency response, and social and community missions.

(c) The Military Department shall, on or before April 1, 2008, and each year thereafter, submit a report to the Legislature on the status of all California armories. For each armory, the report shall include:

(1) The location of the armory.

(2) The utilization of the facilities of the armory for military missions, emergency response, and community and social services.

(3) The physical condition of the facilities of the armory for its current missions and uses.

(4) Any identified improvement, renovation, and modernization projects for the facilities of the armory, and the total estimated costs to complete these projects.

(5) The status of recent improvements undertaken at the facilities of the armory.

(6) An 18-month projection of all work and improvements that will be completed on the facilities of the armory.

(7) The projected workload and staffing necessary for the maintenance, repairs, improvements, and operating expenses of the facilities of the armory.

CHAPTER 743

An act to amend Sections 25658, 25658.5, 25661, and 25662 of the Business and Professions Code, and to amend Sections 13004.1 and 14610.1 of the Vehicle Code, relating to alcoholic beverages.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars ($250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars ($500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. It is the intent of the Legislature that the community service

requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine of one thousand dollars ($1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 272 of the Penal Code and Section 13202.5 of the Vehicle Code.

SEC. 2. Section 25658.5 of the Business and Professions Code is amended to read:

25658.5. (a) Any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee, or the licensee's agent or employee, is guilty of an infraction and shall be punished by a fine of not more than two hundred fifty dollars ($250), or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of this section shall be punished by a fine of not more than five hundred dollars ($500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service, as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(b) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 13202.5 of the Vehicle Code.

SEC. 3. Section 25661 of the Business and Professions Code is amended to read:

25661. (a) Any person under the age of 21 years who presents or offers to any licensee, his or her agent or employee, any written, printed, or photostatic evidence of age and identity which is false, fraudulent or not actually his or her own for the purpose of ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure, the serving of any alcoholic beverage, or who has in his or her possession any false or fraudulent written, printed, or photostatic evidence of age and identity, is guilty of a misdemeanor and shall be punished by a fine of at least two hundred fifty dollars ($250), no part of which shall be suspended; or the person shall be required to perform not less than 24 hours nor more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of this section shall be punished by a fine of not more than five hundred dollars ($500), or the person shall be required

to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service, as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(b) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 13202.5 of the Vehicle Code.

SEC. 4. Section 25662 of the Business and Professions Code is amended to read:

25662. (a) Any person under the age of 21 years who has any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public is guilty of a misdemeanor and shall be punished by a fine of two hundred fifty dollars ($250) or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed or is not attending school. A second or subsequent violation shall be punishable as a misdemeanor and the person shall be fined not more than five hundred dollars ($500), or required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides. This section does not apply to possession by a person under the age of 21 years making a delivery of an alcoholic beverage in pursuance of the order of his or her parent, responsible adult relative, or any other adult designated by the parent or legal guardian, or in pursuance of his or her employment. That person shall have a complete defense if he or she was following, in a timely manner, the reasonable instructions of his or her parent, legal guardian, responsible adult relative, or adult designee relating to disposition of the alcoholic beverage.

(b) Unless otherwise provided by law, where a peace officer has lawfully entered the premises, the peace officer may seize any alcoholic beverage in plain view that is in the possession of, or provided to, a person under the age of 21 years at social gatherings, when those gatherings are open to the public, 10 or more persons under the age of 21 years are participating, persons under the age of 21 years are

consuming alcoholic beverages, and there is no supervision of the social gathering by a parent or guardian of one or more of the participants.

Where a peace officer has seized alcoholic beverages pursuant to this subdivision, the officer may destroy any alcoholic beverage contained in an opened container and in the possession of, or provided to, a person under the age of 21 years, and, with respect to alcoholic beverages in unopened containers, the officer shall impound those beverages for a period not to exceed seven working days pending a request for the release of those beverages by a person 21 years of age or older who is the lawful owner or resident of the property upon which the alcoholic beverages were seized. If no one requests release of the seized alcoholic beverages within that period, those beverages may be destroyed.

(c) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 13202.5 of the Vehicle Code.

SEC. 5. Section 13004.1 of the Vehicle Code is amended to read:

13004.1. (a) No person shall manufacture or sell an identification document of a size and form substantially similar to the identification cards issued by the department.

(b) A violation of this section is a misdemeanor punishable by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

SEC. 6. Section 14610.1 of the Vehicle Code is amended to read:

14610.1. (a) No person shall manufacture or sell an identification document of a size and form substantially similar to the drivers' licenses issued by the department.

(b) A violation of this section is a misdemeanor punishable by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

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 744

An act to amend Sections 25500, 25503.6, 25631, and 25658 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 25500 of the Business and Professions Code is amended to read:

25500. (a) No manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person shall:

(1) Hold the ownership, directly or indirectly, of any interest in any on-sale license.

(2) Furnish, give, or lend any money or other thing of value, directly or indirectly, to, or guarantee the repayment of any loan or the fulfillment of any financial obligation of, any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises.

(3) Own any interest, directly or indirectly, in the business, furniture, fixtures, refrigeration equipment, signs, except signs for interior use mentioned in subdivision (g) of Section 25503, or lease in or of any premises operated or maintained under any on-sale license for the sale of alcoholic beverages for consumption on the premises where sold; or own any interest, directly or indirectly, in realty acquired after June 13, 1935, upon which on-sale premises are maintained unless the holding of the interest is permitted in accordance with rules of the department.

(b) This section does not apply to the holding by one person of a wholesaler's license and an on-sale license in counties not to exceed 15,000 population.

(c) This section does not apply to the financial or representative relationship between a manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of such person, and a person holding only one of the following types of licenses:

(1) On-sale general license for a bona fide club.

(2) Club license issued under Article 4 (commencing with Section 23425) of Chapter 3.

(3) Veterans' club license issued under Article 5 (commencing with Section 23450) of Chapter 3.

(4) On-sale license for boats, trains, sleeping cars, or airplanes where the alcoholic beverages produced or sold by the manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, bottler, importer, or wholesaler or any officer, director, or agent of the person are not sold, furnished, or given, directly or indirectly to the on-sale licensee.

(d) This section does not apply to an employee of a licensee referred to in subdivision (a) who is a nonadministrative and nonsupervisorial employee.

(e) Notwithstanding any other provision of this division or regulation of the department, this section does not apply to an employee of a licensee referred to in subdivision (a) who is the spouse of an on-sale licensee, so long as the on-sale licensee does not purchase, offer for sale, or promote, regardless of source, any of the brands of alcoholic beverages that are produced, bottled, processed, imported, rectified, distributed, represented, or sold by any licensee referred to in subdivision (a) that employs the spouse of the on-sale licensee.

(f) Nothing in this division prohibits the holder of any retail on-sale or off-sale license from purchasing, for fair consideration, advertising in any publication published by any manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any person who directly or indirectly holds the ownership of any interest in the premises of the retail licensee.

SEC. 2. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County or Alameda County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats

and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located in San Bernardino County.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(F) An outdoor stadium and a fully enclosed arena with fixed seating capacities in excess of 10,000 seats located in Fresno County.

(G) An athletic and entertainment complex of not less than 50 acres that includes within its boundaries an outdoor stadium with a fixed seating capacity of at least 8,000 seats and a second outdoor stadium with a fixed seating capacity of at least 3,500 seats located within Riverside County.

(H) An outdoor stadium with a fixed seating capacity in excess of 1,500 seats located in Tulare County.

(I) A motorsports entertainment complex of not less than 50 acres that includes within its boundaries an outdoor speedway with a fixed seating capacity of at least 50,000 seats, located within San Bernardino County.

(J) An exposition park, owned or operated by a bona fide nonprofit organization, of not less than 400 acres with facilities including a grandstand with a seating capacity of at least 8,000 people, at least one exhibition hall greater than 100,000 square feet, and at least four exhibition halls, each greater than 30,000 square feet, located in the City of Pomona or the City of La Verne in Los Angeles County.

(K) An outdoor soccer stadium with a fixed seating capacity of at least 25,000 seats, an outdoor tennis stadium with a fixed capacity of at least 7,000 seats, an outdoor track and field facility with a fixed seating capacity of at least 7,000 seats, and an indoor velodrome with a fixed seating capacity of at least 2,000 seats, all located within a sports and athletic complex built before January 1, 2005, within the City of Carson in Los Angeles County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the exposition park, stadium, or arena owned by the on-sale licensee. With respect to an exposition park as described in subparagraph (J) of paragraph (1) that includes at least one hotel, the advertising space or time shall not be displayed on or in any hotel located in the exposition park, or purchased in connection with the operation of any hotel located in the exposition park.

(4) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the

winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent that purchased the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the distilled spirits rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any beer manufacturer or holder of a winegrower's license, any distilled spirits rectifier, any distilled spirits manufacturer, or any distilled spirits manufacturer's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill all or part of those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space, time, or costs involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, a holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

(f) (1) Notwithstanding any other provision of this chapter, a beer manufacturer or holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee described in paragraph (1) of

subdivision (a), for a safe ride home program operated by, or funded by, the beer manufacturer or holder of a winegrower's license, distilled spirits rectifier, distilled spirits manufacturer, or distilled spirits manufacturer's agent that is operated at the on-sale retail licensee's premises.

(2) Advertising space and time purchased under this subdivision is in addition to any advertising space and time purchased under subdivision (a) and shall not constitute a free good under Section 25600.

SEC. 3. Section 25631 of the Business and Professions Code is amended to read:

25631. Any on- or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2 o'clock a.m. and 6 o'clock a.m. of the same day, is guilty of a misdemeanor.

For the purposes of this section, on the day that a time change occurs from Pacific standard time to Pacific daylight saving time, or back again to Pacific standard time, "2 o'clock a.m." means two hours after midnight of the day preceding the day such change occurs.

SEC. 4. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars ($250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not

employed and is not attending school, or a combination of a fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars ($500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this

subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given to licensees, and the department, within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution under any other provision of law, including, but not limited to, Section 272 of the Penal Code.

SEC. 4.5. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars ($250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars ($500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or

drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine of one thousand dollars ($1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given to licensees and the department within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including,

but not limited to, Section 272 of the Penal Code and Section 13202.5 of the Vehicle Code.

SEC. 5. Section 4.5 of this bill incorporates amendments to Section 25658 of the Business and Professions Code proposed by this bill and AB 1658. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 25658 of the Business and Professions Code, and (3) this bill is enacted after AB 1658, in which case Section 25658 of the Business and Professions Code, as amended by AB 1658, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

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 745

An act to amend Section 25503.6 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County or Alameda County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located in San Bernardino County.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(F) An outdoor stadium and a fully enclosed arena with fixed seating capacities in excess of 10,000 seats located in Fresno County.

(G) An athletic and entertainment complex of not less than 50 acres that includes within its boundaries an outdoor stadium with a fixed seating capacity of at least 8,000 seats and a second outdoor stadium with a fixed seating capacity of at least 3,500 seats located within Riverside County.

(H) An outdoor stadium with a fixed seating capacity in excess of 1,500 seats located in Tulare County.

(I) A motorsports entertainment complex of not less than 50 acres that includes within its boundaries an outdoor speedway with a fixed seating capacity of at least 50,000 seats, located within San Bernardino County.

(J) An exposition park, owned or operated by a bona fide nonprofit organization, of not less than 400 acres with facilities including a grandstand with a seating capacity of at least 8,000 people, at least one exhibition hall greater than 100,000 square feet, and at least four exhibition halls, each greater than 30,000 square feet, located in the City of Pomona or the City of La Verne in Los Angeles County.

(K) An outdoor soccer stadium with a fixed seating capacity of at least 25,000 seats, an outdoor tennis stadium with a fixed capacity of at least 7,000 seats, an outdoor track and field facility with a fixed seating capacity of at least 7,000 seats, and an indoor velodrome with a fixed seating capacity of at least 2,000 seats, all located within a sports and athletic complex built before January 1, 2005, within the City of Carson in Los Angeles County.

(L) An outdoor professional sports facility with a fixed seating capacity of at least 4,200 seats located within San Joaquin County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the exposition park, stadium, or arena owned by the on-sale licensee. With respect to an exposition park as described in subparagraph (J) of paragraph (1) that includes at least one hotel, the advertising space or time shall not be displayed on or in any hotel located in the exposition park, or purchased in connection with the operation of any hotel located in the exposition park.

(4) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits rectifier, the distilled spirits manufacturer or the distilled spirits manufacturer's agent that purchased the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the distilled spirits rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any beer manufacturer or holder of a winegrower's license, any distilled spirits rectifier, any distilled spirits manufacturer, or any distilled spirits manufacturer's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill all or part of those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space, time, or costs involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, a holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine.

The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 2. The Legislature hereby finds and declares, with respect to Section 1 of this act, that a special statute is necessary and that a statute of general applicability cannot be enacted within the meaning of Section 16 of Article IV of the California Constitution, because of unique circumstances and concerns applicable to certain facilities located in the County of San Joaquin.

CHAPTER 746

An act to amend, repeal, and add Section 1803 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 1803 of the Vehicle Code is amended to read:

1803. (a) (1) The clerk of a court in which a person was convicted of a violation of this code, was convicted of a violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of a violation of Section 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, or a violation of subdivision (a) of Section 192.5 of the Penal Code, was convicted of an offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, was convicted of a felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, or was convicted of a violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be

forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

(2) For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a):

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11, except Section 22526.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle or a motorized scooter.

(7) Division 16.5 (commencing with Section 38000), except Section 38301.3.

(8) Subdivision (b) of Section 23221, subdivision (b) of Section 23223, subdivision (b) of Section 23225, and subdivision (b) of Section 23226.

(c) If the court impounds a license, or orders a person to limit his or her driving pursuant to subdivision (d) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, that shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23602, the clerk of the court in which the order terminating or revoking probation was entered shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

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

SEC. 1.5. Section 1803 of the Vehicle Code is amended to read:

1803. (a) (1) The clerk of a court in which a person was convicted of a violation of this code, was convicted of a violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of a violation of Section 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, or a violation of subdivision (a) of Section 192.5 of the Penal Code, was convicted of an offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, was convicted of a felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, or was convicted of a violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

(2) For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a):

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11, except Section 22526.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle or a motorized scooter.

(7) Division 16.5 (commencing with Section 38000), except Section 38301.3.

(8) Subdivision (b) of Section 23221, subdivision (b) of Section 23223, subdivision (b) of Section 23225, and subdivision (b) of Section 23226.

(c) If the court impounds a license, or orders a person to limit his or her driving pursuant to subdivision (d) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, that shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23602, the clerk of the court in which the order terminating or revoking probation was entered shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

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

SEC. 2. Section 1803 is added to the Vehicle Code, to read:

1803. (a) (1) The clerk of a court in which a person was convicted of a violation of this code, was convicted of a violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of a violation of Section 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, or a violation of subdivision (a) of Section 192.5 of the Penal Code, was convicted of an offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, was convicted of a felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, or was convicted of a violation of any other statute relating to the safe operation of vehicles, shall prepare within 5 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be

forwarded to the department within 5 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

(2) For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a):

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11, except Section 22526.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle or a motorized scooter.

(7) Division 16.5 (commencing with Section 38000), except Section 38301.3.

(8) Subdivision (b) of Section 23221, subdivision (b) of Section 23223, subdivision (b) of Section 23225, and subdivision (b) of Section 23226.

(c) If the court impounds a license, or orders a person to limit his or her driving pursuant to subdivision (d) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, that shall be prepared within 5 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 5 days of an order terminating or revoking probation under Section 23602, the clerk of the court in which the order terminating or revoking probation was entered shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

(f) This section shall become operative on October 1, 2008.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1803 of the Vehicle Code proposed by both this bill and AB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1803 of the Vehicle Code, and (3) this bill is enacted after AB 678, in which case Section 1 of this bill shall not become operative.

CHAPTER 747

An act to amend Section 13955 of the Government Code, to amend Sections 668 and 668.1 of the Harbors and Navigation Code, to amend Section 1861.025 of the Insurance Code, to amend Sections 192.5, 193.7, 193.8, 977, 1192.8, and 3057 of the Penal Code, to amend Section 101.10 of the Streets and Highways Code, and to amend Sections 1803, 1808, 11110, 11215, 12810, 13202.5, 13350, 13350.5, 13351, 13352.6, 13353, 13353.1, 13353.3, 13353.7, 13353.8, 13954, 15300, 15302, 20001, 22651.10, 23502, 23550.5, 23558, 23592, 23596, 23612, 23620, 23626, and 40509.5 of the Vehicle Code, relating to crime.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 13955 of the Government Code is amended to read:

13955. Except as provided in Section 13956, a person shall be eligible for compensation when all of the following requirements are met:

(a) The person for whom compensation is being sought is any of the following:

(1) A victim.

(2) A derivative victim.

(3) (A) A person who is entitled to reimbursement for funeral, burial, or crime scene cleanup expenses pursuant to paragraph (9) of subdivision (a) of Section 13957.

(B) This paragraph applies without respect to any felon status of the victim.

(b) Either of the following conditions is met:

(1) The crime occurred within this state, whether or not the victim is a resident of the state. This paragraph shall apply only during those time periods during which the board determines that federal funds are available to the state for the compensation of victims of crime.

(2) Whether or not the crime occurred within the State of California, the victim was any of the following:

(A) A resident of the state.

(B) A member of the military stationed in California.

(C) A family member living with a member of the military stationed in this state.

(c) If compensation is being sought for a derivative victim, the derivative victim is a resident of this state, or resident of another state, who is any of the following:

(1) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(2) At the time of the crime was living in the household of the victim.

(3) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in paragraph (1).

(4) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(5) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(d) The application is timely pursuant to Section 13953.

(e) (1) Except as provided in paragraph (2), the injury or death was a direct result of a crime.

(2) Notwithstanding paragraph (1), no act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this chapter, except when the injury or death from such an act was any of the following:

(A) Intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(B) Caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code.

(C) Caused by a person who is under the influence of any alcoholic beverage or drug.

(D) Caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

(E) Caused by a person who commits vehicular manslaughter in violation of subdivision (b) of Section 191.5, subdivision (c) of Section 192, or Section 192.5 of the Penal Code.

(F) Caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect, and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

(f) As a direct result of the crime, the victim or derivative victim sustained one or more of the following:

(1) Physical injury. The board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury. A child who resides in a home where a crime or crimes of domestic violence have occurred may be presumed by the board to have sustained physical injury, regardless of whether the child has witnessed the crime.

(2) Emotional injury and a threat of physical injury.

(3) Emotional injury, where the crime was a violation of any of the following provisions:

(A) Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code.

(B) Section 270 of the Penal Code, where the emotional injury was a result of conduct other than a failure to pay child support, and criminal charges were filed.

(C) Section 261.5 of the Penal Code, and criminal charges were filed.

(D) Section 278 or 278.5 of the Penal Code, where the deprivation of custody as described in those sections has endured for 30 calendar days or more. For purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(g) The injury or death has resulted or may result in pecuniary loss within the scope of compensation pursuant to Sections 13957 to 13957.9, inclusive.

SEC. 2. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2, or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100) or imprisonment in the county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules

and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) (1) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000), or by imprisonment in the state prison or in the county jail for not more than one year, or by both that fine and imprisonment.

(2) In imposing the minimum fine required by this subdivision, the court shall take into consideration the defendant's ability to pay the fine and, in the interest of justice for reasons stated in the record, may reduce the amount of that minimum fine to less than the amount otherwise required by this subdivision.

(d) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not more than one hundred dollars ($100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of subdivision (a) or (b) of Section 192.5 of the Penal Code, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the

following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(2) Participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. A person ordered to treatment pursuant to this paragraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this paragraph is a basis for reducing any other probation requirement.

(g) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the person's county of residence or employment, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(h) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one

year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court, as a condition of probation, may order that the person participate in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the county of the person's residence or employment. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made

only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(k) A person who flees the scene of the crime after committing a violation of Section 191.5 or paragraph (1) of subdivision (c) of Section 192 of the Penal Code shall be subject to subdivision (c) of Section 20001 of the Vehicle Code.

(*l*) Any person who violates Section 654.3 is guilty of an infraction punishable by a fine of not more than five hundred dollars ($500) for each separate violation.

SEC. 3. Section 668.1 of the Harbors and Navigation Code is amended to read:

668.1. (a) Any person convicted of a violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655, or of Section 655.2, 655.6, 655.7, 658, or 658.5, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or of the federal rules of the road and pilot rules, not including equipment requirements, incorporated by reference in Section 6600.1 of Title 14 of the California Code of Regulations, or found by a court to have performed any of the acts described in Section 6697 of Title 14 of the California Code of Regulations, pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, when the conviction resulted from the operation of a vessel, shall be ordered by the court to complete and pass a boating safety course approved by the department pursuant to Section 668.3.

(b) Any person who has been ordered by the court to complete and pass a boating safety course pursuant to this section shall submit to the court proof of completion and passage of the course within seven months of the time of his or her conviction. The proof shall be in a form that has been approved by the department and that provides for the ability to submit the form to the court through the United States Postal Service. If the person who has been required to complete and pass a boating safety course is under 18 years of age, the court may require that the person obtain parental consent to enroll in the course. If the person does not complete and pass the boating safety course, the court may extend the period for completion or impose another penalty as prescribed by statute.

(c) The department shall adopt regulations to carry out this section, including approval of boating safety education courses, as specified in Section 668.3, prescribing the forms for proof of completion and passage, approval of testing to indicate appropriate mastery of the course subject matter, and setting forth any fees to be charged to course participants, which fees shall not exceed the expenses associated with providing the course.

SEC. 4. Section 1861.025 of the Insurance Code is amended to read:

1861.025. A person is qualified to purchase a Good Driver Discount policy if he or she meets all of the following criteria:

(a) He or she has been licensed to drive a motor vehicle for the previous three years.

(b) During the previous three years, he or she has not done any of the following:

(1) Had more than one violation point count determined as provided by subdivision (a), (b), (c), (d), (e), (g), or (h) of Section 12810 of the Vehicle Code, but subject to the following modifications:

(A) For the purposes of this section, the driver of a motor vehicle involved in an accident for which he or she was principally at fault that resulted only in damage to property shall receive one violation point count, in addition to any other violation points that may be imposed for this accident.

(B) If, under Section 488 or 488.5, an insurer is prohibited from increasing the premium on a policy on account of a violation, that violation shall not be included in determining the point count of the person.

(C) If a violation is required to be reported under Section 1816 of the Vehicle Code, or under Section 784 of the Welfare and Institutions Code, or any other provision requiring the reporting of a violation by a minor, the violation shall be included for the purposes of this section in determining the point count in the same manner as is applicable to adult violations.

(2) Had more than one dismissal pursuant to Section 1803.5 of the Vehicle Code that was not made confidential pursuant to Section 1808.7 of the Vehicle Code, in the 36-month period for violations that would have resulted in the imposition of more than one violation point count under paragraph (1) if the complaint had not been dismissed.

(3) Was the driver of a motor vehicle involved in an accident that resulted in bodily injury or in the death of any person and was principally at fault. The commissioner shall adopt regulations setting guidelines to be used by insurers for the determination of fault for the purposes of this paragraph and paragraph (1).

(c) During the period commencing on January 1, 1999, or the date 10 years prior to the date of application for the issuance or renewal of the Good Driver Discount policy, whichever is later, and ending on the date of the application for the issuance or renewal of the Good Driver Discount policy, he or she has not been convicted of a violation of Section 23140, 23152, or 23153 of the Vehicle Code, a felony violation of Section 23550 or 23566, or former Section 23175 or, as those sections read on January 1, 1999, of the Vehicle Code, or a violation of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code.

(d) Any person who claims that he or she meets the criteria of subdivisions (a), (b), and (c) based entirely or partially on a driver's license and driving experience acquired anywhere other than in the United States or Canada is rebuttably presumed to be qualified to purchase a Good Driver Discount policy if he or she has been licensed to drive in the United States or Canada for at least the previous 18 months and meets the criteria of subdivisions (a), (b), and (c) for that period.

SEC. 5. Section 192.5 of the Penal Code is amended to read:

192.5. Vehicular manslaughter pursuant to subdivision (b) of Section 191.5 and subdivision (c) of Section 192 is the unlawful killing of a human being without malice aforethought, and includes:

(a) Operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence.

(b) Operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, but without gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence.

(c) Operating a vessel in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or operating a vessel in the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence.

(d) Operating a vessel in the commission of an unlawful act, not amounting to a felony, but without gross negligence; or operating a vessel in the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence.

(e) A person who flees the scene of the crime after committing a violation of subdivision (a), (b), or (c), upon conviction, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. This additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. The court shall not strike a finding that brings a person within the provisions of this subdivision or an allegation made pursuant to this subdivision.

SEC. 6. Section 193.7 of the Penal Code is amended to read:

193.7. A person convicted of a violation of subdivision (b) of Section 191.5 that occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, of, or Section 23152 or 23153 of, the Vehicle Code, or any combination thereof, that resulted in convictions, shall be designated as an habitual traffic offender subject to paragraph (3) of subdivision (e) of Section 14601.3 of the Vehicle Code, for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350 of the Vehicle Code.

SEC. 7. Section 193.8 of the Penal Code is amended to read:

193.8. (a) An adult, who is the registered owner of a motor vehicle or in possession of a motor vehicle, shall not relinquish possession of the vehicle to a minor for the purpose of driving if the following conditions exist:

(1) The adult owner or person in possession of the vehicle knew or reasonably should have known that the minor was intoxicated at the time possession was relinquished.

(2) A petition was sustained or the minor was convicted of a violation of Section 23103 as specified in Section 23103.5, 23140, 23152, or 23153 of the Vehicle Code or a violation of Section 191.5 or subdivision (a) of Section 192.5.

(3) The minor does not otherwise have a lawful right to possession of the vehicle.

(b) The offense described in subdivision (a) shall not apply to commercial bailments, motor vehicle leases, or parking arrangements, whether or not for compensation, provided by hotels, motels, or food facilities for customers, guests, or other invitees thereof. For purposes of this subdivision, hotel and motel shall have the same meaning as in subdivision (b) of Section 25503.16 of the Business and Professions Code and food facility shall have the same meaning as in Section 113785 of the Health and Safety Code.

(c) If an adult is convicted of the offense described in subdivision (a), that person shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment. An adult convicted of the offense described in subdivision (a) shall not be subject to driver's license suspension or revocation or attendance at a licensed alcohol or drug education and counseling program for persons who drive under the influence.

SEC. 8. Section 977 of the Penal Code is amended to read:

977. (a) (1) In all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraphs (2) and (3). If the accused agrees, the initial court

appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused shall be present for arraignment and sentencing, and at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2.

(3) If the accused is charged with a misdemeanor offense involving driving under the influence, in an appropriate case, the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing. For purposes of this paragraph, a misdemeanor offense involving driving under the influence shall include a misdemeanor violation of any of the following:

(A) Subdivision (b) of Section 191.5.

(B) Section 23103 as specified in Section 23103.5 of the Vehicle Code.

(C) Section 23152 of the Vehicle Code.

(D) Section 23153 of the Vehicle Code.

(b) (1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:

"Waiver of Defendant's Personal Presence"

"The undersigned defendant, having been advised of his or her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit

pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place."

(c) The court may permit the initial court appearance and arraignment in municipal or superior court of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an initial hearing in superior court in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(d) Notwithstanding subdivision (c), if the defendant is represented by counsel, the attorney shall be present with the defendant in any county exceeding 4,000,000 persons in population.

SEC. 8.5. Section 977 of the Penal Code is amended to read:

977. (a) (1) In all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraphs (2) and (3). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused shall be present for arraignment and sentencing, and at any time during the proceedings

when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2.

(3) If the accused is charged with a misdemeanor offense involving driving under the influence, in an appropriate case, the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing. For purposes of this paragraph, a misdemeanor offense involving driving under the influence shall include a misdemeanor violation of any of the following:

(A) Subdivision (b) of Section 191.5.

(B) Section 23103 as specified in Section 23103.5 of the Vehicle Code.

(C) Section 23152 of the Vehicle Code.

(D) Section 23153 of the Vehicle Code.

(b) (1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:

"Waiver of Defendant's Personal Presence"

"The undersigned defendant, having been advised of his or her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place."

(c) The court may permit the initial court appearance and arraignment of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an arraignment on an information in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(d) Notwithstanding subdivision (c), if the defendant is represented by counsel, the attorney shall be present with the defendant in any county exceeding 4,000,000 persons in population.

SEC. 9. Section 1192.8 of the Penal Code is amended to read:

1192.8. (a) For purposes of subdivision (c) of Section 1192.7, "serious felony" also means any violation of Section 191.5, paragraph (1) of subdivision (c) of Section 192, subdivision (a), (b), or (c) of Section 192.5 of this code, or Section 2800.3, subdivision (b) of Section 23104, or Section 23153 of the Vehicle Code, when any of these offenses involve the personal infliction of great bodily injury on any person other than an accomplice, or the personal use of a dangerous or deadly weapon, within the meaning of paragraph (8) or (23) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature, in enacting subdivision (a), to codify the court decisions of People v. Gonzales, 29 Cal. App. 4th 1684, and People v. Bow, 13 Cal. App. 4th 1551, and to clarify that the crimes specified in subdivision (a) have always been, and continue to be, serious felonies within the meaning of subdivision (c) of Section 1192.7.

SEC. 10. Section 3057 of the Penal Code is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinics, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) of Section 192, subdivision (a) of Section 192.5, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a)

of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12020, 12021, 12022, 12022.5, 12022.53, 12022.7, 12022.8, 12025, or 12560, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

SEC. 11. Section 101.10 of the Streets and Highways Code is amended to read:

101.10. (a) (1) The department shall design, construct, place, and maintain, or cause to be designed, constructed, placed, and maintained, along state highways, signs that read as follows: "Please Don't Drink and Drive," followed by: "In Memory of (victim's name)." These signs shall be placed upon the state highways in accordance with this section, placement guidelines adopted by the department, and any applicable federal limitations or conditions on highway signage, including location and spacing. Signs may memorialize more than one victim. "Victim" for purposes of this section means a person who was killed in a vehicular accident, but does not include a party described in paragraph (2) of subdivision (c).

(2) The department shall adopt program guidelines for the application for and placement of signs authorized by this section, including, but not limited to, the sign application and qualification process, the procedure for the dedication of signs, and procedures for the replacement or restoration of any signs that are damaged or stolen.

(b) If the placement at the location of a vehicular accident is safe and practical and the conditions of subdivisions (c) and (d) are met, the department shall place a sign described in subdivision (a) in close proximity to the location where the vehicular accident occurred.

(c) (1) A party to that accident was convicted of any of the following:

(A) Murder of the second degree under Section 187, and the violation was a direct result of driving a vehicle while in violation of Section 23152 or 23153 of the Vehicle Code.

(B) Gross vehicular manslaughter while intoxicated under subdivision (a) of Section 191.5 of the Penal Code.

(C) Vehicular manslaughter under subdivision (b) of Section 191.5 of the Penal Code.

(2) A party to that accident operated a vehicle involved in the vehicular accident in violation of Section 23152 or 23153 of the Vehicle Code, but died in the accident or was not prosecuted because he or she is found mentally incompetent pursuant to Section 1367 of the Penal Code.

(d) (1) Upon the request of an immediate family member of the deceased victim involved in an accident occurring on and after January 1, 1991, and described in subdivision (b), the department shall place a sign in accordance with this section. A person who is not a member of the immediate family may also submit a request to have a sign placed under this section if that person also submits the written consent of an immediate family member. The department shall charge the requesting party a fee to cover the department's cost in designing, constructing, placing, and maintaining that sign, and the department's costs in administering this section. The sign shall be posted for seven years from the date of initial placement, or until the date the department determines that the condition of the sign has deteriorated to the point that it is no longer serviceable, whichever date is first.

(2) "Immediate family" means spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.

(3) If there is any opposition to the placement of the memorial sign by a member of the immediate family, no sign shall be placed pursuant to this section.

SEC. 12. Section 1803 of the Vehicle Code is amended to read:

1803. (a) (1) The clerk of a court in which a person was convicted of a violation of this code, was convicted of a violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of a violation of Section 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, or a violation of subdivision (a) of Section 192.5 of the Penal Code, was convicted of an offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, was convicted of a felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, or was convicted of a violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the

abstract shall be certified by the person so required to prepare it to be true and correct.

(2) For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a):

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11, except Section 22526.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle or a motorized scooter.

(7) Division 16.5 (commencing with Section 38000), except Section 38301.3.

(8) Subdivision (b) of Section 23221, subdivision (b) of Section 23223, subdivision (b) of Section 23225, and subdivision (b) of Section 23226.

(c) If the court impounds a license, or orders a person to limit his or her driving pursuant to subdivision (d) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, that shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23602, the clerk of the court in which the order terminating or revoking probation was entered shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

SEC. 12.5. Section 1803 of the Vehicle Code is amended to read:

1803. (a) (1) The clerk of a court in which a person was convicted of a violation of this code, was convicted of a violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of a violation of Section 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, or a violation of subdivision (a) of Section 192.5 of the Penal Code, was convicted of an offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, was convicted of a felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, or was convicted of a violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

(2) For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a):

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11, except Section 22526.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle or a motorized scooter.

(7) Division 16.5 (commencing with Section 38000), except Section 38301.3.

(8) Subdivision (b) of Section 23221, subdivision (b) of Section 23223, subdivision (b) of Section 23225, and subdivision (b) of Section 23226.

(c) If the court impounds a license, or orders a person to limit his or her driving pursuant to subdivision (d) of Section 40508, the court shall

notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, that shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23602, the clerk of the court in which the order terminating or revoking probation was entered shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

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

SEC. 13. Section 1808 of the Vehicle Code is amended to read:

1808. (a) Except where a specific provision of law prohibits the disclosure of records or information or provides for confidentiality, all records of the department relating to the registration of vehicles, other information contained on an application for a driver's license, abstracts of convictions, and abstracts of accident reports required to be sent to the department in Sacramento, except for abstracts of accidents where, in the opinion of a reporting officer, another individual was at fault, shall be open to public inspection during office hours. All abstracts of accident reports shall be available to law enforcement agencies and courts of competent jurisdiction.

(b) The department shall make available or disclose abstracts of convictions and abstracts of accident reports required to be sent to the department in Sacramento, as described in subdivision (a), if the date of the occurrence is not later than the following:

(1) Ten years for a violation pursuant to Section 23140, 23152, or 23153.

(2) Seven years for a violation designated as two points pursuant to Section 12810, except as provided in paragraph (1) of this subdivision.

(3) Three years for accidents and all other violations.

(c) The department shall make available or disclose suspensions and revocations of the driving privilege while the suspension or revocation is in effect and for three years following termination of the action or

reinstatement of the privilege, except that driver's license suspension actions taken pursuant to Sections 13202.6 and 13202.7, or Section 256 or 11350.6 of the Welfare and Institutions Code shall be disclosed only during the actual time period in which the suspension is in effect.

(d) The department shall not make available or disclose a suspension or revocation that has been judicially set aside or stayed.

(e) The department shall not make available or disclose personal information about a person unless the disclosure is in compliance with the Driver's Privacy Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.). However, a disclosure is subject to the prohibition in paragraph (2) of subdivision (a) of Section 12800.5.

(f) The department shall make available or disclose to the courts and law enforcement agencies a conviction of Section 23103, as specified in Section 23103.5, or a conviction of Section 23140, 23152, or 23153, or Section 655 of the Harbors and Navigation Code, or paragraph (1) of subdivision (c) of Section 192 of the Penal Code for a period of 10 years from the date of the offense for the purpose of imposing penalties mandated by this code, or by other applicable provisions of California law.

(g) The department shall make available or disclose to the courts and law enforcement agencies a conviction of Section 191.5, or subdivision (a) of Section 192.5 of the Penal Code, punished as a felony, for the purpose of imposing penalties mandated by Section 23550.5, or by other applicable provisions of California law.

SEC. 14. Section 11110 of the Vehicle Code is amended to read:

11110. (a) The department, after notice and hearing, may suspend or revoke a license issued under this chapter if any of the following occurs:

(1) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(2) The licensee fails to keep the records required by this chapter.

(3) The licensee (A) permits fraud or engages in fraudulent practices either with reference to an applicant for a driver's license or an all-terrain vehicle safety certificate from the department, or (B) induces or countenances fraud or fraudulent practices on the part of an applicant.

(4) The licensee fails to comply with this chapter or regulation or requirement of the department adopted pursuant thereto.

(5) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or that would reasonably have the effect of leading persons to believe, that the licensee is in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, that is untrue or misleading and that is known, or that by

the exercise of reasonable care should be known, to be untrue or misleading.

(6) The licensee, or an employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(7) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision (b) of Section 191.5 or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this paragraph.

(8) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(9) The licensee conducts training, or permits training by an employee, in an unsafe manner or contrary to safe driving practices.

(10) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(11) The licensed school owner does not have in effect a bond as required by Section 11102.

(12) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(13) The licensee holds a secondary teaching credential and explicitly or implicitly recruits or attempts to recruit a pupil who is enrolled in a junior or senior high school to be a customer for a business licensed pursuant to this article that is owned by the licensee or for which the licensee is an employee.

(b) In the interest of the public's safety, as determined by the department, the department may immediately suspend the license of a licensee for an alleged violation under this chapter and shall conduct a hearing of the alleged violation within 30 days of the suspension.

SEC. 14.5. Section 11110 of the Vehicle Code is amended to read:

11110. (a) The department, after notice and hearing, may suspend or revoke a license issued under this chapter if any of the following occurs:

(1) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(2) The licensee fails to keep the records required by this chapter.

(3) The licensee (A) permits fraud or engages in fraudulent practices either with reference to an applicant for a driver's license or an all-terrain

vehicle safety certificate from the department, or (B) induces or countenances fraud or fraudulent practices on the part of an applicant.

(4) The licensee fails to comply with this chapter or regulation or requirement of the department adopted pursuant thereto.

(5) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or that would reasonably have the effect of leading persons to believe, that the licensee is in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

(6) The licensee, or an employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(7) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23105, 23152, or 23153 of this code or subdivision (b) of Section 191.5 or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this paragraph.

(8) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(9) The licensee conducts training, or permits training by an employee, in an unsafe manner or contrary to safe driving practices.

(10) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(11) The licensed school owner does not have in effect a bond as required by Section 11102.

(12) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(13) The licensee holds a secondary teaching credential and explicitly or implicitly recruits or attempts to recruit a pupil who is enrolled in a junior or senior high school to be a customer for a business licensed pursuant to this article that is owned by the licensee or for which the licensee is an employee.

(b) In the interest of the public's safety, as determined by the department, the department may immediately suspend the license of a licensee for an alleged violation under this chapter and shall conduct a hearing of the alleged violation within 30 days of the suspension.

SEC. 15. Section 11215 of the Vehicle Code is amended to read:

11215. The department, after notice and hearing, may suspend or revoke a license issued under this chapter if any of the following circumstances exist:

(a) The department finds and determines that the licensee ceases to meet any requirement to obtain a license under this chapter.

(b) The holder fails to comply with, or otherwise violates, a provision of this chapter or a regulation or requirement of the department adopted pursuant to this chapter.

(c) The licensee engages in fraudulent practices with respect to its activities licensed under this chapter or induces or fails to promptly report to the department any known fraud or fraudulent practices on the part of an employee of the traffic violator school.

(d) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or that would reasonably have the effect of leading persons to believe that the licensee was in fact an employee or representative of the department, or whenever the licensee advertises, in any manner or means, a statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

(e) The licensee or an employee or agent of the licensee collects fees for or preregisters a person in traffic violator school or solicits traffic violator school instruction in an office of the department or in a court or within 500 feet of a court.

(f) The licensee is convicted of violating Section 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision (b) of Section 191.5 or Section 192 of the Penal Code. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(g) The traffic violator school owner teaches, or permits an employee to teach, traffic safety instruction without a valid instructor's license.

(h) The traffic violator school owner does not have in effect a bond as provided in paragraph (3) of subdivision (a) of Section 11202 or a deposit in lieu of the bond, as specified in Section 11203.

SEC. 15.5. Section 11215 of the Vehicle Code is amended to read:

11215. The department, after notice and hearing, may suspend or revoke a license issued under this chapter if any of the following circumstances exist:

(a) The department finds and determines that the licensee ceases to meet any requirement to obtain a license under this chapter.

(b) The holder fails to comply with, or otherwise violates, a provision of this chapter or a regulation or requirement of the department adopted pursuant to this chapter.

(c) The licensee engages in fraudulent practices with respect to its activities licensed under this chapter or induces or fails to promptly report to the department any known fraud or fraudulent practices on the part of an employee of the traffic violator school.

(d) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or that would reasonably have the effect of leading persons to believe that the licensee was in fact an employee or representative of the department, or whenever the licensee advertises, in any manner or means, a statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

(e) The licensee or an employee or agent of the licensee collects fees for or preregisters a person in traffic violator school or solicits traffic violator school instruction in an office of the department or in a court or within 500 feet of a court.

(f) The licensee is convicted of violating Section 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23105, 23152, or 23153 of this code or subdivision (b) of Section 191.5 or Section 192 of the Penal Code. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(g) The traffic violator school owner teaches, or permits an employee to teach, traffic safety instruction without a valid instructor's license.

(h) The traffic violator school owner does not have in effect a bond as provided in paragraph (3) of subdivision (a) of Section 11202 or a deposit in lieu of the bond, as specified in Section 11203.

SEC. 16. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) A conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) A conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) A conviction of reckless driving shall be given a value of two points.

(d) (1) A conviction of a violation of subdivision (b) of Section 191.5 or subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) or (c) of Section 23109, or Section 31602 of this code, shall be given a value of two points.

(2) A conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) A conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(f) Except as provided in subdivision (i), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(g) A traffic accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(h) A conviction of a violation of Section 27360 or 27360.5 shall be given a value of one point.

(i) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) A conviction of a violation of paragraph (1) or (2) of subdivision (b) of Section 12814.6, subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of subdivision (d) of Section 21712 shall not result in a violation point count.

(4) A violation of Section 23136 shall not result in a violation point count.

(5) A violation of Section 38301.3 shall not result in a violation point count.

(j) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

SEC. 16.5. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) A conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) A conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) A conviction of reckless driving shall be given a value of two points.

(d) (1) A conviction of a violation of subdivision (b) of Section 191.5 or subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) or (c) of Section 23109, Section 23109.1, or Section 31602 of this code, shall be given a value of two points.

(2) A conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) A conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(f) Except as provided in subdivision (i), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(g) A traffic accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(h) A conviction of a violation of Section 27360 or 27360.5 shall be given a value of one point.

(i) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) A conviction of a violation of paragraph (1) or (2) of subdivision (b) of Section 12814.6, subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of subdivision (d) of Section 21712 shall not result in a violation point count.

(4) A violation of Section 23136 shall not result in a violation point count.

(5) A violation of Section 38301.3 shall not result in a violation point count.

(j) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

SEC. 17. Section 13202.5 of the Vehicle Code is amended to read:

13202.5. (a) For each conviction of a person for an offense specified in subdivision (d), committed while the person was under the age of 21 years, but 13 years of age or older, the court shall suspend the person's driving privilege for one year. If the person convicted does not yet have the privilege to drive, the court shall order the department to delay issuing the privilege to drive for one year subsequent to the time the person becomes legally eligible to drive. However, if there is no further conviction for an offense specified in subdivision (d) in a 12-month period after the conviction, the court, upon petition of the person affected, may modify the order imposing the delay of the privilege. For each successive offense, the court shall suspend the person's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for one additional year.

As used in this section, the term "conviction" includes the findings in juvenile proceedings specified in Section 13105.

(b) Whenever the court suspends driving privileges pursuant to subdivision (a), the court in which the conviction is had shall require all driver's licenses held by the person to be surrendered to the court. The

court shall within 10 days following the conviction transmit a certified abstract of the conviction, together with any driver's licenses surrendered, to the department.

(c) (1) After a court has issued an order suspending or delaying driving privileges pursuant to subdivision (a), the court, upon petition of the person affected, may review the order and may impose restrictions on the person's privilege to drive based upon a showing of a critical need to drive.

(2) As used in this section, "critical need to drive" means the circumstances that are required to be shown for the issuance of a junior permit pursuant to Section 12513.

(3) The restriction shall remain in effect for the balance of the period of suspension or restriction in this section. The court shall notify the department of any modification within 10 days of the order of modification.

(d) This section applies to violations involving controlled substances or alcohol contained in the following provisions:

(1) Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of, and Sections 25658, 25658.5, 25661, and 25662 of, the Business and Professions Code.

(2) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(3) Section 191.5, subdivision (a) or (b) of Section 192.5, and subdivision (f) of Section 647 of the Penal Code.

(4) Section 23103 when subject to Section 23103.5, Section 23140, and Article 2 (commencing with Section 23152) of Chapter 12 of Division 11 of this code.

(e) Suspension, restriction, or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction of a violation specified in subdivision (d).

SEC. 18. Section 13350 of the Vehicle Code is amended to read:

13350. (a) The department immediately shall revoke the privilege of a person to drive a motor vehicle upon receipt of a duly certified abstract of the record of a court showing that the person has been convicted of any of the following crimes or offenses:

(1) Failure of the driver of a vehicle involved in an accident resulting in injury or death to a person to stop or otherwise comply with Section 20001.

(2) A felony in the commission of which a motor vehicle is used, except as provided in Section 13351, 13352, or 13357.

(3) Reckless driving causing bodily injury.

(b) If a person is convicted of a violation of Section 23152 punishable under Section 23546, 23550, or 23550.5, or a violation of Section 23153

punishable under Section 23550.5 or 23566, including a violation of subdivision (b) of Section 191.5 of the Penal Code as provided in Section 193.7 of that code, the court shall, at the time of surrender of the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6), or (7) of subdivision (a) of Section 13352, and an acknowledgment of his or her designation as a habitual traffic offender. A copy of this affidavit shall be transmitted, with the license or temporary permit, to the department within the prescribed 10 days.

(c) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of one year after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility as defined in Section 16430.

SEC. 19. Section 13350.5 of the Vehicle Code is amended to read:

13350.5. Notwithstanding Section 13350, for the purposes of this article, conviction of a violation of subdivision (b) of Section 191.5 of the Penal Code is a conviction of a violation of Section 23153.

SEC. 20. Section 13351 of the Vehicle Code is amended to read:

13351. (a) The department immediately shall revoke the privilege of a person to drive a motor vehicle upon receipt of a duly certified abstract of the record of a court showing that the person has been convicted of any of the following crimes or offenses:

(1) Manslaughter resulting from the operation of a motor vehicle, except when convicted under paragraph (2) of subdivision (c) of Section 192 of the Penal Code.

(2) Conviction of three or more violations of Section 20001, 20002, 23103, or 23104 within a period of 12 months from the time of the first offense to the third or subsequent offense, or a combination of three or more convictions of violations within the same period.

(3) Violation of subdivision (a) of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code or of Section 2800.3 causing serious bodily injury resulting in a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, serious bone fracture, protracted loss or impairment of function of a bodily member or organ, and serious disfigurement.

(b) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of three years after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility, as defined in Section 16430.

SEC. 20.5. Section 13351 of the Vehicle Code is amended to read:

13351. (a) The department immediately shall revoke the privilege of a person to drive a motor vehicle upon receipt of a duly certified

abstract of the record of a court showing that the person has been convicted of any of the following crimes or offenses:

(1) Manslaughter resulting from the operation of a motor vehicle, except when convicted under paragraph (2) of subdivision (c) of Section 192 of the Penal Code.

(2) Conviction of three or more violations of Section 20001, 20002, 23103, 23104, or 23105 within a period of 12 months from the time of the first offense to the third or subsequent offense, or a combination of three or more convictions of violations within the same period.

(3) Violation of subdivision (a) of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code or of Section 2800.3 causing serious bodily injury resulting in a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, serious bone fracture, protracted loss or impairment of function of any bodily member or organ, and serious disfigurement.

(b) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of three years after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility, as defined in Section 16430.

SEC. 21. Section 13352.6 of the Vehicle Code is amended to read:

13352.6. (a) The department shall immediately suspend the driving privilege of a person who is 18 years of age or older and is convicted of a violation of Section 23140, upon the receipt of a duly certified abstract of the record of a court showing that conviction. The privilege may not be reinstated until the person provides the department with proof of financial responsibility and until proof satisfactory to the department, of successful completion of a driving-under-the-influence program licensed under Section 11836 of the Health and Safety Code has been received in the department's headquarters. That attendance shall be as follows:

(1) If, within 10 years of the current violation of Section 23140, the person has not been convicted of a separate violation of Section 23140, 23152, or 23153, or of Section 23103, with a plea of guilty under Section 23103.5, or of Section 655 of the Harbors and Navigation Code, or of Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code, the person shall complete, at a minimum, the education component of that licensed driving-under-the-influence program.

(2) If the person does not meet the requirements of paragraph (1), the person shall complete, at a minimum, the program described in paragraph (1) of subdivision (c) of Section 11837 of the Health and Safety Code.

(b) For the purposes of this section, enrollment, participation, and completion of the program shall be subsequent to the date of the current violation. Credit for enrollment, participation, or completion may not

be given for any program activities completed prior to the date of the current violation.

SEC. 22. 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 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 subdivision (a) of Section 192.5 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 subdivision (a) of Section 192.5 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 a stay of the suspension or revocation, as provided for in Section 13558.

(D) For the purposes of this section, a conviction of an 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 subdivision (a) of Section 192.5 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 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 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.

SEC. 23. Section 13353.1 of the Vehicle Code is amended to read:

13353.1. (a) If a person refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test pursuant to Section 13388, upon the receipt of the officer's sworn statement, submitted pursuant to Section 13380, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136, and that the person had refused to submit to, or did not complete, the test 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 of the following:

(A) A separate violation of subdivision (a) of Section 23136, that resulted in a finding of a violation, or a separate violation, that resulted in a conviction, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code.

(B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 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 subdivision (a) of Section 23136, that resulted in findings of violations, or two or more separate violations, that resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or any combination thereof.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions.

(C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraph (A) or (B).

(b) For the purposes of this section, a conviction of an 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 subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 13388 and shall not become effective until 30 days after the person is served with that notice. 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 13388, 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 23136.

(2) Whether the person was lawfully detained.

(3) Whether the person refused to submit to, or did not complete, the test after being requested to do so by a peace officer.

(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.

SEC. 23.5. Section 13353.1 of the Vehicle Code is amended to read:

13353.1. (a) If a person refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test pursuant to Section 13388 or 13389, upon the receipt of the officer's sworn statement, submitted pursuant to Section 13380, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136 or 23154, and that the person had refused to submit to, or did not complete, the test 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 of the following:

(A) A separate violation of subdivision (a) of Section 23136, that resulted in a finding of a violation, or a separate violation, that resulted in a conviction, of Section 23103, as specified in Section 23103.5, of

Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code.

(B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 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 subdivision (a) of Section 23136, that resulted in findings of violations, or two or more separate violations, that resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or any combination thereof.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions.

(C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraph (A) or (B).

(b) For the purposes of this section, a conviction of an 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 subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 13388 and shall not become effective until 30 days after the person is served with that notice. 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 13388, 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 23136.

(2) Whether the person was lawfully detained.

(3) Whether the person refused to submit to, or did not complete, the test after being requested to do so by a peace officer.

(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.

SEC. 24. Section 13353.3 of the Vehicle Code is amended to read:

13353.3. (a) An order of suspension of a person's privilege to operate a motor vehicle pursuant to Section 13353.2 shall become effective 30 days after the person is served with the notice pursuant to Section 13382 or 13388, or subdivision (b) of Section 13353.2.

(b) The period of suspension of a person's privilege to operate a motor vehicle under Section 13353.2 is as follows:

(1) If the person has not been convicted of a separate violation of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, the person has not been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has not been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, that offense or occurrence occurred within 10 years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for four months.

(2) If the person has been convicted of one or more separate violations of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153, Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, the person has been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, that offense or occasion occurred within 10 years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for one year.

(3) Notwithstanding any other provision of law, if a person has been administratively determined to have been driving in violation of Section 23136 or to have refused chemical testing pursuant to Section 13353.1, the period of suspension shall not be for less than one year.

(c) If a person's privilege to operate a motor vehicle is suspended pursuant to Section 13353.2 and the person is convicted of a violation of Section 23152 or 23153, including, but not limited to, a violation

described in Section 23620, arising out of the same occurrence, both the suspension under Section 13353.2 and the suspension or revocation under Section 13352 shall be imposed, except that the periods of suspension or revocation shall run concurrently, and the total period of suspension or revocation shall not exceed the longer of the two suspension or revocation periods.

(d) For the purposes of this section, a conviction of an 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 subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle Code or Penal Code.

SEC. 25. 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, or Section 23140, 23152, or 23153 of this code, or Section 191.5 or subdivision (a) of Section 192.5 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 subdivision (a) of Section 192.5 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, when 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.

SEC. 26. Section 13353.8 of the Vehicle Code is amended to read:

13353.8. (a) After the department has issued an order suspending or delaying driving privileges as a result of a violation of subdivision (a) of Section 23136, the department, upon the petition of the person affected, may review the order and may impose restrictions on the person's privilege to drive based upon a showing of a critical need to drive, if the department determines that, within 10 years of the current violation of Section 23136, the person has not violated Section 23136 or been convicted of a separate violation of Section 23140, 23152, or

23153, or of Section 23103, with a plea of guilty under Section 23103.5, or of Section 191.5 or subdivision (a) of Section 192.5 of, the Penal Code, and that the person's driving privilege has not been suspended or revoked under Section 13353, 13353.1, or 13353.2 within that 10-year period.

(b) For purposes of this section, a conviction of an offense in a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, 23153, or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle Code or Penal Code.

(c) As used in this section, "critical need to drive" means the circumstances that are required to be shown for the issuance of a junior permit pursuant to Section 12513.

(d) The restriction shall be imposed not earlier than the 31st day after the date the order of suspension became effective and shall remain in effect for the balance of the period of suspension or restriction in this section.

SEC. 27. Section 13954 of the Vehicle Code is amended to read:

13954. (a) Notwithstanding any other provision of this code, the department immediately shall suspend or revoke the driving privilege of a person who the department has reasonable cause to believe was in some manner involved in an accident while operating a motor vehicle under the following circumstances at the time of the accident:

(1) The person had 0.08 percent or more, by weight, of alcohol in his or her blood.

(2) He or she proximately caused the accident as a result of an act prohibited, or the neglect of any duty imposed, by law.

(3) The accident occurred within five years of the date of a violation of subdivision (b) of Section 191.5 of the Penal Code that resulted in a conviction.

(b) If an accident described in subdivision (a) does not result in a conviction or finding of a violation of Section 23152 or 23153, the department shall suspend the driving privilege under this section for one year from the date of commencement of the original suspension. After the one-year suspension period, the driving privilege may be reinstated if evidence establishes to the satisfaction of the department that no grounds exist that would authorize the refusal to issue a license and that reinstatement of the driving privilege would not jeopardize the safety of the person or other persons upon the highways, and if the person gives proof of financial responsibility, as defined in Section 16430.

(c) If an accident described in subdivision (a) does result in a conviction or finding of a violation of Section 23152 or 23153, the department shall revoke the driving privilege under this section for three years from the date of commencement of the original revocation. After the three-year revocation period, the driving privilege may be reinstated if evidence establishes to the satisfaction of the department that no grounds exist that would authorize the refusal to issue a license and that reinstatement of the driving privilege would not jeopardize the safety of the person or other persons upon the highways, and if the person gives proof of financial responsibility.

(d) Any revocation action under subdivision (c) shall be imposed as follows:

(1) If the accident results in a first conviction of a violation of Section 23152 or 23153, or if the person was convicted of a separate violation of Section 23152 or 23153 that occurred within five years of the accident, the period of revocation under subdivision (c) shall be concurrent with any period of restriction, suspension, or revocation imposed under Section 13352, 13352.4, or 13352.5.

(2) If the person was convicted of two or more separate violations of Section 23152 or 23153, or both, that occurred within five years of the accident, the period of revocation under subdivision (c) shall be cumulative and shall be imposed consecutively with any period of restriction, suspension, or revocation imposed under Section 13352 or 13352.5.

(e) The department immediately shall notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall grant the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3, except as otherwise provided in this section. For purposes of this section, the scope of the hearing shall cover 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 23152 or 23153.

(2) Whether the person had been placed under lawful arrest.

(3) Whether a chemical test of the person's blood, breath, or urine indicated that the blood-alcohol level was 0.08 percent or more, by weight, at the time of testing.

If the department determines, upon a hearing of the matter, that the person had not been placed under lawful arrest, or that a chemical test of the person's blood, breath, or urine did not indicate a blood-alcohol level of 0.08 percent or more, by weight, at the time of testing, the suspension or revocation shall be terminated immediately.

(f) This section applies if the accident occurred on or after January 1, 1990, without regard for the dates of the violations referred to in subdivisions (a) and (d).

(g) Notwithstanding subdivision (f), if a person's privilege to operate a motor vehicle is required to be suspended or revoked pursuant to this section as it read before January 1, 1990, as a result of an accident that occurred before January 1, 1990, the privilege shall be suspended or revoked pursuant to this section as it read before January 1, 1990.

SEC. 28. 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), (b), or (c) of Section 23152 while operating a motor vehicle.

(2) Subdivision (d) of Section 23152.

(3) Subdivision (a) or (b) of Section 23153 while operating a motor vehicle.

(4) Subdivision (d) of Section 23153.

(5) Leaving the scene of an accident involving a 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 Section 191.5 of the Penal Code or subdivision (c) of Section 192 of the Penal Code.

(9) While operating a motor vehicle, refuses to submit to, or fails to complete, a chemical test or tests in violation of Section 23612.

(10) A violation of Section 2800.1, 2800.2, or 2800.3 that involves a commercial motor vehicle.

(b) If a violation listed in subdivision (a), 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.

SEC. 29. 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), (b), or (c) of Section 23152 while operating a motor vehicle.

(b) Subdivision (d) of Section 23152.

(c) Subdivision (a) or (b) of Section 23153 while operating a motor vehicle.

(d) Subdivision (d) of Section 23153.

(e) Leaving the scene of an accident involving a 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 Section 191.5 of the Penal Code or in subdivision (c) of Section 192 of the Penal 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.

SEC. 30. Section 20001 of the Vehicle Code is amended to read:

20001. (a) The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

(b) (1) Except as provided in paragraph (2), a person who violates subdivision (a) shall be punished by imprisonment in the state prison, or in a county jail for not more than one year, or by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(2) If the accident described in subdivision (a) results in death or permanent, serious injury, a person who violates subdivision (a) shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by both that imprisonment and fine. However, the court, in the interests of justice and for reasons stated

in the record, may reduce or eliminate the minimum imprisonment required by this paragraph.

(3) In imposing the minimum fine required by this subdivision, the court shall take into consideration the defendant's ability to pay the fine and, in the interests of justice and for reasons stated in the record, may reduce the amount of that minimum fine to less than the amount otherwise required by this subdivision.

(c) A person who flees the scene of the crime after committing a violation of Section 191.5 of, or paragraph (1) of subdivision (c) of Section 192 of the Penal Code, upon conviction of any of those sections, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. This additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. The court shall not strike a finding that brings a person within the provisions of this subdivision or an allegation made pursuant to this subdivision.

(d) As used in this section, "permanent, serious injury" means the loss or permanent impairment of function of a bodily member or organ.

SEC. 31. Section 22651.10 of the Vehicle Code is amended to read:

22651.10. (a) (1) Notwithstanding any other provision of law, when a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, arrests a person for an alleged violation of Section 23152 or 23153, and the person has one or more prior convictions within the past 10 years for a violation of Section 23103, as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code, the peace officer may cause the removal and seizure of the motor vehicle driven by that person in the commission of that offense in accordance with this chapter.

(2) A motor vehicle seized under paragraph (1) may be impounded for not more than 30 days.

(3) The seizure and impoundment of a motor vehicle under paragraphs (1) and (2) shall be undertaken only if the county participates in a program that combines that seizure and impoundment with an intervention and a referral to a driving-under-the-influence program licensed under Section 11836 of the Health and Safety Code immediately upon the arrest or arraignment of the person described in paragraph (1) or upon the delivery of that person to a medical facility for treatment of any injuries.

(b) (1) The intervention shall be performed by a certified alcohol and drug addiction counselor.

(2) The county participating in the program established under this section shall pay for the cost of the intervention, and no part of that cost shall be passed on to the defendant.

(c) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of the storage in accordance with Section 22852.

(d) (1) Notwithstanding this chapter or any other provision of law, an impounding agency shall release a motor vehicle to the registered owner or his or her agent prior to the conclusion of the impoundment period described in subdivision (a) under any of the following circumstances:

(A) If the motor vehicle is a stolen motor vehicle.

(B) If the driver was not the sole registered owner of the vehicle and the impoundment of the vehicle would cause a hardship on the other registered owner or his or her family.

(C) If the person alleged to have violated Section 23152 or 23153 was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense.

(D) If the registered owner of the motor vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation of Section 23152 or 23153, or was unaware that the driver was using the vehicle to engage in the unlawful activity described in Section 23152 or 23153.

(E) If the legal owner or registered owner of the motor vehicle is a rental car agency.

(F) If, prior to the conclusion of the impoundment period, a citation or notice is dismissed under Section 40500, criminal charges are not filed by the district attorney because of a lack of evidence, or the charges are otherwise dismissed by the court.

(2) A motor vehicle shall be released pursuant to this subdivision only if the registered owner or his or her agent presents a currently valid driver's license to operate the vehicle and proof of current vehicle registration, or if ordered by a court.

(3) If, pursuant to subparagraph (F) of paragraph (1), a motor vehicle is released prior to the conclusion of the impoundment period, neither the person charged with a violation of Section 23152 or 23153 nor the registered owner of the motor vehicle is responsible for towing and storage charges nor shall the motor vehicle be sold to satisfy those charges.

(e) A motor vehicle seized and removed under subdivision (a) shall be released to the legal owner of the vehicle, or the legal owner's agent,

on or before the 30th day of impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the impoundment of the vehicle. Lien sale processing fees shall not be charged to a legal owner who redeems the vehicle on or before the 15th day of impoundment.

(3) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

(f) (1) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(2) Notwithstanding paragraph (1), if the person is convicted of a violation of Section 23152 or 23153 and was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense, the court shall order the convicted person to reimburse the registered owner for towing and storage charges related to the impoundment, and administrative charges authorized under Section 22850.5 incurred by the registered owner to obtain possession of the vehicle, unless the court finds that the person convicted does not have the ability to pay all or part of those charges.

(3) If the vehicle is a rental vehicle, the rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining possession of the vehicle.

(4) The owner is not liable for towing and storage charges related to the impoundment if acquittal or dismissal occurs. A county implementing an impoundment program under this section shall establish a process for the immediate return of all payments made by the defendant relating to the impoundment upon the acquittal of the defendant or dismissal of the case.

(5) The vehicle may not be sold prior to the defendant's conviction.

(6) (A) The impounding agency is responsible for the actual costs incurred by the towing agency as a result of the impoundment should the registered owner be absolved of liability for those charges pursuant to paragraph (3) of subdivision (d).

(B) Notwithstanding subparagraph (A), nothing shall prohibit an impounding agency from making prior payment arrangements to satisfy the requirement described in subparagraph (A).

(g) On or before January 1, 2009, the county shall report to the Legislature regarding the effectiveness of the pilot program authorized under this section in reducing the number of first-time violations and repeat offenses of Section 23152 or 23153 in the county.

(h) This section applies only to the County of Sacramento and only if the Board of Supervisors of Sacramento County enacts an ordinance or resolution authorizing the implementation of the pilot program in the county.

(i) This section shall be implemented only to the extent that funds from private or federal sources are available to fund the program.

(j) This section shall remain operative only until January 1, 2009.

(k) 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. 32. Section 23502 of the Vehicle Code is amended to read:

23502. (a) Notwithstanding any other provision of law, if a person who is at least 18 years of age is convicted of a first violation of Section 23140, in addition to any penalties, the court shall order the person to attend a program licensed under Section 11836 of the Health and Safety Code, subject to a fee schedule developed under paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code.

(b) The attendance in a licensed driving-under-the-influence program required under subdivision (a) shall be as follows:

(1) If, within 10 years of the current violation of Section 23140, the person has not been convicted of a separate violation of Section 23140, 23152, or 23153, or of Section 23103, with a plea of guilty under Section 23103.5, or of Section 655 of the Harbors and Navigation Code, or of Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code, the person shall complete, at a minimum, the education component of that licensed driving-under-the-influence program.

(2) If the person does not meet the requirements of paragraph (1), the person shall complete, at a minimum, the program described in paragraph (1) of subdivision (c) of Section 11837 of the Health and Safety Code.

(c) The person's privilege to operate a motor vehicle shall be suspended by the department as required under Section 13352.6, and the court shall require the person to surrender his or her driver's license to the court in accordance with Section 13550.

(d) The court shall advise the person at the time of sentencing that the driving privilege will not be restored until the person has provided the department with proof satisfactory to the department that the person has successfully completed the driving-under-the-influence program required under this section.

SEC. 33. Section 23550.5 of the Vehicle Code is amended to read:

23550.5. (a) A person is guilty of a public offense, punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000) if that person is convicted of a violation of Section 23152 or 23153, and the offense occurred within 10 years of any of the following:

(1) A prior violation of Section 23152 that was punished as a felony under Section 23550 or this section, or both, or under former Section 23175 or former Section 23175.5, or both.

(2) A prior violation of Section 23153 that was punished as a felony.

(3) A prior violation of paragraph (1) of subdivision (c) of Section 192 of the Penal Code that was punished as a felony.

(b) Each person who, having previously been convicted of a violation of subdivision (a) of Section 191.5 of the Penal Code, a felony violation of subdivision (b) of Section 191.5, or a violation of subdivision (a) of Section 192.5 of the Penal Code, is subsequently convicted of a violation of Section 23152 or 23153 is guilty of a public offense punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000).

(c) The privilege to operate a motor vehicle of a person convicted of a violation that is punishable under subdivision (a) or (b) shall be revoked by the department under paragraph (7) of subdivision (a) of Section 13352, unless paragraph (6) of subdivision (a) of Section 13352 is also applicable, in which case the privilege shall be revoked under that provision. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(d) A person convicted of a violation of Section 23152 or 23153 that is punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation under subdivision (b) of Section 13350.

SEC. 34. Section 23558 of the Vehicle Code is amended to read:

23558. A person who proximately causes bodily injury or death to more than one victim in any one instance of driving in violation of Section 23153 of this code or in violation of Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code, shall, upon a felony conviction, and notwithstanding subdivision (g) of Section 1170.1 of the Penal Code, receive an enhancement of one year in the state prison for each additional injured victim. The enhanced sentence provided for in this section shall not be imposed unless the fact of the bodily injury to each additional victim is charged in the accusatory pleading and admitted or found to be true by the trier of fact. The maximum number

of one year enhancements that may be imposed pursuant to this section is three.

Notwithstanding any other provision of law, the court may strike the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

SEC. 35. Section 23592 of the Vehicle Code is amended to read:

23592. (a) (1) Whenever a person is convicted of any of the following offenses committed while driving a motor vehicle of which he or she is the owner, the court, at the time sentence is imposed on the person, may order the motor vehicle impounded for a period of not more than six months for a first conviction, and not more than 12 months for a second or subsequent conviction:

(A) Driving with a suspended or revoked driver's license.

(B) A violation of Section 2800.2 resulting in an accident or Section 2800.3, if either violation occurred within seven years of one or more separate convictions for a violation of any of the following:

(i) Section 23103, if the vehicle involved in the violation was driven at a speed of 100 or more miles per hour.

(ii) Section 23152.

(iii) Section 23153.

(iv) Subdivisions (a) and (b) of Section 191.5 of the Penal Code.

(v) Subdivision (c) of Section 192 of the Penal Code.

(vi) Subdivision (a) of Section 192.5 of the Penal Code.

(2) The cost of keeping the vehicle is a lien on the vehicle pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code.

(b) Notwithstanding subdivision (a), a motor vehicle impounded pursuant to this section that is subject to a chattel mortgage, conditional sale contract, or lease contract shall be released by the court to the legal owner upon the filing of an affidavit by the legal owner that the chattel mortgage, conditional sale contract, or lease contract is in default and shall be delivered to the legal owner upon payment of the accrued cost of keeping the vehicle.

SEC. 36. Section 23596 of the Vehicle Code is amended to read:

23596. (a) (1) Upon its own motion or upon motion of the prosecutor in a criminal action for a violation of any of the following offenses, the court with jurisdiction over the offense, notwithstanding Section 86 of the Code of Civil Procedure and any other provision of law otherwise prescribing the jurisdiction of the court based upon the value of the property involved, may declare the motor vehicle driven by the defendant to be a nuisance if the defendant is the registered owner of the vehicle:

(A) A violation of Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code.

(B) A violation of Section 23152 that occurred within seven years of two or more separate offenses of Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code, or Section 23152 or 23153, or any combination thereof, that resulted in convictions.

(C) A violation of Section 23153 that occurred within seven years of one or more separate offenses of Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code, or Section 23152 or 23153, that resulted in convictions.

(2) The court or the prosecutor shall give notice of the motion to the defendant, and the court shall hold a hearing before a motor vehicle may be declared a nuisance under this section.

(b) Except as provided in subdivision (g), upon the conviction of the defendant and at the time of pronouncement of sentence, the court with jurisdiction over the offense shall order a vehicle declared to be a nuisance pursuant to subdivision (a) to be sold. A vehicle ordered to be sold pursuant to this subdivision shall be surrendered to the sheriff of the county or the chief of police of the city in which the violation occurred. The officer to whom the vehicle is surrendered shall promptly ascertain from the department the names and addresses of all legal and registered owners of the vehicle and, within five days of receiving that information, shall send by certified mail a notice to all legal and registered owners of the vehicle other than the defendant, at the addresses obtained from the department, informing them that the vehicle has been declared a nuisance and will be sold or otherwise disposed of pursuant to this section and of the approximate date and location of the sale or other disposition. The notice shall also inform a legal owner of its right to conduct the sale pursuant to subdivision (c).

(c) The legal owner who is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed finance institution legally operating in this state, or the agent of that legal owner, may take possession and conduct the sale of the vehicle declared to be a nuisance if it notifies the officer to whom the vehicle is surrendered of its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (b). Sale of the vehicle pursuant to this subdivision may be conducted at the time, in the manner, and on the notice usually given for the sale of repossessed or surrendered vehicles. The proceeds of a sale conducted by the legal owner shall be disposed of as provided in subdivision (e). A notice pursuant to this subdivision may be presented in person, by certified mail, by facsimile transmission, or by electronic mail. The agent of a legal owner acting pursuant to this subdivision shall be licensed, or exempt from licensure, pursuant to Chapter 11

(commencing with Section 7500) of Division 3 of the Business and Professions Code.

(d) If the legal owner or the agent of the legal owner does not notify the officer to whom the vehicle is surrendered of its intent to conduct the sale as provided in subdivision (c), the officer shall offer the vehicle for sale at public auction within 60 days of receiving the vehicle. At least 10 days but not more than 20 days prior to the sale, not counting the day of the sale, the officer shall give notice of the sale by advertising once in a newspaper of general circulation published in the city or county, as the case may be, in which the vehicle is located, that notice shall contain a description of the make, year, model, identification number, and license number of the vehicle and the date, time, and location of the sale. For motorcycles, the engine number shall also be included. If there is no newspaper of general circulation published in the county, notice shall be given by posting a notice of sale containing the information required by this subdivision in three of the most public places in the city or county in which the vehicle is located, and at the place where the vehicle is to be sold, for 10 consecutive days prior to and including the day of the sale.

(e) The proceeds of a sale conducted pursuant to this section shall be disposed of in the following priority:

(1) To satisfy the costs of the sale, including costs incurred with respect to the taking and keeping of the vehicle pending sale.

(2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of the sale, including accrued interest or finance charges and delinquency charges.

(3) To the holder of a subordinate lien or encumbrance on the vehicle to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall reasonably furnish reasonable proof of its interest and, unless it does so on request, is not entitled to distribution pursuant to this paragraph.

(4) To any other person who can establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest.

(5) If the vehicle was forfeited as a result of a felony violation of subdivision (a) of Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code, or of Section 23153 that resulted in serious bodily injury to a person other than the defendant, the balance, if any, to the city or county in which the violation occurred, to be deposited in its general fund.

(6) Except as provided in paragraph (5), the balance, if any, to the city or county in which the violation occurred, to be expended for community-based adolescent substance abuse treatment services.

The person conducting the sale shall disburse the proceeds of the sale as provided in this subdivision, and provide a written accounting regarding the disposition to all persons entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.

(f) If the vehicle to be sold under this section is not of the type that can readily be sold to the public generally, the vehicle shall be destroyed or donated to an eleemosynary institution.

(g) No vehicle shall be sold pursuant to this section in either of the following circumstances:

(1) The vehicle is stolen, unless the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained.

(2) The vehicle is owned by another, or there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family that may be operated on the highway with a class 3 or class 4 driver's license.

(h) The Legislature finds and declares it to be the public policy of this state that no policy of insurance shall afford benefits that would alleviate the financial detriment suffered by a person as a direct or indirect result of a confiscation of a vehicle pursuant to this section.

SEC. 37. Section 23612 of the Vehicle Code is amended to read:

23612. (a) (1) (A) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153.

(C) The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (i) the suspension of the person's privilege

to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within 10 years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code that resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense that occurred on a separate occasion, or (iii) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within 10 years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or any combination thereof, that resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses that occurred on separate occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(C) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person has the choice of submitting to and completing a blood or urine test, and the officer shall advise the person that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested

either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall submit to and complete the other remaining test.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests that are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests that are available at the medical facility and that the person's choice is limited to those tests that are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) A person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. A person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

(b) A person who is afflicted with hemophilia is exempt from the blood test required by this section.

(c) A person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section.

(d) (1) A person lawfully arrested for an offense allegedly committed while the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(2) If a blood or breath test is not available under subparagraph (A) of paragraph (1) of subdivision (a), or under subparagraph (A) of paragraph (2) of subdivision (a), or under paragraph (1) of this subdivision, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be

deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

(e) If the person, who has been arrested for a violation of Section 23140, 23152, or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.

(f) If the peace officer serves the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle, the peace officer shall take possession of all driver's licenses issued by this state that are held by the person. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of arrest.

(g) (1) The peace officer shall immediately forward a copy of the completed notice of suspension or revocation form and any driver's license taken into possession under subdivision (f), with the report required by Section 13380, to the department. If the person submitted to a blood or urine test, the peace officer shall forward the results immediately to the appropriate forensic laboratory. The forensic laboratory shall forward the results of the chemical tests to the department within 15 calendar days of the date of the arrest.

(2) (A) Notwithstanding any other provision of law, a document containing data prepared and maintained in the governmental forensic laboratory computerized database system that is electronically transmitted or retrieved through public or private computer networks to or by the department is the best available evidence of the chemical test results in all administrative proceedings conducted by the department. In addition, any other official record that is maintained in the governmental forensic laboratory, relates to a chemical test analysis prepared and maintained in the governmental forensic laboratory computerized database system, and is electronically transmitted and retrieved through a public or private computer network to or by the department is admissible as evidence in the department's administrative proceedings. In order to be admissible as evidence in administrative proceedings, a document described in this subparagraph shall bear a certification by the employee of the department who retrieved the document certifying that the information was received or retrieved directly from the computerized database system of a governmental forensic laboratory and that the document accurately reflects the data received or retrieved.

(B) Notwithstanding any other provision of law, the failure of an employee of the department to certify under subparagraph (A) is not a public offense.

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

SEC. 38. Section 23620 of the Vehicle Code is amended to read:

23620. (a) For the purposes of this division, Section 13352, and Chapter 12 (commencing with Section 23100) of Division 11, a separate offense that resulted in a conviction of a violation of subdivision (f) of Section 655 of the Harbors and Navigation Code or of Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code is a separate offense of a violation of Section 23153.

(b) For the purposes of this division and Chapter 12 (commencing with Section 23100) of Division 11, and Section 13352, a separate offense that resulted in a conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code is a separate violation of Section 23152.

SEC. 39. Section 23626 of the Vehicle Code is amended to read:

23626. A conviction of an 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 23152 or 23153 of this code, or Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code, is a conviction of Section 23152 or 23153 of this code, or Section 191.5 of, or subdivision (a) of Section 192.5 of, the Penal Code for the purposes of this code.

SEC. 40. Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), a person has violated his or her written promise to appear or a lawfully granted continuance of his

or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for a violation of this code, a violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or a violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), a person has willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for a violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) If a person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or subdivision (a) of Section 192.5 of that code has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine pursuant to subdivision (a) or (b), no arrest warrant shall be issued for an alleged violation of subdivision (a) or (b) of Section 40508, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.

(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

(4) The driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

(f) Except as required under subdivision (c), in addition to the proceedings described in this section, the court may elect to notify the department pursuant to subdivision (c) of Section 40509.

(g) This section is applicable to courts that have elected to provide notice pursuant to subdivision (b). The method of commencing or terminating an election to proceed under this section shall be prescribed by the department.

(h) A violation subject to Section 40001, that is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 40.5. Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), a person has violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for a violation of this code, a violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or a violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), a person has willfully failed to pay a lawfully imposed fine, or bail in installments as agreed to under Section 40510.5, within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for a violation, except violations not required to be reported

pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine or bail is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine or bail has been paid.

(c) If a person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or subdivision (a) of Section 192.5 of that code has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine or bail pursuant to subdivision (a) or (b), no arrest warrant shall be issued for an alleged violation of subdivision (a) or (b) of Section 40508, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.

(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

(4) The driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

(f) Except as required under subdivision (c), in addition to the proceedings described in this section, the court may elect to notify the department pursuant to subdivision (c) of Section 40509.

(g) This section is applicable to courts that have elected to provide notice pursuant to subdivision (b). The method of commencing or terminating an election to proceed under this section shall be prescribed by the department.

(h) A violation subject to Section 40001, that is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 41. 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. 42. Section 8.5 of this bill incorporates amendments to Section 977 of the Penal Code proposed by both this bill and SB 649. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 977 of the Penal Code, and (3) this bill is enacted after SB 649, in which case Section 8 of this bill shall not become operative.

SEC. 43. Section 12.5 of this bill incorporates amendments to Section 1803 of the Vehicle Code proposed by both this bill and AB 421. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1803 of the Vehicle Code, and (3) this bill is enacted after AB 421, in which case Section 12 of this bill shall not become operative.

SEC. 44. Section 14.5 of this bill incorporates amendments to Section 11110 of the Vehicle Code proposed by both this bill and AB 430. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 11110 of the Vehicle Code, and (3) this bill is enacted after AB 430, in which case Section 14 of this bill shall not become operative.

SEC. 45. Section 15.5 of this bill incorporates amendments to Section 11215 of the Vehicle Code proposed by both this bill and AB 430. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 11215 of the Vehicle Code, and (3) this bill is enacted after AB 430, in which case Section 15 of this bill shall not become operative.

SEC. 46. Section 16.5 of this bill incorporates amendments to Section 12810 of the Vehicle Code proposed by both this bill and AB 430. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 12810 of the Vehicle Code, and (3) this bill is enacted after AB 430, in which case Section 16 of this bill shall not become operative.

SEC. 47. Section 20.5 of this bill incorporates amendments to Section 13351 of the Vehicle Code proposed by both this bill and AB 430. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section

13351 of the Vehicle Code, and (3) this bill is enacted after AB 430, in which case Section 20 of this bill shall not become operative.

SEC. 48. Section 23.5 of this bill incorporates amendments to Section 13353.1 of the Vehicle Code proposed by both this bill and AB 1165. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, but this bill becomes operative first, (2) each bill amends Section 13353.1 of the Vehicle Code, and (3) this bill is enacted after AB 1165, in which case Section 13353.1 of the Vehicle Code, as amended by Section 23 of this bill, shall remain operative only until the operative date of AB 1165, at which time Section 23.5 of this bill shall become operative.

SEC. 49. Section 40.5 of this bill incorporates amendments to Section 40509.5 of the Vehicle Code proposed by both this bill and AB 1248. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 40509.5 of the Vehicle Code, and (3) this bill is enacted after AB 1248, in which case Section 40 of this bill shall not become operative.

CHAPTER 748

An act to add Section 13385 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. This section shall be known and may be cited as the Steve Ambriz Act.

SEC. 2. Section 13385 is added to the Vehicle Code, to read:

13385. (a) On or after July 1, 2008, all application forms for driver's licenses or driver's license renewal notices shall include a requirement that the applicant sign the following declaration as a condition of licensure:

"I am hereby advised that being under the influence of alcohol or drugs, or both, impairs the ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If I drive while under the influence of alcohol or drugs, or both, and as a result, a person is killed, I can be charged with murder."

(b) On all application forms for driver's licenses or driver's license renewal notices printed by the department, in English or a language other

than English, the department shall include the declaration in the same language as the application or renewal notice.

(c) The department is not, incident to this section, required to maintain, copy, or store any information other than that to be incorporated into the standard application form.

CHAPTER 749

An act to amend Sections 13353.1, 13353.2, 22651, 42009, and 42010 of, and to add Sections 13389 and 23154 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

SECTION 1. Section 13353.1 of the Vehicle Code is amended to read:

13353.1. (a) If a person refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test pursuant to Section 13388 or 13389, upon the receipt of the officer's sworn statement, submitted pursuant to Section 13380, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136 or 23154, and that the person had refused to submit to, or did not complete, the test 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 of the following:

(A) A separate violation of subdivision (a) of Section 23136, that resulted in a finding of a violation, or a separate violation, that resulted in a conviction, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code.

(B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 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 subdivision (a) of Section 23136, that resulted in findings of violations, or two or more separate violations, that resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or any combination thereof.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions.

(C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraph (A) or (B).

(b) For the purposes of this section, a conviction of an 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 subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 13388 and shall not become effective until 30 days after the person is served with that notice. 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 13388, 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 23136.

(2) Whether the person was lawfully detained.

(3) Whether the person refused to submit to, or did not complete, the test after being requested to do so by a peace officer.

(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.

SEC. 1.5. Section 13353.1 of the Vehicle Code is amended to read:

13353.1. (a) If a person refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening test pursuant to Section 13388 or 13389, upon the receipt of the officer's sworn statement, submitted pursuant to Section 13380, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136 or 23154, and that the person had refused to submit to, or did not complete, the test 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 of the following:

(A) A separate violation of subdivision (a) of Section 23136, that resulted in a finding of a violation, or a separate violation, that resulted in a conviction, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code.

(B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 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 subdivision (a) of Section 23136, that resulted in findings of violations, or two or more separate violations, that resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or any combination thereof.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions.

(C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraph (A) or (B).

(b) For the purposes of this section, a conviction of an 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 subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

(c) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 13388 and shall not become effective until 30 days after the person is served with that notice. 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 13388, 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 23136.

(2) Whether the person was lawfully detained.

(3) Whether the person refused to submit to, or did not complete, the test after being requested to do so by a peace officer.

(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.

SEC. 2. Section 13353.2 of the Vehicle Code is amended to read:

13353.2. (a) The department shall immediately suspend the privilege of a person to operate a motor vehicle for any one of the following reasons:

(1) The person was driving a motor vehicle when the person had 0.08 percent or more, by weight, of alcohol in his or her blood.

(2) The person was under 21 years of age and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test, or other chemical test.

(3) The person was driving a vehicle that requires a commercial driver's license when the person had a 0.04 percent or more, by weight, of alcohol in his or her blood.

(4) The person was driving a motor vehicle when both of the following apply:

(A) The person was on probation for a violation of Section 23152 or 23153.

(B) The person had a 0.01 percent or more, by weight, of alcohol in his or her blood, as measured by a preliminary alcohol screening test or other chemical test.

(b) The notice of the order of suspension under this section shall be served on the person by a peace officer pursuant to Section 13388 or 13382. The notice of the order of suspension shall be on a form provided by the department. If the notice of the order of suspension has not been served upon the person by the peace officer pursuant to Section 13388 or 13382, upon the receipt of the report of a peace officer submitted pursuant to Section 13380, the department shall mail written notice of the order of the suspension to the person at the last known address shown on the department's records and, if the address of the person provided by the peace officer's report differs from the address of record, to that address.

(c) The notice of the order of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request an administrative hearing, the procedure for requesting an administrative hearing, and the date by which a request for an administrative hearing shall be made in order to receive a determination prior to the effective date of the suspension.

(d) The department shall make a determination of the facts in subdivision (a) on the basis of the report of a peace officer submitted pursuant to Section 13380. The determination of the facts, after administrative review pursuant to Section 13557, by the department is final, unless an administrative hearing is held pursuant to Section 13558 and any judicial review of the administrative determination after the hearing pursuant to Section 13559 is final.

(e) The determination of the facts in subdivision (a) is a civil matter that is independent of the determination of the person's guilt or innocence, shall have no collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude the litigation of the same or similar facts in the criminal proceeding. If a person is acquitted of criminal charges relating to a determination of facts under subdivision (a), or if the person's driver's license was suspended pursuant to Section 13388 and the department finds no basis for a suspension pursuant to that section, the department shall immediately reinstate the person's privilege to operate a motor vehicle if the department has suspended it administratively pursuant to subdivision (a), and the department shall

return or reissue for the remaining term any driver's license that has been taken from the person pursuant to Section 13382 or otherwise. Notwithstanding subdivision (b) of Section 13558, if criminal charges under Section 23140, 23152, or 23153 are not filed by the district attorney because of a lack of evidence, or if those charges are filed but are subsequently dismissed by the court because of an insufficiency of evidence, the person has a renewed right to request an administrative hearing before the department. The request for a hearing shall be made within one year from the date of arrest.

(f) The department shall furnish a form that requires a detailed explanation specifying which evidence was defective or lacking and detailing why that evidence was defective or lacking. The form shall be made available to the person to provide to the district attorney. The department shall hold an administrative hearing, and the hearing officer shall consider the reasons for the failure to prosecute given by the district attorney on the form provided by the department. If applicable, the hearing officer shall consider the reasons stated on the record by a judge who dismisses the charges. A fee shall not be imposed pursuant to Section 14905 for the return or reissuing of a driver's license pursuant to this subdivision. The disposition of a suspension action under this section does not affect an action to suspend or revoke the person's privilege to operate a motor vehicle under another provision of this code, including, but not limited to, Section 13352 or 13353, or Chapter 3 (commencing with Section 13800).

SEC. 3. Section 13389 is added to the Vehicle Code, to read:

13389. (a) If a peace officer lawfully detains a person previously convicted of Section 23152 or 23153 who is driving a motor vehicle, while the person is on probation for a violation of Section 23152 or 23153, and the officer has reasonable cause to believe that the person is in violation of Section 23154, the officer shall request that the person take a preliminary alcohol screening test to determine the presence of alcohol in the person, if a preliminary alcohol screening test device is immediately available. If a preliminary alcohol screening test device is not immediately available, the officer may request the person to submit to chemical testing of his or her blood, breath, or urine, conducted pursuant to Section 23612.

(b) If the person refuses to take, or fails to complete, the preliminary alcohol screening test or refuses to take or fails to complete a chemical test if a preliminary alcohol device is not immediately available, or if the person takes the preliminary alcohol screening test and that test reveals a blood-alcohol concentration of 0.01 percent or greater, the officer shall proceed as follows:

(1) The officer, acting on behalf of the department, shall serve the person with a notice of an order of suspension of the person's driving privilege.

(2) (A) The officer shall take possession of any driver's license issued by this state that is held by the person. When the officer takes possession of a valid driver's license, the officer shall issue, on behalf of the department, a temporary driver's license.

(B) The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of issuance, or until receipt of the order of suspension from the department, whichever occurs first.

(3) (A) The officer shall immediately forward a copy of the completed notice of order of suspension form, and any driver's license taken into possession under paragraph (2), with the report required by Section 13380, to the department.

(B) For the purposes of subparagraph (A), "immediately" means on or before the end of the fifth ordinary business day after the notice of order of suspension was served.

(c) For the purposes of this section, a preliminary alcohol screening test device is an instrument designed and used to measure the presence of alcohol in a person based on a breath sample.

SEC. 4. Section 22651 of the Vehicle Code is amended to read:

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

(a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is issued charging that the vehicle is embezzled.

(d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When a vehicle, except a highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.

(i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes

the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) Wherever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility with a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility. However, whenever the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For the purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and privately owned facilities for offstreet parking where a fee is not charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded

pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When a vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When a vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle that is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 4.5. Section 22651 of the Vehicle Code is amended to read:

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

(a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is issued charging that the vehicle is embezzled.

(d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When a vehicle, except a highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.

(i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for

the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) Wherever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility under the following circumstances:

(A) With a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility.

(B) Displaying in, or upon, the vehicle, a registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit that was not issued for that vehicle, or is not otherwise lawfully used on that vehicle under this code.

(C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or falsified registration card, identification card, temporary receipt,

license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit.

(2) When a vehicle described in paragraph (1) is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle.

(3) For the purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(4) As used in this subdivision, "offstreet parking facility" means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and privately owned facilities for offstreet parking where a fee is not charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When a vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When a vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle that is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider,

within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 5. Section 23154 is added to the Vehicle Code, to read:

23154. (a) It is unlawful for a person who is on probation for a violation of Section 23152 or 23153 to operate a motor vehicle at any time with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other chemical test.

(b) A person may be found to be in violation of subdivision (a) if the person was, at the time of driving, on probation for a violation of Section 23152 or 23153, and the trier of fact finds that the person had consumed an alcoholic beverage and was driving a vehicle with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other chemical test.

(c) (1) A person who is on probation for a violation of Section 23152 or 23153 who drives a motor vehicle is deemed to have given his or her consent to a preliminary alcohol screening test or other chemical test for the purpose of determining the presence of alcohol in the person, if lawfully detained for an alleged violation of subdivision (a).

(2) The testing shall be incidental to a lawful detention and administered at the direction of a peace officer having reasonable cause to believe the person is driving a motor vehicle in violation of subdivision (a).

(3) The person shall be told that his or her failure to submit to, or the failure to complete, a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of the person's privilege to operate a motor vehicle for a period of one year to three years, as provided in Section 13353.1.

SEC. 6. Section 42009 of the Vehicle Code is amended to read:

42009. (a) For an offense specified in subdivision (b), committed by the driver of a vehicle within a highway construction or maintenance area, during any time when traffic is regulated or restricted through or around that area pursuant to Section 21367, or when the highway construction or maintenance is actually being performed in the area by workers acting in their official capacity, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed. In an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of the following is an offense that is subject to subdivision (a):

(1) Section 21367, relating to regulation of traffic at a construction site.

(2) Article 3 (commencing with Section 21450) of Chapter 2 of Division 11, relating to obedience to traffic devices.

(3) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(4) Chapter 4 (commencing with Section 21800) of Division 11, relating to yielding the right-of-way.

(5) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

(6) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(7) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.

(8) Section 23103, relating to reckless driving.

(9) Section 23104, relating to reckless driving which results in bodily injury to another.

(10) Section 23109, relating to speed contests.

(11) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(12) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(13) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.

(14) Section 23220, relating to drinking while driving.

(15) Section 23221, relating to drinking in a motor vehicle while on the highway.

(16) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(17) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(18) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.

(19) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(20) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when construction or maintenance work is actually being performed by workers, and there are work zone traffic control devices, traffic controls or warning signs, or any combination of

those, to notify motorists and pedestrians of construction or maintenance workers in the area.

SEC. 6.5. Section 42009 of the Vehicle Code is amended to read:

42009. (a) For an offense specified in subdivision (b), committed by the driver of a vehicle within a highway construction or maintenance area, during any time when traffic is regulated or restricted through or around that area pursuant to Section 21367, or when the highway construction or maintenance is actually being performed in the area by workers acting in their official capacity, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed. In an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of the following is an offense that is subject to subdivision (a):

(1) Section 21367, relating to regulation of traffic at a construction site.

(2) Article 3 (commencing with Section 21450) of Chapter 2 of Division 11, relating to obedience to traffic devices.

(3) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(4) Chapter 4 (commencing with Section 21800) of Division 11, relating to yielding the right-of-way.

(5) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

(6) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(7) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.

(8) Section 23103, relating to reckless driving.

(9) Section 23104 or 23105, relating to reckless driving which results in bodily injury to another.

(10) Section 23109 or 23109.1, relating to speed contests.

(11) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(12) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(13) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.

(14) Section 23220, relating to drinking while driving.

(15) Section 23221, relating to drinking in a motor vehicle while on the highway.

(16) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(17) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(18) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.

(19) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(20) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when construction or maintenance work is actually being performed by workers, and there are work zone traffic control devices, traffic controls or warning signs, or any combination of those, to notify motorists and pedestrians of construction or maintenance workers in the area.

SEC. 7. Section 42010 of the Vehicle Code is amended to read:

42010. (a) For an offense specified in subdivision (b) that is committed by the driver of a vehicle within an area that has been designated as a Safety Enhancement-Double Fine Zone pursuant to Section 97 and following of the Streets and Highways Code, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed, and, in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of the following is an offense that is subject to subdivision (a):

(1) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(2) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(3) Section 23103, relating to reckless driving.

(4) Section 23104, relating to reckless driving that results in bodily injury to another.

(5) Section 23109, relating to speed contests.

(6) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(7) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(8) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.

(9) Section 23220, relating to drinking while driving.

(10) Section 23221, relating to drinking in a motor vehicle while on the highway.

(11) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(12) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(13) Section 23224, relating to being a driver or passenger under 21 years of age possessing an open alcoholic beverage container.

(14) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(15) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when traffic controls or warning signs have been placed pursuant to Section 97 or 97.1 of the Streets and Highways Code.

(d) (1) Notwithstanding any other provision of law, the enhanced fine imposed pursuant to this section shall be based only on the base fine imposed for the underlying offense and shall not include any other enhancements imposed pursuant to law.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

SEC. 7.5. Section 42010 of the Vehicle Code is amended to read:

42010. (a) For an offense specified in subdivision (b) that is committed by the driver of a vehicle within an area that has been designated as a Safety Enhancement-Double Fine Zone pursuant to Section 97 and following of the Streets and Highways Code, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed, and, in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of the following is an offense that is subject to subdivision (a):

(1) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(2) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(3) Section 23103, relating to reckless driving.

(4) Section 23104 or 23105, relating to reckless driving that results in bodily injury to another.

(5) Section 23109 or 23109.1, relating to speed contests.

(6) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(7) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(8) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.

(9) Section 23220, relating to drinking while driving.

(10) Section 23221, relating to drinking in a motor vehicle while on the highway.

(11) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(12) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(13) Section 23224, relating to being a driver or passenger under 21 years of age possessing an open alcoholic beverage container.

(14) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(15) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when traffic controls or warning signs have been placed pursuant to Section 97 or 97.1 of the Streets and Highways Code.

(d) (1) Notwithstanding any other provision of law, the enhanced fine imposed pursuant to this section shall be based only on the base fine imposed for the underlying offense and shall not include any other enhancements imposed pursuant to law.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the

definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 9. This act shall become operative on January 1, 2009.

SEC. 10. Section 1.5 of this bill incorporates amendments to Section 13353.1 of the Vehicle Code proposed by this bill and AB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 13353.1 of the Vehicle Code, and (3) this bill is enacted after AB 678, in which case Section 13353.1 of the Vehicle Code, as amended by AB 678, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 11. Section 4.5 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by this bill and AB 1589. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 22651 of the Vehicle Code, and (3) this bill is enacted after AB 1589, in which case Section 22651 of the Vehicle Code, as amended by AB 1589, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

SEC. 12. Section 6.5 of this bill incorporates amendments to Section 42009 of the Vehicle Code proposed by this bill and AB 430. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 42009 of the Vehicle Code, and (3) this bill is enacted after AB 430, in which case Section 42009 of the Vehicle Code, as amended by AB 430, shall remain operative only until the operative date of this bill, at which time Section 6.5 of this bill shall become operative, and Section 6 of this bill shall not become operative.

SEC. 13. Section 7.5 of this bill incorporates amendments to Section 42010 of the Vehicle Code proposed by this bill and AB 430. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 42010 of the Vehicle Code, and (3) this bill is enacted after AB 430, in which case Section 42010 of the Vehicle Code, as amended by AB 430, shall remain operative only until the operative date of this bill, at which time Section 7.5 of this bill shall become operative, and Section 7 of this bill shall not become operative.

CHAPTER 750

An act to add Article 11 (commencing with Section 44125) to Chapter 5 of, to add Chapter 8.9 (commencing with Section 44270) to, Part 5 of Division 26 of, and to add and repeal 44060.5 of, the Health and Safety Code, and to add and repeal Sections 9250.1, 9261.1, and 9853.6 of the Vehicle Code, relating to air pollution.

[Approved by Governor October 14, 2007. Filed with Secretary of State October 14, 2007.]

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

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

(a) The California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) requires California to reduce statewide greenhouse gas emissions to 1990 levels by 2020.

(b) The transportation sector is responsible for approximately 40 percent of statewide greenhouse gas emissions and significant degradation of public health and environmental quality due to air and water pollution.

(c) The State Energy Resources Conservation and Development Commission (Energy Commission) in its Integrated Energy Policy Report recommends that alternative fuels comprise 20 percent of on-road motor vehicle fuels by 2020.

(d) The State Air Resources Board is currently developing a "low-carbon" fuel standard for transportation fuels to reduce the carbon intensity of transportation fuels by 10 percent by 2020.

(e) The Energy Commission will adopt a state alternative fuel implementation plan to increase the use of alternative transportation fuels by recommending policies and financial incentives, and identifying barriers to alternative fuel use.

(f) Investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases.

(g) Research, development, and commercialization of alternative fuels and vehicle technologies in California have the potential to strengthen California's economy by attracting and retaining clean technology businesses, stimulating high-quality job growth, and helping to reduce the state's vulnerability to petroleum price volatility. Research, development, demonstration, and deployment of alternative and renewable fuels and vehicle technologies will also result in new skill and occupational demands across California industries.

(h) This act will provide ongoing funding for alternative fuel and vehicle technology research, development, demonstration, and deployment in order to advance the state's leadership in clean technologies, achieve the state's petroleum reduction objectives and clean air and greenhouse gas emission reduction standards, develop public-private partnerships, and ensure a secure and reliable fuel supply.

(i) This act will ensure that research is conducted to evaluate the air quality impacts of alternative fuels and to establish clear criteria to prevent net increases in criteria air pollutants and air toxics.

(j) This act will be implemented in a manner to ensure the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.

(k) This act will provide funding consistent with the California Global Warming Solutions Act of 2006, the Integrated Energy Policy Report, the state alternative fuels plan adopted pursuant to Section 43866 of the Health and Safety Code, and other state goals and requirements.

SEC. 2. It is the intent of the Legislature to appropriate moneys from the Alternative and Renewable Fuel and Vehicle Technology Fund and the Air Quality Improvement Fund to the Department of Motor Vehicles to cover the administrative costs of implementing the fee increases created by this act.

SEC. 3. Section 44060.5 is added to the Health and Safety Code, to read:

44060.5. (a) Beginning July 1, 2008, the smog abatement fee described in Section 44060 shall be increased by eight dollars ($8).

(b) Revenues generated by the increase described in this section shall be distributed as follows:

(1) The revenues generated by four dollars ($4) shall be deposited in the Air Quality Improvement Fund created by Section 44274.5.

(2) The revenues generated by four dollars ($4) shall be deposited in the Alternative and Renewable Fuel and Vehicle Technology Fund created by Section 44273.

(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 4. Article 11 (commencing with Section 44125) is added to Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, to read:

Article 11. Enhanced Fleet Modernization Program

44125. (a) No later than July 1, 2009, the state board, in consultation with the Bureau of Automotive Repair (BAR), shall adopt a program to

commence on January 1, 2010, that allows for the voluntarily retirement of passenger vehicles and light-duty and medium-duty trucks that are high polluters. The program shall be administered by the BAR pursuant to guidelines adopted by the state board.

(b) The guidelines shall ensure all of the following:

(1) Vehicles retired pursuant to the program are permanently removed from operation and retired at a dismantler under contract with the BAR.

(2) Districts retain their authority to administer vehicle retirement programs otherwise authorized under law.

(3) The program is available for high polluting passenger vehicles and light-duty and medium-duty trucks that have been continuously registered in California for two years prior to acceptance into the program or otherwise proven to have been driven primarily in California for the last two years and have not been registered in any other state or country in the last two years.

(4) The program is focused where the greatest air quality impact can be identified.

(5) Compensation levels for retired vehicles are flexible, taking into account factors including, but not limited to, the age of the vehicle, the emission benefits of the vehicle's retirement, the emissions impact of any replacement vehicle, and the location of vehicles in areas of the state with the poorest air quality.

(6) Cost-effectiveness and impacts on disadvantaged and low-income populations are considered.

44126. The Enhanced Fleet Modernization Subaccount is hereby created in the High Polluter Removal and Repair Account. All moneys deposited in the subaccount shall be available to the department and the BAR, upon appropriation by the Legislature, to establish and implement the program created pursuant to this article.

SEC. 5. Chapter 8.9 (commencing with Section 44270) is added to Part 5 of Division 26 of the Health and Safety Code, to read:

Chapter 8.9. California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007

44270. This chapter shall be known, and may be cited, as the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007.

44270.3. For the purposes of this chapter, the following terms have the following meanings:

(a) "Commission" means the State Energy Resources Conservation and Development Commission.

(b) "Full fuel-cycle assessment" or "life-cycle assessment" means evaluating and comparing the full environmental and health impacts of each step in the life cycle of a fuel, including, but not limited to, all of the following:

(1) Feedstock production, extraction, transport, and storage.

(2) Fuel production, distribution, transport, and storage.

(3) Vehicle operation, including refueling, combustion, conversion, permeation, and evaporation.

(c) "Vehicle technology" means any vehicle, boat, off-road equipment, or locomotive, or component thereof, including its engine, propulsion system, transmission, or construction materials.

44271. (a) This chapter creates the Alternative and Renewable Fuel and Vehicle Technology Program, pursuant to Section 44272, to be administered by the commission, and the Air Quality Improvement Program, pursuant to Section 44274, to be administered by the state board. The commission and the state board shall do all of the following in fulfilling their responsibilities pursuant to their respective programs:

(1) Determine definitions of terms used in the provisions of this chapter.

(2) Establish sustainability goals to ensure that alternative and renewable fuel and vehicle deployment projects, on a full fuel-cycle assessment basis, will not adversely impact the state natural resources, especially state and federal lands.

(3) Identify revenue streams for the programs created pursuant to this chapter.

(4) Ensure that the results of the reductions in emissions or benefits can be measured and quantified.

(b) The state board shall develop guidelines for both the Alternative and Renewable Fuel and Vehicle Technology Program and the Air Quality Improvement Program to ensure that programs meet both of the following requirements:

(1) Activities undertaken pursuant to the programs complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(2) Activities undertaken pursuant to the programs maintain or improve upon emission reductions and air quality benefits in the State Implementation Plan for Ozone, California Phase 2 Reformulated Gasoline standards, and diesel fuel regulations.

(c) For the purposes of both of the programs created by this chapter, eligible projects do not include those required to be undertaken pursuant to state or federal law or district rules or regulations.

44271.5. (a) The commission shall create an advisory body to help develop an investment plan to determine priorities and opportunities for the Alternative and Renewable Fuel and Vehicle Technology Program created pursuant to this chapter. The advisory body shall be subject to the public meetings requirements of 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). The investment plan shall describe how funding will complement existing public and private investments, including existing state programs that further the goals of this chapter. The plan shall be updated annually.

(b) Membership of the advisory body created pursuant to subdivision (a) shall include, but is not limited to, representatives of fuel and vehicle technology consortia, labor organizations, environmental organizations, community-based justice and public health organizations, recreational boaters, consumer advocates, academic institutions, workforce training groups, and private industry. The advisory body shall also include representatives from the Resources Agency, the Business, Transportation and Housing Agency, the Labor and Workforce Development Agency, and the California Environmental Protection Agency.

44272. (a) The Alternative and Renewable Fuel and Vehicle Technology Program is hereby created. The program shall be administered by the commission. The program shall provide, upon appropriation by the Legislature, grants, revolving loans, loan guarantees, loans, or other appropriate measures, to public agencies, vehicle and technology consortia, businesses and projects, public-private partnerships, workforce training partnerships and collaboratives, fleet owners, consumers, recreational boaters, and academic institutions to develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies. The emphasis of this program shall be to develop and deploy technology and alternative and renewable fuels in the marketplace, without adopting any one preferred fuel or technology.

(b) The commission shall provide preferences to those projects that maximize the goals of the Alternative and Renewable Fuel and Vehicle Technology Program created by Section 44272, based on the following criteria, as appropriate:

(1) The project's ability to provide a measurable transition from the nearly exclusive use of petroleum fuels to a diverse portfolio of viable alternative fuels that meet petroleum reduction and alternative fuel use goals.

(2) The project's consistency with existing and future state climate change policy and low-carbon fuel standards.

(3) The project's ability to reduce criteria air pollutants and air toxics and reduce or avoid multimedia environmental impacts.

(4) The project's ability to decrease, on a life-cycle basis, the emissions of water pollutants or any other substances known to damage human health or the environment, in comparison to the production and use of California Phase 2 Reformulated Gasoline or diesel fuel produced and sold pursuant to California diesel fuel regulations set forth in Article 2 (commencing with Section 2280) of Chapter 5 of Division 3 of Title 13 of the California Code of Regulations.

(5) The project does not adversely impact the sustainability of the state's natural resources, especially state and federal lands.

(6) The project provides nonstate matching funds.

(7) The project provides economic benefits for California by promoting California-based technology firms, jobs, and businesses.

(8) The project uses existing or proposed fueling infrastructure to maximize the outcome of the project.

(9) The project's ability to reduce on a life-cycle assessment greenhouse gas emissions by at least 10 percent, and higher percentages in the future, from current reformulated gasoline and diesel fuel standards established by the state board.

(10) The project's use of alternative fuel blends of at least 20 percent, and higher blend ratios in the future, with a preference for projects with higher blends.

(11) The project drives new technology advancement for vehicles, vessels, engines, and other equipment, and promotes the deployment of that technology in the marketplace.

(c) All of the following shall be eligible for funding:

(1) Alternative and renewable fuel projects to develop and improve alternative and renewable low-carbon fuels, including electricity, ethanol, dimethyl ether, renewable diesel, natural gas, hydrogen, and biomethane, among others, and their feedstocks that have high potential for long-term or short-term commercialization, including projects that lead to sustainable feedstocks.

(2) Demonstration and deployment projects that optimize alternative and renewable fuels for existing and developing engine technologies.

(3) Projects to produce alternative and renewable low-carbon fuels in California.

(4) Projects to decrease the overall impact of an alternative and renewable fuel's life-cycle carbon footprint and increase sustainability.

(5) Alternative and renewable fuel infrastructure, fueling stations, and equipment. The preference in paragraph (10) of subdivision (b) shall not apply to these projects.

(6) Projects to develop and improve light-, medium-, and heavy-duty vehicle technologies that provide for better fuel efficiency and lower greenhouse gas emissions, alternative fuel usage and storage, or emission reductions, including propulsion systems, advanced internal combustion engines with a 40 percent or better efficiency level over the current market standard, light-weight materials, energy storage, control systems and system integration, physical measurement and metering systems and software, development of design standards and testing and certification protocols, battery recycling and reuse, engine and fuel optimization electronic and electrified components, hybrid technology, plug-in hybrid technology, fuel cell technology, and conversions of hybrid technology to plug-in technology through the installation of safety certified supplemental battery modules.

(7) Programs and projects that accelerate the commercialization of vehicles and alternative and renewable fuels including buy-down programs through near-market and market-path deployments, advanced technology warranty or replacement insurance, development of market niches, and supply-chain development.

(8) Programs and projects to retrofit medium- and heavy-duty on-road and nonroad vehicle fleets with technologies that create higher fuel efficiencies, including alternative and renewable fuel vehicles and technologies, idle management technology, and aerodynamic retrofits that decrease fuel consumption.

(9) Infrastructure projects that promote alternative and renewable fuel infrastructure development connected with existing fleets, public transit, and existing transportation corridors, including physical measurement or metering equipment and truck stop electrification.

(10) Workforce training programs related to alternative and renewable fuel feedstock production and extraction, renewable fuel production, distribution, transport, and storage, high-performance and low-emission vehicle technology and high tower electronics, automotive computer systems, mass transit fleet conversion, servicing, and maintenance, and other sectors or occupations related to the purposes of this chapter.

(11) Block grants administered by not-for-profit technology consortia for multiple projects, education and program promotion within California, and development of alternative and renewable fuel and vehicle technology centers.

(d) The same requirements in Section 25620.5 of the Public Resources Code shall apply to awards made on a single source basis or a sole sources basis.

44273. (a) The Alternative and Renewable Fuel and Vehicle Technology Fund is hereby created in the State Treasury, to be administered by the commission. The moneys in the fund, upon

appropriation by the Legislature, shall be expended by the commission to implement the Alternative and Renewable Fuel and Vehicle Technology Program in accordance with this chapter.

(b) Notwithstanding any other provision of law, the sum of ten million dollars ($10,000,000) shall be transferred annually from the Public Interest Research, Development, and Demonstration Fund created by Section 384 of the Public Utilities Code to the Alternative and Renewable Fuel and Vehicle Technology Fund. Prior to the award of any funds from this source, the commission shall make a determination that the proposed project will provide benefits to electric or natural gas ratepayers based upon the commission's adopted criteria.

44274. (a) The Air Quality Improvement Program is hereby created. The program shall be administered by the state board, in consultation with the districts. The purpose of the program shall be to fund, upon appropriation by the Legislature, air quality improvement projects relating to fuel and vehicle technologies. The primary purpose of the program shall be to fund projects to reduce criteria air pollutants, improve air quality, and provide funding for research to determine and improve the air quality impacts of alternative transportation fuels and vehicles, vessels, and equipment technologies.

(b) Projects proposed for funding pursuant to subdivision (a) shall be evaluated based on their proposed or potential reduction of criteria or toxic air pollutants, cost-effectiveness, contribution to regional air quality improvement, and ability to promote the use of clean alternative fuels and vehicle technologies as determined by the state board, in coordination with the commission.

(c) The program shall be limited to competitive grants. Projects to be funded include the following:

(1) On- and off-road equipment projects that are cost effective.

(2) Projects that provide mitigation for off-road gasoline exhaust and evaporative emissions.

(3) Projects that provide research to determine the air quality impacts of alternative fuels and projects that study the life-cycle impacts of alternative fuels and conventional fuels, the emissions of biofuel and advanced reformulated gasoline mixes, and air pollution improvements and control technologies for use with alternative fuels and vehicles.

(4) Projects that augment the University of California's agricultural experiment station and cooperative extension programs for research to increase sustainable biofuels production and improve the collection of biomass feedstock.

(5) Incentives for small off-road equipment replacement to encourage consumers to replace internal combustion engine lawn and garden equipment.

(6) Incentives for medium- and heavy-duty vehicles and equipment mitigation, including all of the following:

(A) Lower emission schoolbus programs.

(B) Electric, hybrid, and plug-in hybrid on- and off-road medium- and heavy-duty equipment.

(C) Regional air quality improvement and attainment programs implemented by the state or districts in the most impacted regions of the state.

(7) Workforce training initiatives related to advanced energy technology designed to reduce air pollution, including state-of-the-art equipment and goods, and new processes and systems. Workforce training initiatives funded shall be broad-based partnerships that leverage other public and private job training programs and resources. These partnerships may include, though are not limited to, employers, labor unions, labor-management partnerships, community organizations, workforce investment boards, postsecondary education providers including community colleges, and economic development agencies.

(8) Incentives to identify and reduce emissions from high emitting light-duty vehicles.

44274.5. The Air Quality Improvement Fund is hereby created in the State Treasury, to be administered by the state board. The moneys in the Air Quality Improvement Fund, upon appropriation by the Legislature, shall be expended by the state board in accordance with this chapter to implement the Air Quality Improvement Program. The Legislature may transfer moneys from the fund to the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund.

SEC. 6. Section 9250.1 is added to the Vehicle Code, to read:

9250.1. (a) Beginning July 1, 2008, the fee described in Section 9250 shall be increased by three dollars ($3).

(b) Two dollars ($2) of the increase shall be deposited into the Alternative and Renewable Fuel and Vehicle Technology Fund created by Section 44273 of the Health and Safety Code, and one dollar ($1) shall be deposited into the Enhanced Fleet Modernization Subaccount created by Section 44126 of the Health and Safety Code.

(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 7. Section 9261.1 is added to the Vehicle Code, to read:

9261.1. (a) Beginning July 1, 2008, the fee described in Section 9261, as adjusted pursuant to Section 1678, shall be increased by five dollars ($5).

(b) Two dollars and 50 cents ($2.50) of the increase shall be deposited into the Alternative and Renewable Fuel and Vehicle Technology Fund

created by Section 44273 of the Health and Safety Code, and two dollars and fifty cents ($2.50) shall be deposited into the Air Quality Improvement Fund created by Section 44274.5 of the Health and Safety Code.

(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 8. Section 9853.6 is added to the Vehicle Code, to read:

9853.6. (a) (1) Beginning July 1, 2008, the fee described in paragraph (1) of subdivision (b) of Section 9853 shall be increased by ten dollars ($10).

(2) Five dollars ($5) of the increase shall be deposited into the Alternative and Renewable Fuel and Vehicle Technology Fund created by Section 44273 of the Health and Safety Code and five dollars ($5) shall be deposited into the Air Quality Improvement Fund created by Section 44274.5 of the Health and Safety Code.

(b) (1) Beginning July 1, 2008, the fee described in paragraph (2) of subdivision (b) of Section 9853 shall be increased by twenty dollars ($20).

(2) Ten dollars ($10) of the increase shall be deposited into the Alternative and Renewable Fuel and Vehicle Technology Fund created by Section 44273 of the Health and Safety Code and ten dollars ($10) shall be deposited into the Air Quality Improvement Fund created by Section 44274.5 of the Health and Safety Code.

(b) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 9. 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.