

ASSEMBLY BILL

No. 176

Introduced by Assembly Member Silva

February 2, 2009

An act to amend Sections 2293, 3635, 4846.5, 8027, 17539.55, 19513, 19576, 19861, 19870, 21701.1, and 25658.4 of the Business and Professions Code, to amend Sections 916, 922, 1799.3, and 3344.1 of the Civil Code, to amend Sections 129, 1033.5, and 2025.560 of the Code of Civil Procedure, to amend Sections 8971, 17002, 18032, 19323, 32255, 49091.10, 52740, 52742, 52743, 56341.1, and 60204 of the Education Code, to amend Sections 2052, 2053, 9082.5, and 18541 of the Elections Code, to amend Sections 795, 1118, and 1294 of the Evidence Code, to amend Sections 3170, 7572, 10005, and 20034 of the Family Code, to amend Sections 8880.30, 11124.1, 11130, 12811.3, 14999.31, 26202.6, 26206.7, 26206.8, 27491.47, 34090.6, 34090.7, 34090.8, 50028, 53160, 53161, 53162, 54953.5, 54960, and 68151 of the Government Code, to amend Sections 1569.69, 1736.5, 7158.3, 13220, 13221, 25201.11, 40828, 100171, and 127240 of the Health and Safety Code, to amend Sections 1758.97 and 2071.1 of the Insurance Code, to amend Sections 298.1, 599aa, 868.7, and 1203.098 of the Penal Code, to amend Section 4423.1 of the Public Resources Code, to amend Section 1611 of the Revenue and Taxation Code, and to amend Section 19639 of the Welfare and Institutions Code, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

AB 176, as introduced, Silva. Maintenance of the codes.

Existing law establishes the California Law Revision Commission. Existing law authorizes the commission to recommend changes in the

law as it deems necessary to modify or eliminate antiquated and inequitable rules of law and bring the law into harmony with modern conditions. Existing law requires the commission to file a report at each regular session of the Legislature containing a calendar of topics selected by the commission for study, which is subject to approval by concurrent resolution of the Legislature. Existing law authorizes the commission to recommend revisions to correct technical or minor defects in the statutes without the prior concurrent resolution of the Legislature referring the matter to it for study.

This bill would make changes to the terms used to describe recording technology to effectuate the recommendations of the commission. The bill would make additional technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 2293 of the Business and Professions
- 2 Code is amended to read:
- 3 2293. (a) The professional competency examination shall be
- 4 in the form of an oral clinical examination to be administered by
- 5 three physician examiners selected by the division or its designee,
- 6 who shall test for medical knowledge specific to the physician's
- 7 specialty or specific suspected deficiency. The examination shall
- 8 be ~~tape~~ *audio* recorded.
- 9 (b) A failing grade from two of the examiners shall constitute
- 10 a failure of an examination. In the event of a failure, the board
- 11 shall supply a true and correct copy of ~~a tape~~ *the audio recording*
- 12 of the examination to the unsuccessful examinee.
- 13 (c) Within 45 days following receipt of ~~the tape~~ *audio recording*
- 14 of the examination, a physician who fails the examination may
- 15 request a hearing before the administrative law judge as designated
- 16 in Section 11371 of the Government Code to determine whether
- 17 he or she is entitled to take a second examination.
- 18 (d) If the physician timely requests a hearing concerning the
- 19 right to reexamination under subdivision (c), the hearing shall be
- 20 held in accordance with the Administrative Procedure Act (*Chapter*
- 21 *3.5 (commencing with Section 11340), Chapter 4 (commencing*
- 22 *with Section 11370), Chapter 4.5 (commencing with Section*
- 23 *11400), and Chapter 5 (commencing with Section 11500) of Part*

1 *1 of Division 3 of Title 2 of the Government Code*). Upon a finding
2 that the examination or procedure is unfair or that one or more of
3 the examiners manifest bias ~~towards~~ *toward* the examinee, a
4 reexamination shall be ordered.

5 (e) If the examinee fails the examination and is not afforded the
6 right to reexamination, the division may take action pursuant to
7 Section 2230 by directing that an accusation be filed charging the
8 examinee with incompetency under subdivision (d) of Section
9 2234. The modes of discipline are set forth in Sections 2227 and
10 2228.

11 (f) Findings and conclusions reported by the examiners may be
12 received in the administrative hearing on the accusation. The
13 passing of the examination shall constitute prima facie evidence
14 of present competence in the area of coverage of the examination.

15 (g) Competency examinations shall be conducted under a
16 uniform examination system, and for that purpose the division
17 may make arrangements with organizations furnishing examination
18 material as deemed desirable.

19 SEC. 2. Section 3635 of the Business and Professions Code is
20 amended to read:

21 3635. (a) In addition to any other qualifications and
22 requirements for licensure renewal, the bureau shall require the
23 satisfactory completion of 60 hours of approved continuing
24 education biennially. This requirement is waived for the initial
25 license renewal. The continuing education shall meet the following
26 requirements:

27 (1) At least 20 hours shall be in pharmacotherapeutics.

28 (2) No more than 15 hours may be in naturopathic medical
29 journals or osteopathic or allopathic medical journals, or audio or
30 ~~videotaped~~ *video recorded* presentations, slides, programmed
31 instruction, or computer-assisted instruction or preceptorships.

32 (3) No more than 20 hours may be in any single topic.

33 (4) No more than 15 hours of the continuing education
34 requirements for the specialty certificate in naturopathic childbirth
35 attendance shall apply to the 60 hours of continuing education
36 requirement.

37 (b) The continuing education requirements of this section may
38 be met through continuing education courses approved by the
39 California Naturopathic Doctors Association, the American
40 Association of Naturopathic Physicians, the Medical Board of

1 California, the California State Board of Pharmacy, the State Board
2 of Chiropractic Examiners, or other courses approved by the
3 bureau.

4 SEC. 3. Section 4846.5 of the Business and Professions Code
5 is amended to read:

6 4846.5. (a) ~~On or after January 1, 2002, except~~ *Except* as
7 provided in this section, the board shall issue renewal licenses only
8 to those applicants that have completed a minimum of 36 hours
9 of continuing education in the preceding two years.

10 (b) (1) Notwithstanding any other provision of law, continuing
11 education hours shall be earned by attending courses relevant to
12 veterinary medicine and sponsored or cosponsored by any of the
13 following:

14 (A) American Veterinary Medical Association (AVMA)
15 accredited veterinary medical colleges.

16 (B) Accredited colleges or universities offering programs
17 relevant to veterinary medicine.

18 (C) The American Veterinary Medical Association.

19 (D) American Veterinary Medical Association recognized
20 specialty or affiliated allied groups.

21 (E) American Veterinary Medical Association's affiliated state
22 veterinary medical associations.

23 (F) Nonprofit annual conferences established in conjunction
24 with state veterinary medical associations.

25 (G) Educational organizations affiliated with the American
26 Veterinary Medical Association or its state affiliated veterinary
27 medical associations.

28 (H) Local veterinary medical associations affiliated with the
29 California Veterinary Medical Association.

30 (I) Federal, state, or local government agencies.

31 (J) Providers accredited by the Accreditation Council for
32 Continuing Medical Education (ACCME) or approved by the
33 American Medical Association (AMA), providers recognized by
34 the American Dental Association Continuing Education
35 Recognition Program (ADA CERP), and AMA or ADA affiliated
36 state, local, and specialty organizations.

37 (2) Continuing education credits shall be granted to those
38 veterinarians taking self-study courses, which may include, but
39 are not limited to, reading journals, viewing ~~of videotapes~~ *video*
40 *recordings*, or listening to ~~audiotapes~~ *audio recordings*. The taking

1 of these courses shall be limited to no more than six hours
2 biennially.

3 (3) The board may approve other continuing veterinary medical
4 education providers not specified in paragraph (1).

5 (A) The board has the authority to recognize national continuing
6 education approval bodies for the purpose of approving continuing
7 education providers not specified in paragraph (1).

8 (B) Applicants seeking continuing education provider approval
9 shall have the option of applying to the board or to a
10 board-recognized national approval body.

11 (4) For good cause, the board may adopt an order specifying,
12 on a prospective basis, that a provider of continuing veterinary
13 medical education authorized pursuant to ~~paragraphs (1) or (2)~~
14 *paragraph (1) or (3)* is no longer an acceptable provider.

15 (5) Continuing education hours earned by attending courses
16 sponsored or cosponsored by those entities listed in paragraph (1)
17 between January 1, 2000, and ~~the effective date of this act~~ *January*
18 *1, 2001*, shall be credited toward a veterinarian's continuing
19 education requirement under this section.

20 (c) Every person renewing his or her license issued pursuant to
21 Section 4846.4 or any person applying for relicensure or for
22 reinstatement of his or her license to active status, shall submit
23 proof of compliance with this section to the board certifying that
24 he or she is in compliance with this section. Any false statement
25 submitted pursuant to this section shall be a violation subject to
26 Section 4831.

27 (d) This section shall not apply to a veterinarian's first license
28 renewal. This section shall apply only to second and subsequent
29 license renewals granted on or after January 1, 2002.

30 (e) The board shall have the right to audit the records of all
31 applicants to verify the completion of the continuing education
32 requirement. Applicants shall maintain records of completion of
33 required continuing education coursework for a period of four
34 years and shall make these records available to the board for
35 auditing purposes upon request. If the board, during this audit,
36 questions whether any course reported by the veterinarian satisfies
37 the continuing education requirement, the veterinarian shall provide
38 information to the board concerning the content of the course; the
39 name of its sponsor and cosponsor, if any; and specify the specific
40 curricula that was of benefit to the veterinarian.

(f) A veterinarian desiring an inactive license or to restore an inactive license under Section 701, shall submit an application on a form provided by the board. In order to restore an inactive license to active status, the veterinarian shall have completed a minimum of 36 hours of continuing education within the last two years preceding application. The inactive license status of a veterinarian shall not deprive the board of its authority to institute or continue a disciplinary action against a licensee.

(g) Knowing misrepresentation of compliance with ~~the requirements of this article~~ by a veterinarian constitutes unprofessional conduct and grounds for disciplinary action or for the issuance of a citation and the imposition of a civil penalty pursuant to Section 4883.

(h) The board, in its discretion, may exempt from the continuing education requirement; any veterinarian who for reasons of health, military service, or undue hardship; cannot meet those requirements. Applications for waivers shall be submitted on a form provided by the board.

(i) The administration of this section may be funded through professional license and continuing education provider fees. The fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.

(j) For those continuing education providers not listed in paragraph (1) of subdivision (b), the board or its recognized national approval agent shall establish criteria by which a provider of continuing education shall be approved. The board shall initially review and approve these criteria and may review the criteria as needed. The board or its recognized agent shall monitor, maintain, and manage related records and data. The board ~~shall have the authority to~~ may impose an application fee, not to exceed two hundred dollars (\$200) biennially, for continuing education providers not listed in paragraph (1) of subdivision (b).

SEC. 4. Section 8027 of the Business and Professions Code is amended to read:

8027. (a) As used in this section, “school” means a court reporter training program or an institution that provides a course of instruction approved by the board and the Bureau for Private Postsecondary and Vocational Education, is a public school in this

1 state, or is accredited by the Western Association of Schools and
2 Colleges.

3 (b) A court reporting school shall be primarily organized to train
4 students for the practice of shorthand reporting, as defined in
5 Sections 8016 and 8017. Its educational program shall be on the
6 postsecondary or collegiate level. It shall be legally organized and
7 authorized to conduct its program under all applicable laws of the
8 state, and shall conform to and offer all components of the
9 minimum prescribed course of study established by the board. Its
10 records shall be kept and shall be maintained in a manner to render
11 them safe from theft, fire, or other loss. The records shall indicate
12 positive daily and clock-hour attendance of each student for all
13 classes, apprenticeship and graduation reports, high school
14 transcripts or the equivalent or self-certification of high school
15 graduation or the equivalent, transcripts of other education, and
16 student progress to date, including all progress and counseling
17 reports.

18 (c) Any school intending to offer a program in court reporting
19 shall notify the board within 30 days of the date on which it
20 provides notice to, or seeks approval from, the ~~California State~~
21 Department of Education, the Bureau for Private Postsecondary
22 and Vocational Education, the ~~Chancellor's Office of the~~
23 *Chancellor* of the California Community Colleges, or the Western
24 Association of Schools and Colleges, whichever is applicable. The
25 board shall review the proposed curriculum and provide the school
26 tentative approval, or notice of denial, within 60 days of receipt
27 of the notice. The school shall apply for provisional recognition
28 pursuant to subdivision (d) within no more than one year from the
29 date it begins offering court reporting classes.

30 (d) The board may grant provisional recognition to a new court
31 reporting school upon satisfactory evidence that it has met all of
32 the provisions of subdivision (b) and this subdivision. Recognition
33 may be granted by the board to a provisionally recognized school
34 after it has been in continuous operation for a period of no less
35 than three consecutive years from the date provisional recognition
36 was granted, during which period the school shall provide
37 satisfactory evidence that at least one person has successfully
38 completed the entire course of study established by the board and
39 complied with the provisions of Section 8020, and has been issued
40 a certificate to practice shorthand reporting as defined in Sections

1 8016 and 8017. The board may, for good cause shown, extend the
2 three-year provisional recognition period for not more than one
3 year. Failure to meet the provisions and terms of this section shall
4 require the board to deny recognition. Once granted, recognition
5 may be withdrawn by the board for failure to comply with all
6 applicable laws and regulations.

7 (e) Application for recognition of a court reporting school shall
8 be made upon a form prescribed by the board and shall be
9 accompanied by all evidence, statements, or documents requested.
10 Each branch, extension center, or off-campus facility requires
11 separate application.

12 (f) All recognized and provisionally recognized court reporting
13 schools shall notify the board of any change in school name,
14 address, telephone number, responsible court reporting program
15 manager, owner of private schools, and the effective date thereof,
16 within 30 days of the change. All of these notifications shall be
17 made in writing.

18 (g) A school shall notify the board in writing immediately of
19 the discontinuance or pending discontinuance of its court reporting
20 program or any of the program's components. Within two years
21 of the date this notice is sent to the board, the school shall
22 discontinue its court reporting program in its entirety. The board
23 may, for good cause shown, grant not more than two one-year
24 extensions of this period to a school. If a student is to be enrolled
25 after this notice is sent to the board, a school shall disclose to the
26 student the fact of the discontinuance or pending discontinuance
27 of its court reporting program or any of its program components.

28 (h) The board shall maintain a roster of currently recognized
29 and provisionally recognized court reporting schools, including,
30 but not limited to, the name, address, telephone number, and the
31 name of the responsible court reporting program manager of each
32 school.

33 (i) The board shall maintain statistics that display the number
34 and passing percentage of all first-time examinees, including, but
35 not limited to, those qualified by each recognized or provisionally
36 recognized school and those first-time examinees qualified by
37 other methods as defined in Section 8020.

38 (j) Inspections and investigations shall be conducted by the
39 board as necessary to carry out this section, including, but not
40 limited to, unannounced site visits.

1 (k) All recognized and provisionally recognized schools shall
2 print in their school or course catalog the name, address, and
3 telephone number of the board. At a minimum, the information
4 shall be in 8-point bold type and include the following statement:

5 "IN ORDER FOR A PERSON TO QUALIFY FROM A
6 SCHOOL TO TAKE THE STATE LICENSING EXAMINATION,
7 THE PERSON SHALL COMPLETE A PROGRAM AT A
8 RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING
9 THE MINIMUM REQUIREMENTS THAT A COURT
10 REPORTING PROGRAM MUST MEET IN ORDER TO BE
11 RECOGNIZED, CONTACT: THE COURT REPORTERS
12 BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE
13 NUMBER)."

14 (l) Each court reporting school shall file with the board, not
15 later than June 30 of each year, a current school catalog that shows
16 all course offerings and staff, and for private schools, the owner,
17 except that where there have been no changes to the catalog within
18 the previous year, no catalog need be sent. In addition, each school
19 shall also file with the board a statement certifying whether the
20 school is in compliance with all statutes and the rules and
21 regulations of the board, signed by the responsible court reporting
22 program manager.

23 (m) A school offering court reporting ~~may~~ *shall* not make any
24 written or verbal claims of employment opportunities or potential
25 earnings unless those claims are based on verified data and reflect
26 current employment conditions.

27 (n) If a school offers a course of instruction that exceeds the
28 board's minimum requirements, the school shall disclose orally
29 and in writing the board's minimum requirements and how the
30 course of instruction differs from those criteria. The school shall
31 make this disclosure before a prospective student executes an
32 agreement obligating that person to pay any money to the school
33 for the course of instruction. The school shall also make this
34 disclosure to all students enrolled on January 1, 2002.

35 (o) Private and public schools shall provide each prospective
36 student with all of the following and have the prospective student
37 sign a document that shall become part of that individual's
38 permanent record, acknowledging receipt of each item:

39 (1) A student consumer information brochure published by the
40 board.

1 (2) A list of the school's graduation requirements, including the
2 number of tests, the pass point of each test, the speed of each test,
3 and the type of test, such as jury charge or literary.

4 (3) A list of requirements to qualify for the ~~state-certified~~
5 *state-certified* shorthand reporter licensing examination, including
6 the number of tests, the pass point of each test, the speed of each
7 test, and the type of test, such as jury charge or literary, if different
8 than those requirements listed in paragraph (2).

9 (4) A copy of the school's board-approved benchmarks for
10 satisfactory progress as identified in subdivision (u).

11 (5) A report showing the number of students from the school
12 who qualified for each of the certified shorthand reporter licensing
13 examinations within the preceding two years, the number of those
14 students that passed each examination, the time, as of the date of
15 qualification, that each student was enrolled in court reporting
16 school, and the placement rate for all students that passed each
17 examination.

18 (6) On and after January 1, 2005, the school shall also provide
19 to prospective students the number of hours each currently enrolled
20 student who has qualified to take the next licensing test, exclusive
21 of transfer students, has attended court reporting classes.

22 (p) All enrolled students shall have the information in
23 subdivisions (n) and (o) on file no later than June 30, 2005.

24 (q) Public schools shall provide the information in subdivisions
25 (n) and (o) to each new student the first day he or she attends theory
26 or machine speed class, if it was not provided previously.

27 (r) Each enrolled student shall be provided written notification
28 of any change in qualification or graduation requirements that is
29 being implemented due to the requirements of any one of the
30 school's oversight agencies. This notice shall be provided to each
31 affected student at least 30 days before the effective date of the
32 change and shall state the new requirement and the name, address,
33 and telephone number of the agency that is requiring it of the
34 school. Each student shall initial and date a document
35 acknowledging receipt of that information and that document, or
36 a copy thereof, shall be made part of the student's permanent file.

37 (s) Schools shall make available a comprehensive final
38 examination in each academic subject to any student desiring to
39 challenge an academic class in order to obtain credit towards
40 certification for the state licensing examination. The points required

1 to pass a challenge examination shall not be higher than the
2 minimum points required of other students completing the
3 academic class.

4 (t) An individual serving as a teacher, instructor, or reader shall
5 meet the qualifications specified by regulation for his or her
6 position.

7 (u) Each school shall provide a substitute teacher or instructor
8 for any class for which the teacher or instructor is absent for two
9 consecutive days or more.

10 (v) The board has the authority to approve or disapprove
11 benchmarks for satisfactory progress which each school shall
12 develop for its court reporting program. Schools shall use only
13 board-approved benchmarks to comply with the provisions of
14 paragraph (4) of subdivision (o) and subdivision (u).

15 (w) Each school shall counsel each student a minimum of one
16 time within each 12-month period to identify the level of attendance
17 and progress, and the prognosis for completing the requirements
18 to become eligible to sit for the state licensing examination. If the
19 student has not progressed in accordance with the board-approved
20 benchmarks for that school, the student shall be counseled a
21 minimum of one additional time within that same 12-month period.

22 (x) The school shall provide to the board, for each student
23 qualifying through the school as eligible to sit for the state licensing
24 examination, the number of hours the student attended court
25 reporting classes, both academic and machine speed classes,
26 including theory.

27 (y) The pass rate of first-time-~~exam~~ *examination* takers for each
28 school offering court reporting shall meet or exceed the average
29 pass rate of all first-time test takers for a majority of examinations
30 given for the preceding three years. Failure to do so shall require
31 the board to conduct a review of the program. In addition, the
32 board may place the school on probation and may withdraw
33 recognition if the school continues to place below the ~~above~~
34 ~~described above-described~~ standard on the two ~~exams~~ *examinations*
35 that follow the three-year period.

36 (z) A school shall not require more than one 10-minute
37 qualifying examination, as defined in the regulations of the board,
38 for a student to be eligible to sit for the state certification
39 examination.

1 (aa) A school shall provide the board the actual number of hours
2 of attendance for each applicant the school qualifies for the state
3 licensing examination.

4 ~~(bb)~~

5 (ab) The board shall, by December 1, 2001, do the following
6 by regulation as necessary:

7 (1) Establish the format that shall be used by schools to report
8 tracking of all attendance hours and actual timeframes for
9 completed coursework.

10 (2) Require schools to provide a minimum of 10 hours of live
11 dictation class each school week for every full-time student.

12 (3) Require schools to provide students with the opportunity to
13 read back from their stenographic notes a minimum of one time
14 each day to his or her instructor.

15 (4) Require schools to provide students with the opportunity to
16 practice with a school-approved speed-building—~~tape~~ *audio*
17 *recording*, or other assigned material, a minimum of one hour per
18 day after school hours as a homework assignment and provide the
19 notes from this—~~tape~~ *audio recording* to their instructor the
20 following day for review.

21 (5) Develop standardization of policies on the use and
22 administration of qualifier examinations by schools.

23 (6) Define qualifier—~~exam~~ *examination* as follows: the qualifier
24 ~~exam~~ *examination* shall consist of 4-voice testimony of 10-minute
25 duration at 200—~~wpm~~ *words per minute*, graded at 97.5 percent
26 accuracy, and in accordance with the guidelines followed by the
27 board. Schools shall be required to date and number each qualifier
28 and announce the date and number to the students at the time of
29 administering the qualifier. All qualifiers shall indicate the actual
30 dictation time of the test and the school shall catalog and maintain
31 the qualifier for a period of not less than three years for the purpose
32 of inspection by the board.

33 (7) Require schools to develop a program to provide students
34 with the opportunity to interact with professional court reporters
35 to provide skill support, mentoring, or counseling—~~which~~ *that* they
36 can document at least quarterly.

37 (8) Define qualifications and educational requirements required
38 of instructors and readers that read test material and qualifiers.

39 ~~(ee)~~

1 (ac) The board shall adopt regulations to implement the
2 requirements of this section not later than September 1, 2002.

3 ~~(dd)~~

4 (ad) The board may recover costs for any additional expenses
5 incurred under the enactment amending this section in the 2001–02
6 Regular Session of the Legislature pursuant to its fee authority in
7 Section 8031.

8 SEC. 5. Section 17539.55 of the Business and Professions
9 Code is amended to read:

10 17539.55. (a) It shall be unlawful to operate a sweepstakes in
11 this state through the use of a 900 number, unless the information
12 provider registers with the Department of Justice as provided in
13 this section within 10 days after causing any advertisement for the
14 sweepstakes to be directed to any person in this state.

15 (b) The registration shall include the following information:

16 (1) Each 900 number to be used in the sweepstakes.

17 (2) The name and address of the information provider including
18 corporate identity, if any, and the name and address for the
19 information provider's agent for service of process within the state.

20 (3) A copy of the information provider's audio text, prerecorded,
21 or live operator scripts.

22 (4) A copy of the official rules for the sweepstakes.

23 (5) For television, video, or any on-screen advertisements, a
24 copy of the storyboard and ~~videotape~~ *video recording*.

25 (6) For radio advertisements, a copy of the script and audio
26 ~~cassette~~ recording.

27 (7) For print or electronic form transmitted over the Internet, a
28 copy of all advertisements.

29 (8) For direct mail solicitations, a copy of all principal
30 solicitations.

31 (9) For telephone solicitations, a copy of the script.

32 (10) The names of the carriers ~~which~~ *that* the information
33 provider plans to utilize to carry the 900 number calls.

34 (c) The information provider shall pay an annual registration
35 fee of fifty dollars (\$50) for each 900 number used for sweepstakes
36 purposes.

37 (d) It shall be unlawful for any information provider that
38 operates a sweepstakes to make reference, in any contact with the
39 public, to the fact that the information provider is registered with
40 the Department of Justice, as required by this section, or in any

1 other manner imply that ~~such~~ *that* registration represents approval
2 of the sweepstakes by the Department of Justice.

3 SEC. 6. Section 19513 of the Business and Professions Code
4 is amended to read:

5 19513. (a) The board shall prepare both written and oral
6 examinations. All examinations shall be standardized and, in the
7 case of oral examinations, ~~tape~~ *audio* recorded. Written
8 examinations may be administered by members of the board staff.
9 Oral examinations shall be conducted by a panel of not ~~less~~ *fewer*
10 than three board members.

11 (b) The board shall provide a detailed outline of the subjects to
12 be covered by the oral and written examinations for a license to
13 every person who requests the outline.

14 (c) The results of the oral and written examinations for ~~stewards~~
15 *stewards'* licenses shall be a public record.

16 SEC. 7. Section 19576 of the Business and Professions Code
17 is amended to read:

18 19576. (a) No person may furnish ~~a tape~~ *an audio or video*
19 *recording* of any quarter horse race occurring in this state to any
20 other person either within or outside of the state for any commercial
21 purpose, including the use of the ~~tape~~ *recording* in any type of
22 video game, without first securing the consent of the racing
23 association conducting the meeting, the organization representing
24 horsemen *and* *horsewomen* participating in the meeting, and the
25 board.

26 (b) No person may use any ~~tape~~ *audio or video recording* of
27 any quarter horse race occurring in this state for any commercial
28 purpose without first securing the consent of the racing association
29 holding the meeting, the organization representing horsemen *and*
30 *horsewomen* participating in the meeting, and the board.

31 (c) Any person whose consent is required under this section
32 may file and maintain an action in superior court to obtain an
33 injunction against the furnishing or commercial use of a *recording*
34 *of a* quarter horse race ~~tape~~ in violation of this section.

35 SEC. 8. Section 19861 of the Business and Professions Code
36 is amended to read:

37 19861. Notwithstanding subdivision (i) of Section 19801, the
38 commission shall not deny a license to a gambling establishment
39 solely because it is not open to the public, provided that all of the
40 following are true: (a) the gambling establishment is situated in a

1 local jurisdiction that has an ordinance allowing only private clubs,
2 and the gambling establishment was in operation as a private club
3 under that ordinance on December 31, 1997, and met all applicable
4 state and local gaming registration requirements; (b) the gambling
5 establishment consists of no more than five gaming tables; (c)
6 ~~videotaped~~ video recordings of the entrance to the gambling room
7 or rooms and all tables situated therein are made during all hours
8 of operation by means of closed circuit television cameras, and
9 these ~~tapes~~ recordings are retained for a period of 30 days and are
10 made available for review by the department or commission upon
11 request; and (d) the gambling establishment is open to members
12 of the private club and their spouses in accordance with
13 membership criteria in effect as of December 31, 1997.

14 A gambling establishment meeting these criteria, in addition to
15 the other requirements of this chapter, may be licensed to operate
16 as a private club gambling establishment until November 30, 2003,
17 or until the ownership or operation of the gambling establishment
18 changes from the ownership or operation as of January 1, 1998,
19 whichever occurs first. Operation of the gambling establishments
20 after this date shall only be permitted if the local jurisdiction
21 approves an ordinance, pursuant to Sections 19961 and 19962,
22 authorizing the operation of gambling establishments that are open
23 to the public. The commission shall adopt regulations implementing
24 this section. Prior to the commission's issuance of a license to a
25 private club, the department shall ensure that the ownership of the
26 gambling establishment has remained constant since January 1,
27 1998, and the operation of the gambling establishment has not
28 been leased to any third party.

29 SEC. 9. Section 19870 of the Business and Professions Code
30 is amended to read:

31 19870. (a) The commission, after considering the
32 recommendation of the chief and any other testimony and written
33 comments as may be presented at the meeting, or as may have
34 been submitted in writing to the commission prior to the meeting,
35 may either deny the application or grant a license to an applicant
36 who it determines to be qualified to hold the license.

37 (b) When the commission grants an application for a license or
38 approval, the commission may limit or place restrictions thereon
39 as it may deem necessary in the public interest, consistent with the
40 policies described in this chapter.

(c) When an application is denied, the commission shall prepare and file a detailed statement of its reasons for the denial.

(d) All proceedings at a meeting of the commission relating to a license application shall be recorded stenographically or ~~on audiotape or videotape~~ *by audio or video recording*.

(e) A decision of the commission denying a license or approval, or imposing any condition or restriction on the grant of a license or approval may be reviewed by petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5 of the Code of Civil Procedure shall not apply to any judicial proceeding described in the foregoing sentence, and the court may grant the petition only if the court finds that the action of the commission was arbitrary and capricious, or that the action exceeded the commission's jurisdiction.

SEC. 10. Section 21701.1 of the Business and Professions Code is amended to read:

21701.1. (a) The owner or operator of a self-service storage facility or a household goods carrier, may, for a fee, transport individual storage containers to and from a self-service storage facility that he or she owns or operates. This transportation activity, whether performed by an owner, operator, or carrier, shall not be deemed transportation for compensation or hire as a business of used household goods and is not subject to regulation under Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code, provided that all of the following requirements are met:

(1) The fee charged (A) to deliver an empty individual storage container to a customer and to transport the loaded container to a self-service storage facility or (B) to return a loaded individual storage container from a self-service storage facility to the customer does not exceed one hundred dollars (\$100).

(2) The owner, operator, or carrier, or any affiliate of the owner, operator, or carrier, does not load, pack, or otherwise handle the contents of the container.

(3) The owner, operator, or carrier is registered under Chapter 2 (commencing with Section 34620) of Division 14.85 of the Vehicle Code or holds a permit under Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code.

(4) The owner, operator, or carrier has procured and maintained cargo insurance in the amount of at least twenty thousand dollars

1 (\$20,000) per shipment. Proof of cargo insurance coverage shall
2 be maintained on file and presented to the Department of Motor
3 Vehicles or Public Utilities Commission upon written request.

4 (5) The owner, operator, or carrier shall disclose to the customer
5 in advance the following information regarding the container
6 transfer service offered, in a written document separate from others
7 furnished at the time of disclosure:

8 (A) A detailed description of the transfer service, including a
9 commitment to use its best efforts to place the container in an
10 appropriate location designated by the customer.

11 (B) The dimensions and construction of the individual storage
12 containers used.

13 (C) The unit charge, if any, for the container transfer service
14 that is in addition to the storage charge or any other fees under the
15 rental agreement.

16 (D) The availability of delivery or pickup by the customer of
17 his or her goods at the self-service storage facility.

18 (E) The maximum allowable distance, measured from the
19 self-service storage facility, for the initial pickup and final delivery
20 of the loaded container.

21 (F) The precise terms of the company's right to move a container
22 from the initial storage location at its own discretion and a
23 statement that the customer will not be required to pay additional
24 charges with respect to that transfer.

25 (G) Conspicuous disclosure in bold text of the allocation of
26 responsibility for the risk of loss or damage to the customer's
27 goods, including any disclaimer of the company's liability, and
28 the procedure for presenting any claim regarding loss or damage
29 to the company.

30 The disclosure of terms and conditions required by this
31 subdivision, and the rental agreement, shall be received by the
32 customer a minimum of 72 hours prior to delivery of the empty
33 individual storage container; however, the customer may, in
34 writing, knowingly and voluntarily waive that receipt. The
35 company shall record in writing, and retain for a period of at least
36 six months after the end of the rental, the time and method of
37 delivery of the information, any waiver made by the customer, and
38 the times and dates of initial pickup and redelivery of the
39 containerized goods.

1 (6) No later than the time the empty individual storage container
2 is delivered to the customer, the company shall provide the
3 customer with an informational brochure containing the following
4 information about loading the container:

5 (A) Packing and loading tips to minimize damage in transit.

6 (B) A suggestion that the customer make an inventory of the
7 items as they are loaded and keep any other record (for example,
8 photographs or ~~videotape~~ *video recording*) that may assist in any
9 subsequent claims processing.

10 (C) A list of items that are impermissible to pack in the container
11 (for example, flammable items).

12 (D) A list of items that are not recommended to be packed in
13 light of foreseeable hazards inherent in the company's handling
14 of the containers and in light of any limitation of liability contained
15 in the rental agreement.

16 (b) Pickup and delivery of the individual storage containers
17 shall be on a date agreed upon between the customer and the
18 company. If the company requires the customer to be physically
19 present at the time of pickup, the company shall in fact be at the
20 customer's premises prepared to perform the service not more than
21 four hours later than the scheduled time agreed to by the customer
22 and company, and in the event of a preventable breach of that
23 obligation by the company, the customer shall be entitled to receive
24 a penalty of fifty dollars (\$50) from the company and to elect
25 rescission of the rental agreement without liability.

26 (c) No charge shall be assessed with respect to any movement
27 of the container between self-service storage facilities by the
28 company at its own discretion, nor for the delivery of a container
29 to a customer's premises if the customer advises the company, at
30 least 24 hours before the agreed time of container dropoff, orally
31 or in writing, that he or she is rescinding the request for service.

32 (d) For purposes of this chapter, "individual storage container"
33 means a container that meets all of the following requirements:

34 (1) It shall be fully enclosed and locked.

35 (2) It contains not less than 100 *cubic feet* and not more than
36 1,100 cubic feet.

37 (3) It is constructed out of a durable material appropriate for
38 repeated use. A box constructed out of cardboard or a similar
39 material shall not constitute an individual storage container for
40 purposes of this section.

1 (e) Nothing in this section shall be construed to limit the
2 authority of the Public Utilities Commission to investigate and
3 commence an appropriate enforcement action pursuant to Chapter
4 7 (commencing with Section 5101) of Division 2 of the Public
5 Utilities Code against any person transporting household goods in
6 individual storage containers in a manner other than that described
7 in this section.

8 SEC. 11. Section 25658.4 of the Business and Professions
9 Code is amended to read:

10 25658.4. (a) ~~On and after January 1, 1992, no~~ No clerk shall
11 make an off sale of alcoholic beverages unless the clerk executes
12 under penalty of perjury on the first day he or she makes that sale
13 an application and acknowledgment. The application and
14 acknowledgment shall be in a form understandable to the clerk.

15 (1) The department shall specify the form of the application and
16 acknowledgment, which shall include at a minimum a summary
17 of this division pertaining to the following:

18 (A) The prohibitions contained in Sections 25658 and 25658.5
19 pertaining to the sale to, and purchase of, alcoholic beverages by
20 persons under 21 years of age.

21 (B) Bona fide evidence of majority as provided in Section
22 25660.

23 (C) Hours of operation as provided in Article 2 (commencing
24 with Section ~~25630~~) of Chapter ~~16~~ 25631).

25 (D) The prohibitions contained in subdivision (a) of Section
26 25602 and Section 25602.1 pertaining to sales to an intoxicated
27 person.

28 (E) Sections 23393 and 23394 as they pertain to on-premises
29 consumption of alcoholic beverages in an off-sale premises.

30 (F) The requirements and prohibitions contained in Section
31 25659.5 pertaining to sales of keg beer for consumption off
32 licensed premises.

33 (2) The application and acknowledgment shall also include a
34 statement that the clerk has read and understands the summary, a
35 statement that the clerk has never been convicted of violating this
36 division or, if convicted, an explanation of the circumstances of
37 each conviction, and a statement that the application and
38 acknowledgment is executed under penalty of perjury.

39 (3) The licensee shall keep the executed application and
40 acknowledgment on the premises at all times and available for

1 inspection by the department. A licensee with more than one
2 licensed off-sale premises in the state may comply with this
3 subdivision by maintaining an executed application and
4 acknowledgment at a designated licensed premises, regional office,
5 or headquarters office in the state. An executed application and
6 acknowledgment maintained at the designated locations shall be
7 valid for all licensed off-sale premises owned by the licensee. Any
8 licensee maintaining an application and acknowledgment at a
9 designated site other than the individual licensed off-sale premises
10 shall notify the department in advance and in writing of the site
11 where the application and acknowledgment shall be maintained
12 and available for inspection. A licensee electing to maintain
13 application and acknowledgments at a designated site other than
14 the licensed premises shall maintain at each licensed premises a
15 notice of where the executed application and acknowledgments
16 are located. Any licensee with more than one licensed off-sale
17 premises who elects to maintain the application and
18 acknowledgments at a designated site other than each licensed
19 premises shall provide the department, upon written demand, a
20 copy of any employee's executed application and acknowledgment
21 within 10 business days. A violation of this subdivision by a
22 licensee constitutes grounds for discipline by the department.

23 (b) ~~On and after January 1, 1992, the~~ The licensee shall post a
24 notice that contains and describes, in concise terms, prohibited
25 sales of alcoholic beverages, a statement that the off-sale seller
26 will refuse to make a sale if the seller reasonably suspects that the
27 Alcoholic Beverage Control Act may be violated, and a statement
28 that a minor who purchases or attempts to purchase alcoholic
29 beverages is subject to suspension or delay in the issuance of his
30 or her driver's license pursuant to Section 13202.5 of the Vehicle
31 Code. The notice shall be posted at an entrance or at a point of
32 sale in the licensed premises or in any other location that is visible
33 to purchasers of alcoholic beverages and to the off-sale seller.

34 (c) ~~On and after January 1, 1998, a~~ A retail licensee shall post
35 a notice that contains and describes, in concise terms, the fines
36 and penalties for any violation of Section 25658, relating to the
37 sale of alcoholic beverages to, or the purchase of alcoholic
38 beverages by, any person under the age of 21 years.

39 (d) Nonprofit organizations or licensees may obtain ~~videotapes~~
40 *video recordings* and other training materials from the department

1 on the Licensee Education on Alcohol and Drugs (LEAD) program.
2 The ~~videotapes~~ *video recordings* and training materials may be
3 updated periodically and may be provided in English and other
4 languages, and when made available by the department, shall be
5 provided at cost.

6 (e) As used in this section:

7 (1) "Off-sale seller" means any person holding a retail off-sale
8 license issued by the department and any person employed by that
9 licensee who in the course of that employment sells alcoholic
10 beverages.

11 (2) "Clerk" means an off-sale seller who is not a licensee.

12 (f) The department may adopt rules and appropriate fees for
13 licensees that it determines necessary for the administration of this
14 section.

15 SEC. 12. Section 916 of the Civil Code is amended to read:

16 916. (a) If a builder elects to inspect the claimed unmet
17 standards, the builder shall complete the initial inspection and
18 testing within 14 days after acknowledgment of receipt of the
19 notice of the claim, at a mutually convenient date and time. If the
20 homeowner has retained legal representation, the inspection shall
21 be scheduled with the legal representative's office at a mutually
22 convenient date and time, unless the legal representative is
23 unavailable during the relevant time periods. All costs of builder
24 inspection and testing, including any damage caused by the builder
25 inspection, shall be borne by the builder. The builder shall also
26 provide written proof that the builder has liability insurance to
27 cover any damages or injuries occurring during inspection and
28 testing. The builder shall restore the property to its pretesting
29 condition within 48 hours of the testing. The builder shall, upon
30 request, allow the inspections to be observed and electronically
31 recorded, ~~videotaped~~ *video recorded*, or photographed by the
32 claimant or his or her legal representative.

33 (b) Nothing that occurs during a builder's or claimant's
34 inspection or testing may be used or introduced as evidence to
35 support a spoliation defense by any potential party in any
36 subsequent litigation.

37 (c) If a builder deems a second inspection or testing reasonably
38 necessary, and specifies the reasons therefor in writing within three
39 days following the initial inspection, the builder may conduct a
40 second inspection or testing. A second inspection or testing shall

1 be completed within 40 days of the initial inspection or testing.
2 All requirements concerning the initial inspection or testing shall
3 also apply to the second inspection or testing.

4 (d) If the builder fails to inspect or test the property within the
5 time specified, the claimant is released from the requirements of
6 this section and may proceed with the filing of an action. However,
7 the standards set forth in the other chapters of this title shall
8 continue to apply to the action.

9 (e) If a builder intends to hold a subcontractor, design
10 professional, individual product manufacturer, or material supplier,
11 including an insurance carrier, warranty company, or service
12 company, responsible for its contribution to the unmet standard,
13 the builder shall provide notice to that person or entity sufficiently
14 in advance to allow them to attend the initial, or if requested,
15 second inspection of any alleged unmet standard and to participate
16 in the repair process. The claimant and his or her legal
17 representative, if any, shall be advised in a reasonable time prior
18 to the inspection as to the identity of all persons or entities invited
19 to attend. This subdivision does not apply to the builder's insurance
20 company. Except with respect to any claims involving a repair
21 actually conducted under this chapter, nothing in this subdivision
22 shall be construed to relieve a subcontractor, design professional,
23 individual product manufacturer, or material supplier of any
24 liability under an action brought by a claimant.

25 SEC. 13. Section 922 of the Civil Code is amended to read:

26 922. The builder shall, upon request, allow the repair to be
27 observed and electronically recorded, ~~videotaped~~ *video recorded*,
28 or photographed by the claimant or his or her legal representative.
29 Nothing that occurs during the repair process may be used or
30 introduced as evidence to support a spoliation defense by any
31 potential party in any subsequent litigation.

32 SEC. 14. Section 1799.3 of the Civil Code is amended to read:

33 1799.3. (a) No person providing ~~video-cassette recording~~ sales
34 or rental services shall disclose any personal information or the
35 contents of any record, including sales or rental information, which
36 is prepared or maintained by that person, to any person, other than
37 the individual who is the subject of the record, without the written
38 consent of that individual.

39 (b) This section does not apply to any of the following:

1 (1) To a disclosure to any person pursuant to a subpoena or
2 court order.

3 (2) To a disclosure ~~which~~ *that* is in response to the proper use
4 of discovery in a pending civil action.

5 (3) To a disclosure to any person acting pursuant to a lawful
6 search warrant.

7 (4) To a disclosure to a law enforcement agency when required
8 for investigations of criminal activity, unless that disclosure is
9 prohibited by law.

10 (5) To a disclosure to a taxing agency for purposes of tax
11 administration.

12 (6) To a disclosure of names and addresses only for commercial
13 purposes.

14 (c) Any willful violation of this section shall be subject to a
15 civil penalty not to exceed five hundred dollars (\$500) for each
16 violation, which may be recovered in a civil action brought by the
17 person who is the subject of the records.

18 (d) (1) Any person who willfully violates this section on three
19 or more occasions in any six-month period shall, in addition, be
20 subject to a civil penalty not to exceed five hundred dollars (\$500)
21 for each violation, which may be assessed and recovered in a civil
22 action brought in the name of the people of the State of California
23 by the Attorney General, by any district attorney or city attorney,
24 or by a city prosecutor in any city or city and county having a
25 full-time city prosecutor, in any court of competent jurisdiction.

26 (2) If the action is brought by the Attorney General, one-half
27 of the penalty collected shall be paid to the treasurer of the county
28 in which the judgment was entered, and one-half to the General
29 Fund. If the action is brought by a district attorney, the penalty
30 collected shall be paid to the treasurer of the county in which the
31 judgment was entered. If the action is brought by a city attorney
32 or city prosecutor, one-half of the penalty shall be paid to the
33 treasurer of the city in which the judgment was entered, and
34 one-half to the treasurer of the county in which the judgment was
35 entered.

36 (e) The penalty provided by this section is not an exclusive
37 remedy, and does not affect any other relief or remedy provided
38 by law.

39 SEC. 15. Section 3344.1 of the Civil Code is amended to read:

3344.1. (a) (1) Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subdivision (c), shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by the injured party or parties, as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use and the person who violated the section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party or parties in any action under this section shall also be entitled to attorney's fees and costs.

(2) For purposes of this subdivision, a play, book, magazine, newspaper, musical composition, audiovisual work, radio or television program, single and original work of art, work of political or newsworthy value, or an advertisement or commercial announcement for any of these works, shall not be considered a product, article of merchandise, good, or service if it is fictional or nonfictional entertainment, or a dramatic, literary, or musical work.

(3) If a work that is protected under paragraph (2) includes within it a use in connection with a product, article of merchandise, good, or service, this use shall not be exempt under this subdivision, notwithstanding the unprotected use's inclusion in a work otherwise exempt under this subdivision, if the claimant proves that this use is so directly connected with a product, article of merchandise, good, or service as to constitute an act of advertising, selling, or soliciting purchases of that product, article of merchandise, good, or service by the deceased personality without prior consent from the person or persons specified in subdivision (c).

(b) The rights recognized under this section are property rights, freely transferable or descendible, in whole or in part, by contract or by means of any trust or any other testamentary instrument, executed before or after January 1, 1985. The rights recognized under this section shall be deemed to have existed at the time of death of any deceased personality who died prior to January 1, 1985, and, except as provided in subdivision (o), shall vest in the persons entitled to these property rights under the testamentary instrument of the deceased personality effective as of the date of his or her death. In the absence of an express transfer in a testamentary instrument of the deceased personality's rights in his or her name, voice, signature, photograph, or likeness, a provision in the testamentary instrument that provides for the disposition of the residue of the deceased personality's assets shall be effective to transfer the rights recognized under this section in accordance with the terms of that provision. The rights established by this section shall also be freely transferable or descendible by contract, trust, or any other testamentary instrument by any subsequent owner of the deceased personality's rights as recognized by this section. Nothing in this section shall be construed to render invalid or unenforceable any contract entered into by a deceased personality during his or her lifetime by which the deceased personality assigned the rights, in whole or in part, to use his or her name, voice, signature, photograph, or likeness, regardless of whether the contract was entered into before or after January 1, 1985.

(c) The consent required by this section shall be exercisable by the person or persons to whom the right of consent, or portion thereof, has been transferred in accordance with subdivision (b), or if no transfer has occurred, then by the person or persons to whom the right of consent, or portion thereof, has passed in accordance with subdivision (d).

(d) Subject to subdivisions (b) and (c), after the death of any person, the rights under this section shall belong to the following person or persons and may be exercised, on behalf of and for the benefit of all of those persons, by those persons who, in the aggregate, are entitled to more than a one-half interest in the rights:

(1) The entire interest in those rights ~~belong~~ *belongs* to the surviving spouse of the deceased personality unless there are any surviving children or grandchildren of the deceased personality,

1 in which case one-half of the entire interest in those rights ~~belong~~
2 *belongs* to the surviving spouse.

3 (2) The entire interest in those rights ~~belong~~ *belongs* to the
4 surviving children of the deceased personality and to the surviving
5 children of any dead child of the deceased personality unless the
6 deceased personality has a surviving spouse, in which case the
7 ownership of a one-half interest in rights is divided among the
8 surviving children and grandchildren.

9 (3) If there is no surviving spouse, and no surviving children or
10 grandchildren, then the entire interest in those rights ~~belong~~ *belongs*
11 to the surviving parent or parents of the deceased personality.

12 (4) The rights of the deceased personality's children and
13 grandchildren are in all cases divided among them and exercisable
14 in the manner provided in Section 240 of the Probate Code
15 according to the number of the deceased personality's children
16 represented. The share of the children of a dead child of a deceased
17 personality can be exercised only by the action of a majority of
18 them.

19 (e) If any deceased personality does not transfer his or her rights
20 under this section by contract, or by means of a trust or
21 testamentary instrument, and there are no surviving persons as
22 described in subdivision (d), then the rights set forth in subdivision
23 (a) shall terminate.

24 (f) (1) A successor in interest to the rights of a deceased
25 personality under this section or a licensee thereof ~~may~~ *shall* not
26 recover damages for a use prohibited by this section that occurs
27 before the successor in interest or licensee registers a claim of the
28 rights under paragraph (2).

29 (2) Any person claiming to be a successor in interest to the rights
30 of a deceased personality under this section or a licensee thereof
31 may register that claim with the Secretary of State on a form
32 prescribed by the Secretary of State and upon payment of a fee as
33 set forth in subdivision (d) of Section 12195 of the Government
34 Code. The form shall be verified and shall include the name and
35 date of death of the deceased personality, the name and address
36 of the claimant, the basis of the claim, and the rights claimed.

37 (3) Upon receipt and after filing of any document under this
38 section, the Secretary of State shall post the document along with
39 the entire registry of persons claiming to be a successor in interest
40 to the rights of a deceased personality or a registered licensee under

1 this section upon the World Wide Web, also known as the Internet.
2 The Secretary of State may microfilm or reproduce by other
3 techniques any of the filings or documents and destroy the original
4 filing or document. The microfilm or other reproduction of any
5 document under the provisions of this section shall be admissible
6 in any court of law. The microfilm or other reproduction of any
7 document may be destroyed by the Secretary of State 70 years
8 after the death of the personality named therein.

9 (4) Claims registered under this subdivision shall be public
10 records.

11 (g) No action shall be brought under this section by reason of
12 any use of a deceased personality's name, voice, signature,
13 photograph, or likeness occurring after the expiration of 70 years
14 after the death of the deceased personality.

15 (h) As used in this section, "deceased personality" means any
16 natural person whose name, voice, signature, photograph, or
17 likeness has commercial value at the time of his or her death,
18 whether or not during the lifetime of that natural person the person
19 used his or her name, voice, signature, photograph, or likeness on
20 or in products, merchandise, or goods, or for purposes of
21 advertising or selling, or solicitation of purchase of, products,
22 merchandise, goods, or services. A "deceased personality" shall
23 include, without limitation, any such natural person who has died
24 within 70 years prior to January 1, 1985.

25 (i) As used in this section, "photograph" means any photograph
26 or photographic reproduction, still or moving, or any video-tape
27 recording or live television transmission, of any person, such that
28 the deceased personality is readily identifiable. A deceased
29 personality shall be deemed to be readily identifiable from a
30 photograph when one who views the photograph with the naked
31 eye can reasonably determine who the person depicted in the
32 photograph is.

33 (j) For purposes of this section, a use of a name, voice, signature,
34 photograph, or likeness in connection with any news, public affairs,
35 or sports broadcast or account, or any political campaign, shall not
36 constitute a use for which consent is required under subdivision
37 (a).

38 (k) The use of a name, voice, signature, photograph, or likeness
39 in a commercial medium shall not constitute a use for which
40 consent is required under subdivision (a) solely because the

1 material containing the use is commercially sponsored or contains
2 paid advertising. Rather, it shall be a question of fact whether or
3 not the use of the deceased personality's name, voice, signature,
4 photograph, or likeness was so directly connected with the
5 commercial sponsorship or with the paid advertising as to constitute
6 a use for which consent is required under subdivision (a).

7 (l) Nothing in this section shall apply to the owners or employees
8 of any medium used for advertising, including, but not limited to,
9 newspapers, magazines, radio and television networks and stations,
10 cable television systems, billboards, and transit ads, by whom any
11 advertisement or solicitation in violation of this section is published
12 or disseminated, unless it is established that the owners or
13 employees had knowledge of the unauthorized use of the deceased
14 personality's name, voice, signature, photograph, or likeness as
15 prohibited by this section.

16 (m) The remedies provided for in this section are cumulative
17 and shall be in addition to any others provided for by law.

18 (n) This section shall apply to the adjudication of liability and
19 the imposition of any damages or other remedies in cases in which
20 the liability, damages, and other remedies arise from acts occurring
21 directly in this state. For purposes of this section, acts giving rise
22 to liability shall be limited to the use, on or in products,
23 merchandise, goods, or services, or the advertising or selling, or
24 soliciting purchases of, products, merchandise, goods, or services
25 prohibited by this section.

26 (o) Notwithstanding any provision of this section to the contrary,
27 if an action was taken prior to May 1, 2007, to exercise rights
28 recognized under this section relating to a deceased personality
29 who died prior to January 1, 1985, by a person described in
30 subdivision (d), other than a person who was disinherited by the
31 deceased personality in a testamentary instrument, and the exercise
32 of those rights was not challenged successfully in a court action
33 by a person described in subdivision (b), that exercise shall not be
34 affected by subdivision (b). In such a case, the rights that would
35 otherwise vest in one or more persons described in subdivision (b)
36 shall vest solely in the person or persons described in subdivision
37 (d), other than a person disinherited by the deceased personality
38 in a testamentary instrument, for all future purposes.

1 (p) The rights recognized by this section are expressly made
2 retroactive, including to those deceased personalities who died
3 before January 1, 1985.

4 SEC. 16. Section 129 of the Code of Civil Procedure is
5 amended to read:

6 129. Notwithstanding any other provision of law, no copy,
7 reproduction, or facsimile of any kind shall be made of any
8 photograph, negative, or print, including instant photographs and
9 ~~video-tapes recordings~~, of the body, or any portion of the body,
10 of a deceased person, taken by or for the coroner at the scene of
11 death or in the course of a post mortem examination or autopsy
12 made by or caused to be made by the coroner, except for use in a
13 criminal action or proceeding in this state ~~which~~ *that* relates to the
14 death of that person, or except as a court of this state permits, by
15 order after good cause has been shown and after written notification
16 of the request for the court order has been served, at least five days
17 before the order is made, upon the district attorney of the county
18 in which the post mortem examination or autopsy has been made
19 or caused to be made.

20 This section shall not apply to the making of such a copy,
21 reproduction, or facsimile for use in the field of forensic pathology,
22 for use in medical; or scientific education or research, or for use
23 by any law enforcement agency in this or any other state or the
24 United States.

25 This section shall apply to any such copy, reproduction, or
26 facsimile, and to any such photograph, negative, or print, heretofore
27 or hereafter made.

28 SEC. 17. Section 1033.5 of the Code of Civil Procedure is
29 amended to read:

30 1033.5. (a) The following items are allowable as costs under
31 Section 1032:

32 (1) Filing, motion, and jury fees.

33 (2) Juror food and lodging while they are kept together during
34 trial and after the jury retires for deliberation.

35 (3) Taking, ~~videotaping~~ *video recording*, and transcribing
36 necessary depositions including an original and one copy of those
37 taken by the claimant and one copy of depositions taken by the
38 party against whom costs are allowed, and travel expenses to attend
39 depositions.

(4) Service of process by a public officer, registered process server, or other means, as follows:

(A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

(B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stakeout or other means employed in locating the person to be served, unless ~~such~~ those charges are successfully challenged by a party to the action.

(C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service.

(D) When service is by a means other than that set forth in subparagraph (A), (B), or (C), the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for ~~such~~ that service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).

(5) Expenses of attachment including keeper's fees.

(6) Premiums on necessary surety bonds.

(7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

(8) Fees of expert witnesses ordered by the court.

(9) Transcripts of court proceedings ordered by the court.

(10) ~~Attorney~~ Attorney's fees, when authorized by any of the following:

(A) Contract.

(B) Statute.

(C) Law.

(11) Court ~~reporters~~ reporter fees as established by statute.

(12) Models and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.

(13) Any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal.

(b) The following items are not allowable as costs, except when expressly authorized by law:

(1) Fees of experts not ordered by the court.

1 (2) Investigation expenses in preparing the case for trial.

2 (3) Postage, telephone, and photocopying charges, except for
3 exhibits.

4 (4) Costs in investigation of jurors or in preparation for voir
5 dire.

6 (5) Transcripts of court proceedings not ordered by the court.

7 (c) Any award of costs shall be subject to the following:

8 (1) Costs are allowable if incurred, whether or not paid.

9 (2) Allowable costs shall be reasonably necessary to the conduct
10 of the litigation rather than merely convenient or beneficial to its
11 preparation.

12 (3) Allowable costs shall be reasonable in amount.

13 (4) Items not mentioned in this section and items assessed upon
14 application may be allowed or denied in the court's discretion.

15 (5) When any statute of this state refers to the award of "costs
16 and attorney's fees," attorney's fees are an item and component
17 of the costs to be awarded and are allowable as costs pursuant to
18 subparagraph (B) of paragraph (10) of subdivision (a). Any claim
19 not based upon the court's established schedule of attorney's fees
20 for actions on a contract shall bear the burden of proof. Attorney's
21 fees allowable as costs pursuant to subparagraph (B) of paragraph
22 (10) of subdivision (a) may be fixed as follows: (A) upon a noticed
23 motion, (B) at the time a statement of decision is rendered, (C)
24 upon application supported by affidavit made concurrently with a
25 claim for other costs, or (D) upon entry of default judgment.
26 Attorney's fees allowable as costs pursuant to subparagraph (A)
27 or (C) of paragraph (10) of subdivision (a) shall be fixed either
28 upon a noticed motion or upon entry of a default judgment, unless
29 otherwise provided by stipulation of the parties.

30 Attorney's fees awarded pursuant to Section 1717 of the Civil
31 Code are allowable costs under Section 1032 *of this code* as
32 authorized by subparagraph (A) of paragraph (10) of subdivision
33 (a).

34 SEC. 18. Section 2025.560 of the Code of Civil Procedure is
35 amended to read:

36 2025.560. (a) An audio or video ~~record~~ *recording* of deposition
37 testimony made by, or at the direction of, any party, including a
38 certified ~~tape~~ *recording* made by an operator qualified under
39 subdivisions (b) to (f), inclusive, of Section 2025.340, shall not
40 be filed with the court. Instead, the operator shall retain custody

1 of that ~~record~~ *recording* and shall store it under conditions that
2 will protect it against loss, destruction, or tampering, and preserve
3 as far as practicable the quality of the recording and the integrity
4 of the testimony and images it contains.

5 (b) At the request of any party to the action, including a party
6 who did not attend the taking of the deposition testimony, or at
7 the request of the deponent, that operator shall promptly do both
8 of the following:

9 (1) Permit the one making the request to hear or to view the
10 recording on receipt of payment of a reasonable charge for
11 providing the facilities for hearing or viewing the recording.

12 (2) Furnish a copy of the audio or video recording to the one
13 making the request on receipt of payment of the reasonable cost
14 of making that copy of the recording.

15 (c) The attorney or operator who has custody of an audio or
16 video ~~record~~ *recording* of deposition testimony made by, or at the
17 direction of, any party, shall retain custody of it until six months
18 after final disposition of the action. At that time, the audio or video
19 recording may be destroyed or erased, unless the court, on motion
20 of any party and for good cause shown, orders that the recording
21 be preserved for a longer period.

22 SEC. 19. Section 8971 of the Education Code is amended to
23 read:

24 8971. As used in this chapter, the following terms shall have
25 the following meanings:

26 (a) “Child development program” means a full-day or part-day
27 comprehensive developmental program for children ages 0 to 14
28 years that is administered by the State Department of Education.

29 (b) “Early primary program,” means an integrated, experiential,
30 and developmentally appropriate educational program for children
31 in preschool, kindergarten, and grades 1 to 3, inclusive, that
32 incorporates various instructional strategies and authentic
33 assessment practices, including educationally appropriate curricula,
34 heterogeneous groupings, active learning activities, oral language
35 development, small-group instruction, peer interaction, use of
36 concrete manipulative materials in the classroom, planned
37 articulation among preschool, kindergarten, and primary grades,
38 and parent involvement and education.

39 (c) “Integrated, experiential, and developmentally appropriate
40 educational program” means a program that is designed around

1 the abilities and interests of the children in the program and one
2 in which children learn about the various subjects simultaneously,
3 as opposed to segmented courses, and through “hands-on” or
4 “active learning” teaching methods that are more appropriate for
5 young children than the academic “textbook” approach.

6 (d) “Preschool program” means a comprehensive developmental
7 program for children who are too young to enroll in kindergarten.

8 (e) “Portfolio material” means a selection of representative
9 samples of the child’s performance within the program setting that
10 may include, but not be limited to, teacher observations, work
11 samples, developmental profiles, photographs, and audio or video
12 ~~tapes~~ *recordings* that present a picture of the child’s progress over
13 time.

14 (f) “School district” includes county offices of education.

15 (g) “State preschool program,” means a part-day comprehensive
16 developmental program for children three to five years of age from
17 low-income families, administered by the State Department of
18 Education.

19 SEC. 20. Section 17002 of the Education Code is amended to
20 read:

21 17002. The following terms wherever used or referred to in
22 this chapter, shall have the following meanings, respectively, unless
23 a different meaning appears from the context:

24 (a) “Apportionment” means a reservation of funds necessary to
25 finance the cost of any project approved by the board for lease to
26 an applicant school district.

27 (b) “Board” means the State Allocation Board.

28 (c) “Cost of project” includes, but is not limited to, the cost of
29 all real estate property rights, and easements acquired, and the cost
30 of developing the site and streets and utilities immediately adjacent
31 thereto, the cost of construction, reconstruction, or modernization
32 of buildings and the furnishing and equipping, including the
33 purchase of educational technology hardware, of those buildings,
34 the supporting wiring and cabling, and the technological
35 modernization of existing buildings to support that hardware, the
36 cost of plans, specifications, surveys, and estimates of costs, and
37 other expenses that are necessary or incidental to the financing of
38 the project. For purposes of this section, “educational technology
39 hardware” includes, but is not limited to, computers, telephones,
40 televisions, and video ~~cassette recorders~~ *recording equipment*.

(d) (1) “Good repair” means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to a school facility inspection and evaluation instrument developed by the Office of Public School Construction and approved by the board or a local evaluation instrument that meets the same criteria. Until the school facility inspection and evaluation instrument is approved by the board, “good repair” means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined by the interim evaluation instrument developed by the Office of Public School Construction or a local evaluation instrument that meets the same criteria as the interim evaluation instrument. The school facility inspection and evaluation instrument and local evaluation instruments that meet the minimum criteria of this subdivision shall not require capital enhancements beyond the standards to which the facility was designed and constructed. In order to provide that school facilities are reviewed to be clean, safe, and functional, the school facility inspection and evaluation instrument and local evaluation instruments shall include at least the following criteria:

(A) Gas systems and pipes appear and smell safe, functional, and free of leaks.

(B) ~~(i) Mechanical systems, including heating, ventilation, and air-conditioning systems, are functional and unobstructed.~~ *satisfy the following:*

(i) Are functional and unobstructed.

(ii) Appear to supply adequate amount of air to all classrooms, work spaces, and facilities.

(iii) Maintain interior temperatures within normally acceptable ranges.

(C) Doors and windows are intact, functional, and open, close, and lock as designed, unless there is a valid reason they should not function as designed.

(D) Fences and gates are intact, functional, and free of holes and other conditions that could present a safety hazard to pupils, staff, or others. Locks and other security hardware function as designed.

(E) Interior surfaces, including walls, floors, and ceilings, are free of safety hazards from tears, holes, missing floor and ceiling tiles, torn carpet, water damage, or other cause. Ceiling tiles are intact. Surfaces display no evidence of mold or mildew.

1 (F) Hazardous and flammable materials are stored properly. No
2 evidence of peeling, chipping, or cracking paint is apparent. No
3 indicators of mold, mildew, or asbestos exposure are evident. There
4 is no apparent evidence of hazardous materials that may pose a
5 threat to the health and safety of pupils or staff.

6 (G) Structures, including posts, beams, supports for portable
7 classrooms and ramps, and other structural building members
8 appear intact, secure, and functional as designed. Ceilings and
9 floors are not sloping or sagging beyond their intended design.
10 There is no visible evidence of severe cracks, dry rot, mold, or
11 damage that undermines structural components.

12 (H) Fire sprinklers, fire extinguishers, emergency alarm systems,
13 and all emergency equipment and systems appear to be functioning
14 properly. Fire alarm pull stations are clearly visible. Fire
15 extinguishers are current and placed in all required areas, including
16 every classroom and assembly area. Emergency exits are clearly
17 marked and unobstructed.

18 (I) Electrical systems, components, and equipment, including
19 switches, junction boxes, panels, wiring, outlets, and light fixtures,
20 are securely enclosed, properly covered and guarded from pupil
21 access, and appear to be working properly.

22 (J) Lighting appears to be adequate and working properly. Lights
23 do not flicker, dim, or malfunction, and there is no unusual hum
24 or noise from light fixtures. Exterior lights onsite appear to be
25 working properly.

26 (K) No visible or odorous indicators of pest or vermin infestation
27 are evident.

28 (L) Interior and exterior drinking fountains are functional,
29 accessible, and free of leaks. Drinking fountain water pressure is
30 adequate. Fountain water is clear and without unusual taste or
31 odor, and moss, mold, or excessive staining is not evident.

32 (M) ~~(i) Restrooms and restroom fixtures are functional.~~ *satisfy*
33 *the following:*

34 (i) *Are functional.*

35 (ii) *Appear to be maintained and stocked with supplies regularly.*

36 (iii) *Appear to be accessible to pupils during the schoolday.*

37 (iv) *Appear to be in compliance with Section 35292.5.*

38 (N) The sanitary sewer system controls odor as designed,
39 displays no signs of stoppage, backup, or flooding, in the facilities
40 or on school grounds, and appears to be functioning properly.

(O) Roofs, gutters, roof drains, and downspouts appear to be functioning properly and are free of visible damage and evidence of disrepair when observed from the ground inside and outside of the building.

(P) The school grounds do not exhibit signs of drainage problems, such as visible evidence of flooded areas, eroded soil, water damage to asphalt playgrounds or parking areas, or clogged storm drain inlets.

(Q) Playground equipment and exterior fixtures, seating, tables, and equipment are functional and free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(R) School grounds, fields, walkways, and parking lot surfaces are free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(S) Overall cleanliness of the school grounds, buildings, common areas, and individual rooms demonstrates that all areas appear to have been cleaned regularly; and are free of accumulated refuse and unabated graffiti. Restrooms, drinking fountains, and food preparation or serving areas appear to have been cleaned each day that the school is in session.

(2) (A) On or before January 1, 2007, the Office of Public School Construction shall develop the school facility inspection and evaluation instrument and instructions for users. The school facility inspection and evaluation instrument and local evaluation instruments that meet the minimum criteria of this subdivision shall include a system that will evaluate each facility, based on the criteria listed in paragraph (1), on a scale of “good,” “fair,” or “poor,” as developed by the Office of Public School Construction, and provide an overall summary of the conditions at each school on a scale of “exemplary,” “good,” “fair,” or “poor.”

(B) On or before July 1, 2007, the Office of Public School Construction, in consultation with county offices of education, shall define objective criteria for determining the overall summary of the conditions of schools.

(C) For purposes of this paragraph, “users” means local educational agencies that participate in either of the programs established pursuant to this chapter, Chapter 12.5 (commencing with Section 17070.10), or Section 17582.

(e) “Lease” includes a lease with an option to purchase.

(f) "Project" means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction or modernization of existing buildings, construction of new buildings, the grading and development of sites, acquisition of sites therefor and any easements or rights-of-way pertinent thereto or necessary for its full use including the development of streets and utilities.

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

SEC. 21. Section 18032 of the Education Code is amended to read:

18032. (a) Every public library that receives state funds pursuant to this chapter and that provides public access to ~~motion picture videotapes~~ *video recordings* shall, by a majority vote of the governing board, adopt a policy regarding access by minors to ~~motion picture videotapes~~ *video recordings* by January 1, 2000.

(b) Every public library that is required to adopt a policy pursuant to subdivision (a) shall make that policy available to members of the public at every library branch.

SEC. 22. Section 19323 of the Education Code is amended to read:

19323. The State Librarian shall make available *in the state* on a loan basis to legally blind persons, or to persons with a disability that prevents them from reading conventional printed materials, ~~in the state tape~~ *audio* recordings of books and other related materials. The ~~tape~~ *audio* recordings shall be selected by the *California* State Library on the same basis as the *California* State Library's general program for providing library materials to legally blind readers.

SEC. 23. Section 32255 of the Education Code is amended to read:

32255. As used in this chapter:

(a) "Animal" means any living organism of the kingdom animalia, beings that typically differ from plants in capacity for spontaneous movement and rapid motor response to stimulation by a usually greater mobility with some degree of voluntary locomotor ability and by greater irritability commonly mediated through a more or less centralized nervous system, beings that are characterized by a requirement for complex organic nutrients

1 including proteins or their constituents that are usually digested
2 in an internal cavity before assimilation into the body proper, and
3 beings that are distinguished from typical plants by lack of
4 chlorophyll, by an inability to perform photosynthesis, by cells
5 that lack cellulose walls, and by the frequent presence of discrete
6 complex sense organs.

7 (b) “Alternative education project” includes, but is not limited
8 to, the use of video ~~tapes~~ *recordings*, models, films, books, and
9 computers, which would provide an alternate avenue for obtaining
10 the knowledge, information, or experience required by the course
11 of study in question. “Alternative education project” also includes
12 “alternative test.”

13 (c) “Pupil” means a person under 18 years of age who is
14 matriculated in a course of instruction in an educational institution
15 within the scope of Section 32255.5. For the purpose of asserting
16 the pupil’s rights and receiving any notice or response pursuant to
17 this chapter, “pupil” also includes the parents of the matriculated
18 minor.

19 SEC. 24. Section 49091.10 of the Education Code is amended
20 to read:

21 49091.10. (a) All primary supplemental instructional materials
22 and assessments, including textbooks, teacher’s manuals, films,
23 ~~tapes~~ *audio and video recordings*, and software shall be compiled
24 and stored by the classroom instructor and made available promptly
25 for inspection by a parent or guardian in a reasonable timeframe
26 or in accordance with procedures determined by the governing
27 board of the school district.

28 (b) A parent or guardian has the right to observe instruction and
29 other school activities that involve his or her child in accordance
30 with procedures determined by the governing board of the school
31 district to ensure the safety of pupils and school personnel and to
32 prevent undue interference with instruction or harassment of school
33 personnel. Reasonable accommodation of parents and guardians
34 shall be considered by the governing board of the school district.
35 Upon written request by the parent or guardian, school officials
36 shall arrange for the parental observation of the requested class or
37 classes or activities by that parent or guardian in a reasonable
38 timeframe and in accordance with procedures determined by the
39 governing board of the school district.

SEC. 25. Section 52740 of the Education Code is amended to read:

52740. (a) It is the intent of the Legislature to provide accurate instructional materials to schools on all of the following topics:

(1) The internment in the United States of persons of Japanese origin and its impact on ~~Japanese-American~~ *Japanese American* citizens.

(2) The Armenian genocide.

(3) The World War II internment, relocation, and restriction in the United States of persons of Italian origin and its impact on the ~~Italian-American~~ *Italian American* community.

(b) The Legislature finds and declares that there are few films or ~~videotapes~~ *video recordings* available on the subjects of the internment of persons of Japanese origin, the Armenian genocide, and the World War II internment, relocation, and restriction of persons of Italian origin; for teachers to use when teaching pupils about these three devastating events. The shortage of available films or ~~videotapes~~ *video recordings* on these subjects is especially true for the Armenian genocide.

(c) The Legislature hereby finds and declares that films and ~~videotapes~~ *video recordings* giving a historically accurate depiction of the internment in the United States of persons of Japanese origin during World War II, the Armenian genocide, and the World War II internment, relocation, and restriction of persons of Italian origin; should be made in order that pupils will recognize these events for the horror they represented. The Legislature hereby encourages teachers to use these films and ~~videotapes~~ *video recordings* as a resource in teaching pupils about these three important historical events that are commonly overlooked in today's school curriculum.

SEC. 26. Section 52742 of the Education Code is amended to read:

52742. The films or ~~video-tapes~~ *recordings* produced pursuant to this article shall be submitted to the Curriculum Development and Supplemental Materials Commission for its review, and may be made available to schools, as provided by this article, only upon adoption by the Curriculum Development and Supplemental Materials Commission.

SEC. 27. Section 52743 of the Education Code is amended to read:

1 52743. The State Department of Education shall make available
2 the films or video ~~tapes~~ *recordings* produced pursuant to this article
3 to schools.

4 SEC. 28. Section 56341.1 of the Education Code is amended
5 to read:

6 56341.1. (a) When developing each pupil's individualized
7 education program, the individualized education program team
8 shall consider the following:

9 (1) The strengths of the pupil.

10 (2) The concerns of the parents or guardians for enhancing the
11 education of the pupil.

12 (3) The results of the initial assessment or most recent
13 assessment of the pupil.

14 (4) The academic, developmental, and functional needs of the
15 child.

16 (b) The individualized education program team shall do the
17 following:

18 (1) In the case of a pupil whose behavior impedes his or her
19 learning or that of others, consider the use of positive behavioral
20 interventions and supports, and other strategies, to address that
21 behavior.

22 (2) In the case of a pupil with limited English proficiency,
23 consider the language needs of the pupil as those needs relate to
24 the pupil's individualized education program.

25 (3) In the case of a pupil who is blind or visually impaired,
26 provide for instruction in braille, and the use of braille, unless the
27 individualized education program team determines, after an
28 assessment of the pupil's reading and writing skills, needs, and
29 appropriate reading and writing media, including an assessment
30 of the pupil's future needs for instruction in braille or the use of
31 braille, that instruction in braille or the use of braille is not
32 appropriate for the pupil.

33 (4) Consider the communication needs of the pupil, and in the
34 case of a pupil who is deaf or hard of hearing, consider the pupil's
35 language and communication needs, opportunities for direct
36 communications with peers and professional personnel in the
37 pupil's language and communication mode, academic level, and
38 full range of needs, including opportunities for direct instruction
39 in the pupil's language and communication mode.

1 (5) Consider whether the pupil requires assistive technology
2 devices and services as defined in Section 1401(1) and (2) of Title
3 20 of the United States Code.

4 (c) If, in considering the special factors described in subdivisions
5 (a) and (b), the individualized education program team determines
6 that a pupil needs a particular device or service, including an
7 intervention, accommodation, or other program modification, in
8 order for the pupil to receive a free appropriate public education,
9 the individualized education program team shall include a statement
10 to that effect in the pupil's individualized education program.

11 (d) The individualized education program team shall review the
12 pupil's individualized education program periodically, but not less
13 frequently than annually, to determine whether the annual goals
14 for the pupil are being achieved, and revise the individualized
15 education program, as appropriate, to address, among other matters,
16 the following:

17 (1) A lack of expected progress toward the annual goals and in
18 the general education curriculum, where appropriate.

19 (2) The results of any reassessment conducted pursuant to
20 Section 56381.

21 (3) Information about the pupil provided to, or by, the parents
22 or guardians, as described in subdivision (b) of Section 56381.

23 (4) The pupil's anticipated needs.

24 (5) Any other relevant matter.

25 (e) A regular education teacher of the pupil, who is a member
26 of the individualized education program team, shall participate,
27 consistent with Section 1414(d)(1)(C) of Title 20 of the United
28 States Code, in the review and revision of the individualized
29 education program of the pupil.

30 (f) The parent or guardian shall have the right to present
31 information to the individualized education program team in person
32 or through a representative and the right to participate in meetings,
33 relating to eligibility for special education and related services,
34 recommendations, and program planning.

35 (g) (1) Notwithstanding Section 632 of the Penal Code, the
36 parent or guardian or local educational agency shall have the right
37 to *audio* record ~~electronically~~ the proceedings of individualized
38 education program team meetings ~~on an audiotape recorder~~. The
39 parent or guardian or local educational agency shall notify the
40 members of the individualized education program team of his, her,

1 or its intent to *audio* record a meeting at least 24 hours prior to the
2 meeting. If the local educational agency initiates the notice of
3 intent to ~~audiotape~~ *audio* record a meeting and the parent or
4 guardian objects or refuses to attend the meeting because it will
5 be ~~tape~~ *audio* recorded, the meeting shall not be ~~recorded on an~~
6 ~~audiotape recorder~~ *audio recorded*.

7 (2) The Legislature hereby finds as follows:

8 (A) Under federal law, ~~audiotape~~ *audio* recordings made by a
9 local educational agency are subject to the federal Family
10 Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec.
11 1232g), and are subject to the confidentiality requirements of the
12 regulations under Sections 300.610 to 300.626, inclusive, of ~~Part~~
13 *Title 34* of the Code of Federal Regulations.

14 (B) Parents or guardians have the right, pursuant to Sections
15 99.10 to 99.22, inclusive, of *Title 34* of the Code of Federal
16 Regulations, to do all of the following:

17 (i) Inspect and review the ~~tape~~ *audio* recordings.

18 (ii) Request that the ~~tape~~ *audio* recordings be amended if the
19 parent or guardian believes that they contain information that is
20 inaccurate, misleading, or in violation of the rights of privacy or
21 other rights of the individual with exceptional needs.

22 (iii) Challenge, in a hearing, information that the parent or
23 guardian believes is inaccurate, misleading, or in violation of the
24 individual's rights of privacy or other rights.

25 (h) It is the intent of the Legislature that the individualized
26 education program team meetings be nonadversarial and convened
27 solely for the purpose of making educational decisions for the good
28 of the individual with exceptional needs.

29 SEC. 29. Section 60204 of the Education Code is amended to
30 read:

31 60204. The commission shall:

32 (a) Recommend curriculum frameworks to the state board.

33 (b) Develop criteria for evaluating instructional materials
34 submitted for adoption so that the materials adopted shall
35 adequately cover the subjects in the indicated grade or grades and
36 ~~which~~ comply with the provisions of Article 3 (commencing with
37 Section 60040) of Chapter 1. The criteria developed by the
38 commission shall be consistent with the duties of the state board
39 pursuant to Section 60200. The criteria shall be public information

1 and shall be provided in written or printed form to any person
2 requesting such information.

3 (c) Study and evaluate instructional materials submitted for
4 adoption.

5 (d) Recommend to the state board instructional materials ~~which~~
6 *that* it approves for adoption.

7 (e) Review and have the authority to adopt the educational films
8 ~~or videotapes~~ *video recordings* produced in accordance with Article
9 3 (commencing with Section 52740) of Chapter 11 of Part 28.

10 (f) Recommend to the state board policies and activities to assist
11 the department and school districts in the use of the curriculum
12 framework and other available model curriculum materials for the
13 purpose of guiding and strengthening the quality of instruction in
14 the public schools.

15 SEC. 30. Section 2052 of the Elections Code is amended to
16 read:

17 2052. It is the intent of the Legislature to promote the
18 fundamental right to vote of visually impaired individuals, and to
19 make efforts to improve public awareness of the availability of
20 ballot pamphlet ~~cassette tapes~~ *audio recordings* and improve their
21 delivery to these voters.

22 SEC. 31. Section 2053 of the Elections Code is amended to
23 read:

24 2053. (a) The Secretary of State shall establish a Visually
25 Impaired Voter Assistance Advisory Board. This board shall
26 consist of the Secretary of State or his or her designee and the
27 following membership, appointed by the Secretary of State:

28 (1) A representative from the State Advisory Council on
29 Libraries.

30 (2) One member from each of three private organizations. Two
31 of the organizations shall be representative of organizations for
32 blind persons in the state.

33 (b) The board shall do all of the following:

34 (1) Establish guidelines for reaching as many visually impaired
35 persons as practical.

36 (2) Make recommendations to the Secretary of State for
37 improving the availability and accessibility of ballot pamphlet
38 ~~cassette tapes~~ *audio recordings* and their delivery to visually
39 impaired voters. The Secretary of State may implement the
40 recommendations made by the board.

(3) Increase the distribution of public service announcements identifying the availability of ballot pamphlet ~~cassette tapes~~ *audio recordings* at least 45 days before any federal, state, and local election.

(4) Promote the Secretary of State's toll-free voter registration telephone line for citizens needing voter registration information, including information for those who are visually handicapped, and the toll-free telephone service regarding the California State Library and regional library service for the visually impaired.

(c) No member shall receive compensation, but each member shall be reimbursed for his or her reasonable and necessary expenses in connection with service on the board.

SEC. 32. Section 9082.5 of the Elections Code is amended to read:

9082.5. The Secretary of State shall cause to be produced an ~~audiocassette~~ *audio* recorded version of the state ballot pamphlet. This *audio* recorded ~~cassette~~ version shall be made available in quantities to be determined by the Secretary of State and shall contain an impartial summary, arguments for and against, rebuttal arguments, and other information concerning each measure that the Secretary of State determines will make the ~~cassette~~ *audio* recorded version of the state ballot pamphlet easier to understand or more useful to the average voter.

SEC. 33. Section 18541 of the Elections Code is amended to read:

18541. (a) No person shall, with the intent of dissuading another person from voting, within 100 feet of a polling place, do any of the following:

(1) Solicit a vote or speak to a voter on the subject of marking his or her ballot.

(2) Place a sign relating to voters' qualifications or speak to a voter on the subject of his or her qualifications except as provided in Section 14240.

(3) Photograph, ~~videotape~~ *video record*, or otherwise record a voter entering or exiting a polling place.

(b) Any violation of this section is punishable by imprisonment in a county jail for not more than 12 months, or in the state prison. Any person who conspires to violate this section is guilty of a felony.

1 (c) For purposes of this section, 100 feet means a distance of
2 100 feet from the room or rooms in which voters are signing the
3 roster and casting ballots.

4 SEC. 34. Section 795 of the Evidence Code is amended to read:

5 795. (a) The testimony of a witness is not inadmissible in a
6 criminal proceeding by reason of the fact that the witness has
7 previously undergone hypnosis for the purpose of recalling events
8 ~~which that~~ are the subject of the ~~witness's~~ ^{witness's} testimony, if
9 all of the following conditions are met:

10 (1) The testimony is limited to those matters ~~which that~~ the
11 witness recalled and related prior to the hypnosis.

12 (2) The substance of the prehypnotic memory was preserved in
13 ~~written, audiotape, or videotape form~~ *a writing, audio recording,*
14 *or video recording* prior to the hypnosis.

15 (3) The hypnosis was conducted in accordance with all of the
16 following procedures:

17 (A) A written record was made prior to hypnosis documenting
18 the subject's description of the event, and information ~~which that~~
19 was provided to the hypnotist concerning the subject matter of the
20 hypnosis.

21 (B) The subject gave informed consent to the hypnosis.

22 (C) The hypnosis session, including the pre- and post-hypnosis
23 interviews, was ~~videotape~~ *video* recorded for subsequent review.

24 (D) The hypnosis was performed by a licensed medical doctor,
25 psychologist, licensed clinical social worker, or a licensed marriage
26 and family therapist experienced in the use of hypnosis and
27 independent of and not in the presence of law enforcement, the
28 prosecution, or the defense.

29 (4) Prior to admission of the testimony, the court holds a hearing
30 pursuant to Section 402 ~~of the Evidence Code~~ at which the
31 proponent of the evidence proves by clear and convincing evidence
32 that the hypnosis did not so affect the witness as to render the
33 ~~witness's~~ ^{witness's} prehypnosis recollection unreliable or to
34 substantially impair the ability to cross-examine the witness
35 concerning the ~~witness's~~ ^{witness's} prehypnosis recollection. At the
36 hearing, each side shall have the right to present expert testimony
37 and to cross-examine witnesses.

38 (b) Nothing in this section shall be construed to limit the ability
39 of a party to attack the credibility of a witness who has undergone

1 hypnosis, or to limit other legal grounds to admit or exclude the
2 testimony of that witness.

3 SEC. 35. Section 1118 of the Evidence Code is amended to
4 read:

5 1118. An oral agreement “in accordance with Section 1118”
6 means an oral agreement that satisfies all of the following
7 conditions:

8 (a) The oral agreement is recorded by a court reporter, ~~tape~~
9 ~~recorder, or other reliable means of sound~~ audio recording.

10 (b) The terms of the oral agreement are recited on the record in
11 the presence of the parties and the mediator, and the parties express
12 on the record that they agree to the terms recited.

13 (c) The parties to the oral agreement expressly state on the
14 record that the agreement is enforceable, or binding or words to
15 that effect.

16 (d) The recording is reduced to writing and the writing is signed
17 by the parties within 72 hours after it is recorded.

18 SEC. 36. Section 1294 of the Evidence Code is amended to
19 read:

20 1294. (a) The following evidence of prior inconsistent
21 statements of a witness properly admitted in a preliminary hearing
22 or trial of the same criminal matter pursuant to Section 1235 is not
23 made inadmissible by the hearsay rule if the witness is unavailable
24 and former testimony of the witness is admitted pursuant to Section
25 1291:

26 (1) A ~~videotaped~~ *video recorded* statement introduced at a
27 preliminary hearing or prior proceeding concerning the same
28 criminal matter.

29 (2) A transcript, containing the statements, of the preliminary
30 hearing or prior proceeding concerning the same criminal matter.

31 (b) The party against whom the prior inconsistent statements
32 are offered, at his or her option, may examine or cross-examine
33 any person who testified at the preliminary hearing or prior
34 proceeding as to the prior inconsistent statements of the witness.

35 SEC. 37. Section 3170 of the Family Code is amended to read:

36 3170. (a) If it appears on the face of a petition, application, or
37 other pleading to obtain or modify a temporary or permanent
38 custody or visitation order that custody, visitation, or both are
39 contested, the court shall set the contested issues for mediation.

(b) Domestic violence cases shall be handled by Family Court Services in accordance with a separate written protocol approved by the Judicial Council. The Judicial Council shall adopt guidelines for services, other than services provided under this chapter, that counties may offer to parents who have been unable to resolve their disputes. These services may include, but are not limited to, parent education programs, booklets, ~~videotapes~~ *video recordings*, or referrals to additional community resources.

SEC. 38. Section 7572 of the Family Code is amended to read:

7572. (a) The Department of Child Support Services, in consultation with the State Department of Health Services, the California Association of Hospitals and Health Systems, and other affected health provider organizations, shall work cooperatively to develop written materials to assist providers and parents in complying with this chapter. This written material shall be updated periodically by the Department of Child Support Services to reflect changes in law, procedures, or public need.

(b) The written materials for parents which shall be attached to the form specified in Section 7574 and provided to unmarried parents shall contain the following information:

(1) A signed voluntary declaration of paternity that is filed with the Department of Child Support Services legally establishes paternity.

(2) The legal rights and obligations of both parents and the child that result from the establishment of paternity.

(3) An alleged father's constitutional rights to have the issue of paternity decided by a court; to notice of any hearing on the issue of paternity; to have an opportunity to present his case to the court, including his right to present and cross-examine witnesses; to have an attorney represent him; and to have an attorney appointed to represent him if he cannot afford one in a paternity action filed by a local child support agency.

(4) That by signing the voluntary declaration of paternity, the father is voluntarily waiving his constitutional rights.

(c) Parents shall also be given oral notice of the rights and responsibilities specified in subdivision (b). Oral notice may be accomplished through the use of audio or ~~videotape~~ *video recorded* programs developed by the Department of Child Support Services to the extent permitted by federal law.

(d) The Department of Child Support Services shall, free of charge, make available to hospitals, clinics, and other places of birth any and all informational and training materials for the program under this chapter, as well as the paternity declaration form. The Department of Child Support Services shall make training available to every participating hospital, clinic, local registrar of births and deaths, and other place of birth no later than June 30, 1999.

(e) The Department of Child Support Services may adopt regulations, including emergency regulations, necessary to implement this chapter.

SEC. 39. Section 10005 of the Family Code is amended to read:

10005. (a) By local rule, the superior court may designate additional duties of the family law facilitator, which may include, but are not limited to, the following:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Section 10012. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 10003.

(3) If the parties are unable to resolve issues with the assistance of the family law facilitator, prior to or at the hearing, and at the request of the court, the family law facilitator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed.

(4) Assisting the clerk in maintaining records.

(5) Preparing formal orders consistent with the court's announced order in cases where both parties are unrepresented.

(6) Serving as a special master in proceedings and making findings to the court unless he or she has served as a mediator in that case.

~~(7) Providing the services specified in Division 15 (commencing with Section 10100). Except for the funding specifically designated for visitation programs pursuant to Section 669B of Title 42 of the United States Code, Title IV-D child support funds shall not be used to fund the services specified in Division 15 (commencing with Section 10100).~~

(8)

(7) Providing the services specified in Section 10004 concerning the issues of child custody and visitation as they relate to calculating child support, if funding is provided for that purpose.

(b) If staff and other resources are available and the duties listed in subdivision (a) have been accomplished, the duties of the family law facilitator may also include the following:

(1) Assisting the court with research and any other responsibilities ~~which~~ *that* will enable the court to be responsive to the litigants' needs.

(2) Developing programs for bar and community outreach through day and evening programs, ~~videotapes~~ *video recordings*, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to family court. These programs shall specifically include information concerning underutilized legislation, such as expedited child support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9), and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children.

SEC. 40. Section 20034 of the Family Code is amended to read:

20034. (a) An attorney, known as an Attorney-Mediator, shall be hired to assist the court in resolving child and spousal support ~~disputes~~, *disputes*, to develop community outreach programs, and to undertake other duties as assigned by the court.

(b) The Attorney-Mediator shall be an attorney, licensed to practice in this state, with mediation or litigation experience, or both, in the field of family law.

(c) By local rule, the superior court may designate the duties of the Attorney-Mediator, which may include, but are not limited to, the following:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Preparing support schedules based on statutory guidelines accessed through existing up-to-date computer technology.

1 (3) Drafting stipulations to include all issues agreed to by the
2 parties, which may include issues other than those specified in
3 Section 20031.

4 (4) If the parties are unable to resolve issues with the assistance
5 of the Attorney-Mediator, prior to or at the hearing, and at the
6 request of the court, the Attorney-Mediator shall review the
7 paperwork, examine documents, prepare support schedules, and
8 advise the judge whether or not the matter is ready to proceed.

9 (5) Assisting the clerk in maintaining records.

10 (6) Preparing formal orders consistent with the court's
11 announced order in cases where both parties are unrepresented.

12 (7) Serving as a special master to hearing proceedings and
13 making findings to the court unless he or she has served as a
14 mediator in that case.

15 (8) Assisting the court with research and any other
16 responsibilities-~~which~~ *that* will enable the court to be responsive
17 to the litigants' needs.

18 (9) Developing programs for bar and community outreach
19 through day and evening programs, ~~videotapes~~ *video recordings*,
20 and other innovative means that will assist unrepresented and
21 financially disadvantaged litigants in gaining meaningful access
22 to ~~Family Court~~ *family court*. These programs shall specifically
23 include information concerning underutilized legislation, such as
24 expedited temporary support orders (Chapter 5 (commencing with
25 Section 3620) of Part 1 of Division 9), modification of support
26 orders (Article 3 (commencing with Section 3680) of Chapter 6
27 of Part 1 of Division 9), and preexisting, court-sponsored programs,
28 such as supervised visitation and appointment of attorneys for
29 children.

30 (d) The court shall develop a protocol wherein all litigants, both
31 unrepresented by counsel and represented by counsel, have ultimate
32 access to a hearing before the court.

33 SEC. 41. Section 8880.30 of the Government Code is amended
34 to read:

35 8880.30. The Commission shall promulgate regulations that
36 specify the method for determining winners in each lottery game,
37 provided:

38 (a) A lottery game may be based on the results of a horse race
39 with the consent of the association conducting the race and the
40 California Horse Racing Board. Any compensation received by

1 an association for the use of its races to determine the winners of
2 a lottery game shall be divided equally between commissions and
3 purses.

4 (b) If a lottery game utilizes a drawing of winning numbers, a
5 drawing among entries, or a drawing among finalists, the drawings
6 shall always be open to the public. No manual or physical selection
7 in the drawings shall be conducted by any employee of the Lottery.
8 Except for computer automated drawings, drawings shall be
9 witnessed by an independent lottery contractor having
10 qualifications established by the Commission. Any equipment
11 used in the drawings shall be inspected by the independent lottery
12 contractor and an employee of the Lottery both before and after
13 the drawings. The drawings and the inspections shall be *both audio*
14 *and video* recorded ~~on both videotape and audiotape~~.

15 (c) It is the intent of this chapter that the Commission may use
16 any of a variety of existing or future methods or technologies in
17 determining winners.

18 SEC. 42. Section 11124.1 of the Government Code is amended
19 to read:

20 11124.1. (a) Any person attending an open and public meeting
21 of the state body shall have the right to record the proceedings
22 with an audio or video ~~tape~~ recorder or a still or motion picture
23 camera in the absence of a reasonable finding by the state body
24 that the recording cannot continue without noise, illumination, or
25 obstruction of view that constitutes, or would constitute, a
26 persistent disruption of the proceedings.

27 (b) ~~Any tape or film record~~ *audio or video recording* of an open
28 and public meeting made for whatever purpose by or at the
29 direction of the state body shall be subject to inspection pursuant
30 to the California Public Records Act (Chapter 3.5 (commencing
31 with Section 6250) of Division 7 of Title 1), but may be erased or
32 destroyed 30 days after the ~~taping or~~ recording. Any inspection of
33 an audio or video ~~tape~~ recording shall be provided without charge
34 ~~on an audio or video tape player~~ *equipment* made available by the
35 state body.

36 (c) No state body shall prohibit or otherwise restrict the
37 broadcast of its open and public meetings in the absence of a
38 reasonable finding that the broadcast cannot be accomplished
39 without noise, illumination, or obstruction of view that would
40 constitute a persistent disruption of the proceedings.

SEC. 43. Section 11130 of the Government Code is amended to read:

11130. (a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to ~~tape~~ *audio* record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to ~~tape~~ *audio* record its closed sessions and preserve the ~~tape~~ *audio* recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The ~~tapes~~ *audio recordings* shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the ~~tape~~ *audio recording* is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the ~~tape~~ *audio* recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

1 (ii) An affidavit that contains specific facts indicating that a
2 violation of the act occurred in the closed session.

3 (3) If the court, following a review of the motion, finds that
4 there is good cause to believe that a violation has occurred, the
5 court may review, in camera, the recording of that portion of the
6 closed session alleged to have violated the act.

7 (4) If, following the ~~in-camera~~ *in camera* review, the court
8 concludes that disclosure of a portion of the recording would be
9 likely to materially assist in the resolution of the litigation alleging
10 violation of this article, the court shall, in its discretion, make a
11 certified transcript of the portion of the recording a public exhibit
12 in the proceeding.

13 (5) Nothing in this section shall permit discovery of
14 communications that are protected by the attorney-client privilege.

15 SEC. 44. Section 12811.3 of the Government Code is amended
16 to read:

17 12811.3. (a) Notwithstanding any other provision of law and
18 subject to the provisions of subdivision (i), any employee of a
19 department, board, or commission under the jurisdiction of the
20 Department of Corrections and Rehabilitation, who is designated
21 as a peace officer described in Chapter 4.5 (commencing with
22 Section 830) of Title 3 of Part 2 of the Penal Code, may transfer
23 from his or her current position to another department, board, or
24 commission under the jurisdiction of the Department of Corrections
25 and Rehabilitation.

26 (b) Any peace officer who desires to transfer to another
27 department, board, or commission pursuant to subdivision (a), and
28 who is prohibited from carrying a firearm pursuant to state or
29 federal law ~~may~~ *shall* not transfer to a department, board, or
30 commission that requires the use of a firearm.

31 (c) Any peace officer who desires to transfer to another
32 department, board, or commission pursuant to subdivision (a) to
33 a position requiring the ability to carry a firearm, as determined
34 by the department, board, or commission, and who has not
35 completed the required training pursuant to Section 832 of the
36 Penal Code, shall successfully complete the required training before
37 appointment to his or her new peace officer position.

38 (d) (1) Any peace officer who desires to transfer shall not be
39 required to undergo a psychological screening pursuant to
40 subdivision (f) of Section 1031 *of this code* or subdivision (a) of

1 Section 13601 of the Penal Code, unless the Secretary of the
2 Department of Corrections and Rehabilitation, or his or her
3 designee, makes a determination that a peace officer is required
4 to undergo all or a portion of a psychological screening as
5 described in subdivision (f) of Section 1031 of this code or
6 subdivision (a) of Section 13601 of the Penal Code.

7 (2) The Secretary of the Department of Corrections and
8 Rehabilitation shall promulgate emergency regulations in order to
9 implement paragraph (1). Notwithstanding subdivision (b) of
10 Section 11346.1, no showing of an emergency shall be necessary
11 in order to adopt, amend, or repeal the emergency regulations
12 required by this paragraph.

13 (e) Any peace officer who has successfully completed a course
14 of training pursuant to Section 13602 of the Penal Code and who
15 transfers to another department, board, or commission pursuant to
16 subdivision (a) shall not be required to complete a new course of
17 training pursuant to Section 13602 of the Penal Code. However,
18 each department, board, or commission may prescribe additional
19 training to be provided to an employee who transfers pursuant to
20 subdivision (a) and shall provide that training within the first six
21 months of appointment to his or her new peace officer position.

22 (f) Any peace officer who desires to transfer to another
23 department, board, or commission pursuant to subdivision (a) shall
24 not be required to undergo a new background investigation
25 pursuant to Section 1029.1.

26 (g) Nothing in this section shall affect an employee's seniority
27 calculation as provided for under current law or any memorandum
28 of understanding between the state and any applicable bargaining
29 unit agreement in effect upon the effective date of this section.

30 (h) The provisions of the Unit 6 Memorandum of Understanding,
31 which expires July 2, 2006, as modified by the ratified addendum
32 dated June 30, 2004, relating to the release of copies of ~~videotaped~~
33 *video recorded* incidents, shall be subject to the California Public
34 Records Act (*Chapter 3.5 (commencing with Section 6250) of*
35 *Division 7 of Title 1*).

36 (i) This section shall become operative only when the Secretary
37 of the Department of Corrections and Rehabilitation certifies in
38 writing that it is necessary to prevent or minimize employment
39 actions, including, but not limited to, layoffs, demotions, reductions
40 in time base, or involuntary transfers of employees. In addition,

1 the Secretary of the Department of Corrections and Rehabilitation
2 shall have the sole authority to designate any or all departments,
3 boards, or commissions eligible to have its peace officer employees
4 transfer pursuant to subdivision (a) and any or all departments,
5 boards, or commissions that shall accept peace officer employees
6 under this section.

7 SEC. 45. Section 14999.31 of the Government Code is amended
8 to read:

9 14999.31. The Film Office and its director shall encourage the
10 use of the uniform application form described in Section 14999.32
11 for obtaining a local permit to engage in film production within
12 the jurisdiction of a county, city, or city and county. As used in
13 this chapter “film” includes, but is not limited to, feature motion
14 pictures, ~~videotapes~~ *video recordings*, television motion pictures,
15 commercials, and stills. “Production” means the activity of making
16 a film for commercial or noncommercial purposes on property
17 owned by a county, city, or city and county, or on private property
18 within the jurisdiction of a county, city, or city and county.

19 SEC. 46. Section 26202.6 of the Government Code is amended
20 to read:

21 26202.6. (a) Notwithstanding the provisions of Sections 26202,
22 26205, and 26205.1, the head of a department of a county, after
23 one year, may destroy recordings of routine video monitoring, and
24 after 100 days may destroy recordings of telephone and radio
25 communications maintained by the department. This destruction
26 shall be approved by the legislative body and the written consent
27 of the agency attorney shall be obtained. In the event that the
28 recordings are evidence in any claim filed or any pending litigation,
29 they shall be preserved until pending litigation is resolved.

30 (b) For purposes of this section, “recordings of telephone and
31 radio communications” means the routine daily ~~taping~~ and
32 recording of telephone communications to and from a county and
33 all radio communications relating to the operations of the
34 departments.

35 (c) For purposes of this section, “routine video monitoring”
36 means ~~videotaping~~ *video recording* by a video or electronic
37 imaging system designed to record the regular and ongoing
38 operations of the departments described in subdivision (a),
39 including mobile in-car video systems, jail observation and

1 monitoring systems, and building security ~~taping~~ *recording*
2 systems.

3 (d) For purposes of this section, “department” includes a public
4 safety communications center operated by the county and the
5 governing board of any special district ~~whose~~ *the* membership of
6 *which* is the same as the membership of the board of supervisors.

7 SEC. 47. Section 26206.7 of the Government Code is amended
8 to read:

9 26206.7. Notwithstanding the provisions of Section 26202, the
10 legislative body of a county may prescribe a procedure whereby
11 duplicates of county records less than two years old may be
12 destroyed if they are no longer required.

13 For purposes of this section, video recording media, ~~such as~~
14 ~~videotapes and films, and~~ including recordings of “routine video
15 monitoring” pursuant to Section 26202.6, shall be considered
16 duplicate records if the county keeps another record, such as written
17 minutes or an ~~audiotape~~ *audio* recording, of the event that is
18 recorded in the video medium. However, a video recording medium
19 shall not be destroyed or erased pursuant to this section for a period
20 of at least 90 days after occurrence of the event recorded thereon.

21 SEC. 48. Section 26206.8 of the Government Code is amended
22 to read:

23 26206.8. (a) When installing new security systems, a transit
24 agency operated by a county shall only purchase and install
25 equipment capable of storing recorded images for at least one year,
26 unless all of the following conditions apply:

27 (1) The transit agency has made a diligent effort to identify a
28 security system that is capable of storing recorded data for one
29 year.

30 (2) The transit agency determines that the technology to store
31 recorded data in an economically and technologically feasible
32 manner for one year is not available.

33 (3) The transit agency purchases and installs the best available
34 technology with respect to storage capacity that is both
35 economically and technologically feasible at that time.

36 (b) Notwithstanding any other provision of law, ~~videotapes or~~
37 *video recordings or other* recordings made by security systems
38 operated as part of a public transit system shall be retained for one
39 year, unless one of the following conditions applies:

1 (1) ~~The videotapes or video recordings or other recordings~~ are
2 evidence in any claim filed or any pending litigation, in which
3 case ~~the videotapes or video recordings or other recordings~~ shall
4 be preserved until the claim or the pending litigation is resolved.

5 (2) ~~The videotapes or video recordings or other recordings~~
6 recorded an event that was or is the subject of an incident report,
7 in which case ~~the videotapes or video recordings or other~~
8 recordings shall be preserved until the incident is resolved.

9 (3) The transit agency utilizes a security system that was
10 purchased or installed prior to January 1, 2004, or that meets the
11 requirements of subdivision (a), in which case ~~the videotapes or~~
12 ~~video recordings or other recordings~~ shall be preserved for as long
13 as the installed technology allows.

14 SEC. 49. Section 27491.47 of the Government Code is amended
15 to read:

16 27491.47. (a) Notwithstanding any other provision of law, the
17 coroner may, in the course of an autopsy, remove and release or
18 authorize the removal and release of corneal eye tissue from a
19 body within the coroner's custody, if all of the following conditions
20 are met:

21 (1) The autopsy has otherwise been authorized.

22 (2) The coroner has no knowledge of objection to the removal
23 and release of corneal tissue having been made by the decedent or
24 any other person specified in Section 7151 of the Health and Safety
25 Code and has obtained any one of the following:

26 (A) A dated and signed written consent by the donor or any
27 other person specified in Section 7151 of the Health and Safety
28 Code on a form that clearly indicates the general intended use of
29 the tissue and contains the signature of at least one witness.

30 (B) Proof of the existence of a recorded telephonic consent by
31 the donor or any other person specified in Section 7151 of the
32 Health and Safety Code in the form of an audio-tape recording of
33 the conversation or a transcript of the recorded conversation, which
34 indicates the general intended use of the tissue.

35 (C) A document recording a verbal telephonic consent by the
36 donor or any other person specified in Section 7151 of the Health
37 and Safety Code, witnessed and signed by ~~no-less~~ *fewer* than two
38 members of the requesting entity, hospital, eye bank, or
39 procurement organization, memorializing the consenting person's
40 knowledge of and consent to the general intended use of the gift.

1 The form of consent obtained under subparagraph (A), (B), or
2 (C) shall be kept on file by the requesting entity and the official
3 agency for a minimum of three years.

4 (3) The removal of the tissue will not unnecessarily mutilate
5 the body, be accomplished by enucleation, nor interfere with the
6 autopsy.

7 (4) The tissue will be removed by a coroner, licensed physician
8 and surgeon, or a trained transplant technician.

9 (5) The tissue will be released to a public or nonprofit facility
10 for transplant, therapeutic, or scientific purposes.

11 (b) Neither the coroner nor medical examiner authorizing the
12 removal of the corneal tissue, nor any hospital, medical center,
13 tissue bank, storage facility, or person acting upon the request,
14 order, or direction of the coroner or medical examiner in the
15 removal of corneal tissue pursuant to this section, shall incur civil
16 liability for the removal in an action brought by any person who
17 did not object prior to the removal of the corneal tissue, nor be
18 subject to criminal prosecution for the removal of the corneal tissue
19 pursuant to ~~the provisions of~~ this section.

20 (c) This section ~~may~~ *shall* not be construed to interfere with the
21 ability of a person to make an anatomical gift pursuant to the
22 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with
23 Section 7150) of Part 1 of Division 7 of the Health and Safety
24 Code).

25 SEC. 50. Section 34090.6 of the Government Code is amended
26 to read:

27 34090.6. (a) Notwithstanding the provisions of Section 34090,
28 the head of a department of a city or city and county, after one
29 year, may destroy recordings of routine video monitoring, and
30 after 100 days may destroy recordings of telephone and radio
31 communications maintained by the department. This destruction
32 shall be approved by the legislative body and the written consent
33 of the agency attorney shall be obtained. In the event that the
34 recordings are evidence in any claim filed or any pending litigation,
35 they shall be preserved until pending litigation is resolved.

36 (b) For purposes of this section, “recordings of telephone and
37 radio communications” means the routine daily ~~taping and~~
38 recording of telephone communications to and from a city, city
39 and county, or department, and all radio communications relating
40 to the operations of the departments.

1 (c) For purposes of this section, “routine video monitoring”
2 means ~~videotaping~~ *video recording* by a video or electronic
3 imaging system designed to record the regular and ongoing
4 operations of the departments described in subdivision (a),
5 including mobile in-car video systems, jail observation and
6 monitoring systems, and building security ~~taping~~ *recording*
7 systems.

8 (d) For purposes of this section, “department” includes a public
9 safety communications center operated by the city or city and
10 county.

11 SEC. 51. Section 34090.7 of the Government Code is amended
12 to read:

13 34090.7. Notwithstanding the provisions of Section 34090, the
14 legislative body of a city may prescribe a procedure whereby
15 duplicates of city records less than two years old may be destroyed
16 if they are no longer required.

17 For purposes of this section, video recording media, ~~such as~~
18 ~~videotapes and films, and~~ including recordings of “routine video
19 monitoring” pursuant to Section 34090.6, shall be considered
20 duplicate records if the city keeps another record, such as written
21 minutes or an ~~audiotape~~ *audio* recording, of the event that is
22 recorded in the video medium. However, a video recording medium
23 shall not be destroyed or erased pursuant to this section for a period
24 of at least 90 days after occurrence of the event recorded thereon.

25 SEC. 52. Section 34090.8 of the Government Code is amended
26 to read:

27 34090.8. (a) When installing new security systems, a transit
28 agency operated by a city or city and county shall only purchase
29 and install equipment capable of storing recorded images for at
30 least one year, unless all of the following conditions apply:

31 (1) The transit agency has made a diligent effort to identify a
32 security system that is capable of storing recorded data for one
33 year.

34 (2) The transit agency determines that the technology to store
35 recorded data in an economically and technologically feasible
36 manner for one year is not available.

37 (3) The transit agency purchases and installs the best available
38 technology with respect to storage capacity that is both
39 economically and technologically feasible at that time.

(b) Notwithstanding any other provision of law, ~~videotapes or video recordings or other~~ recordings made by security systems operated as part of a public transit system shall be retained for one year, unless one of the following conditions applies:

(1) The ~~videotapes or video recordings or other~~ recordings are evidence in any claim filed or any pending litigation, in which case the ~~videotapes or video recordings or other~~ recordings shall be preserved until the claim or the pending litigation is resolved.

(2) The ~~videotapes or video recordings or other~~ recordings recorded an event that was or is the subject of an incident report, in which case the ~~videotapes or video recordings or other~~ recordings shall be preserved until the incident is resolved.

(3) The transit agency utilizes a security system that was purchased or installed prior to January 1, 2004, or that meets the requirements of subdivision (a), in which case the ~~videotapes or video recordings or other~~ recordings shall be preserved for as long as the installed technology allows.

SEC. 53. Section 50028 of the Government Code is amended to read:

50028. (a) The legislative body of any county, city, or city and county, whether general law or chartered, may adopt, by ordinance, such rules and regulations as it deems necessary, which require any coin-operated viewing machine to have permanently attached thereto a tally counter ~~which that~~ will count each coin, and accumulate ~~such that~~ count or the accumulated amount of money, deposited in ~~such the~~ coin-operated viewing machine. ~~Such~~ The tally counter shall be resistant to tampering, and shall not be capable of being reset to a lower number, and shall display the count in such a manner that the accumulated total is readily visible near the coin insertion slot or opening. For ~~the~~ purposes of this section, “coin-operated viewing machine” means any projector, machine, television, or other device ~~which that~~ displays for viewing motion pictures, projection slides, filmstrips, photographic pictures, ~~video-tapes recordings~~, or drawings, and ~~which that~~ is operated by the viewer, or for the viewer, by means of inserting a coin into the device, an attachment thereto, an enclosure surrounding ~~such the~~ device, or any other device electrically or mechanically connected thereto. For ~~the~~ purposes of this section, “coin” means any physical object, including, but not limited to, a piece of metal issued by the federal government as money. “Coin-operated

viewing machine” does not include an electronic video game of skill wherein the image is created, generated, or synthesized electronically, or coin-operated television receivers—~~which~~ *that* display commercial or public service broadcasts.

(b) Notwithstanding any other provision of law, any county ordinance adopted pursuant to this section shall be enforceable within the incorporated, as well as the unincorporated, area of the county, whether general law or chartered, unless a city ordinance in direct conflict with ~~such~~ *that* county ordinance has been adopted, in which case ~~such~~ *the* county ordinance shall be enforceable in the area of the county outside ~~of~~ *such* *the* city.

(c) (1) Any person who violates the provisions of the ordinance adopted pursuant to this section shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each ~~such~~ machine and each day in which ~~such~~ *a* violation occurs.

(2) In determining the amount of ~~such~~ *the* penalty, the court shall take into consideration all relevant circumstances, including, but not limited to, the frequency of inspection, the ~~cash flow~~ *cashflow* through ~~such~~ *the* machine, the amount of revenue derived by other ~~such~~ machines in the vicinity, prior revenues generated, the nature and persistence of the violation, and prior violations by the same person or establishment.

(d) No peace officer, as defined in Section 830 of the Penal Code, shall check ~~such~~ tally counters, provided, however, that an ordinance adopted pursuant to this section may provide for checking of ~~such~~ tally counters by a person or persons employed by the adopting county, city, or city and county, other than a peace officer, on a predetermined schedule.

(e) The provisions of this section shall not be construed to limit, or otherwise affect, any other power of a county, city, or city and county to license, tax, or regulate business or commercial enterprises or property within their jurisdiction, but shall be in addition to ~~such~~ *those* powers.

SEC. 54. Section 53160 of the Government Code is amended to read:

53160. (a) The head of a special district, after one year, may destroy recordings of routine video monitoring, and after 100 days may destroy recordings of telephone and radio communications maintained by the special district. This destruction shall be approved by the legislative body and the written consent of the

1 agency attorney shall be obtained. In the event that the recordings
2 are evidence in any claim filed or any pending litigation, they shall
3 be preserved until pending litigation is resolved.

4 (b) For purposes of this article, “recordings of telephone and
5 radio communications” means the routine daily ~~taping~~ and
6 recording of telephone communications to and from a special
7 district, and all radio communications relating to the operations
8 of the special district.

9 (c) For purposes of this article, “routine video monitoring”
10 means ~~videotaping~~ *video recording* by a video or electronic
11 imaging system designed to record the regular and ongoing
12 operations of the special district, including mobile in-car video
13 systems, jail observation and monitoring systems, and building
14 security ~~taping~~ *recording* systems.

15 (d) For purposes of this article, “special district” shall have the
16 same meaning as “public agency,” as that term is defined in Section
17 53050.

18 SEC. 55. Section 53161 of the Government Code is amended
19 to read:

20 53161. Notwithstanding Section 53160, the legislative body
21 of a special district may prescribe a procedure whereby duplicates
22 of special district records less than two years old may be destroyed
23 if they are no longer required.

24 For purposes of this section, video recording media, ~~such as~~
25 ~~videotapes and films, and~~ including recordings of “routine video
26 monitoring” pursuant to Section 53160, shall be considered
27 duplicate records if the special district keeps another record, such
28 as written minutes or an ~~audiotape~~ *audio* recording, of the event
29 that is recorded in the video medium. However, a video recording
30 medium shall not be destroyed or erased pursuant to this section
31 for at least 90 days after occurrence of the event recorded thereon.

32 SEC. 56. Section 53162 of the Government Code is amended
33 to read:

34 53162. (a) When installing new security systems, a transit
35 agency operated by a special district shall only purchase and install
36 equipment capable of storing recorded images for at least one year,
37 unless all of the following conditions apply:

38 (1) The transit agency has made a diligent effort to identify a
39 security system that is capable of storing recorded data for one
40 year.

1 (2) The transit agency determines that the technology to store
2 recorded data in an economically and technologically feasible
3 manner for one year is not available.

4 (3) The transit agency purchases and installs the best available
5 technology with respect to storage capacity that is both
6 economically and technologically feasible at that time.

7 (b) Notwithstanding any other provision of law, ~~videotapes or~~
8 ~~video recordings or other~~ recordings made by security systems
9 operated as part of a public transit system shall be retained for one
10 year, unless one of the following conditions applies:

11 (1) The ~~videotapes or video recordings or other~~ recordings are
12 evidence in any claim filed or any pending litigation, in which
13 case the ~~videotapes or video recordings or other~~ recordings shall
14 be preserved until the claim or the pending litigation is resolved.

15 (2) The ~~videotapes or video recordings or other~~ recordings
16 recorded an event that was or is the subject of an incident report,
17 in which case the ~~videotapes or video recordings or other~~
18 recordings shall be preserved until the incident is resolved.

19 (3) The transit agency utilizes a security system that was
20 purchased or installed prior to January 1, 2004, or that meets the
21 requirements of subdivision (a), in which case the ~~videotapes or~~
22 ~~video recordings or other~~ recordings shall be preserved for as long
23 as the installed technology allows.

24 SEC. 57. Section 54953.5 of the Government Code is amended
25 to read:

26 54953.5. (a) Any person attending an open and public meeting
27 of a legislative body of a local agency shall have the right to record
28 the proceedings with an audio or video ~~tape~~ recorder or a still or
29 motion picture camera in the absence of a reasonable finding by
30 the legislative body of the local agency that the recording cannot
31 continue without noise, illumination, or obstruction of view that
32 constitutes, or would constitute, a persistent disruption of the
33 proceedings.

34 (b) Any ~~tape or film record~~ *audio or video recording* of an open
35 and public meeting made for whatever purpose by or at the
36 direction of the local agency shall be subject to inspection pursuant
37 to the California Public Records Act (Chapter 3.5 (commencing
38 with Section 6250) of Division 7 of Title 1), but, notwithstanding
39 Section 34090, may be erased or destroyed 30 days after the ~~taping~~
40 ~~or recording~~. Any inspection of a ~~video or tape~~ *an audio or video*

1 recording shall be provided without charge on ~~a video or tape~~
2 ~~player equipment~~ made available by the local agency.

3 SEC. 58. Section 54960 of the Government Code is amended
4 to read:

5 54960. (a) The district attorney or any interested person may
6 commence an action by mandamus, injunction, or declaratory relief
7 for the purpose of stopping or preventing violations or threatened
8 violations of this chapter by members of the legislative body of a
9 local agency or to determine the applicability of this chapter to
10 actions or threatened future action of the legislative body, or to
11 determine whether any rule or action by the legislative body to
12 penalize or otherwise discourage the expression of one or more of
13 its members is valid or invalid under the laws of this state or of
14 the United States, or to compel the legislative body to ~~tape~~ *audio*
15 record its closed sessions as hereinafter provided.

16 (b) The court in its discretion may, upon a judgment of a
17 violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957,
18 or 54957.6, order the legislative body to ~~tape~~ *audio* record its
19 closed sessions and preserve the ~~tape~~ *audio* recordings for the
20 period and under the terms of security and confidentiality the court
21 deems appropriate.

22 (c) (1) Each recording so kept shall be immediately labeled
23 with the date of the closed session recorded and the title of the
24 clerk or other officer who shall be custodian of the recording.

25 (2) The ~~tapes~~ *audio recordings* shall be subject to the following
26 discovery procedures:

27 (A) In any case in which discovery or disclosure of the ~~tape~~
28 *audio recording* is sought by either the district attorney or the
29 plaintiff in a civil action pursuant to Section 54959, 54960, or
30 54960.1 alleging that a violation of this chapter has occurred in a
31 closed session ~~which~~ *that* has been recorded pursuant to this
32 section, the party seeking discovery or disclosure shall file a written
33 notice of motion with the appropriate court with notice to the
34 governmental agency ~~which~~ *that* has custody and control of the
35 ~~tape~~ *audio* recording. The notice shall be given pursuant to
36 subdivision (b) of Section 1005 of the Code of Civil Procedure.

37 (B) The notice shall include, in addition to the items required
38 by Section 1010 of the Code of Civil Procedure, all of the
39 following:

1 (i) Identification of the proceeding in which discovery or
2 disclosure is sought, the party seeking discovery or disclosure, the
3 date and time of the meeting recorded, and the governmental
4 agency ~~which~~ *that* has custody and control of the recording.

5 (ii) An affidavit ~~which~~ *that* contains specific facts indicating
6 that a violation of the act occurred in the closed session.

7 (3) If the court, following a review of the motion, finds that
8 there is good cause to believe that a violation has occurred, the
9 court may review, in camera, the recording of that portion of the
10 closed session alleged to have violated the act.

11 (4) If, following the in camera review, the court concludes that
12 disclosure of a portion of the recording would be likely to
13 materially assist in the resolution of the litigation alleging violation
14 of this chapter, the court shall, in its discretion, make a certified
15 transcript of the portion of the recording a public exhibit in the
16 proceeding.

17 (5) Nothing in this section shall permit discovery of
18 communications ~~which~~ *that* are protected by the attorney-client
19 privilege.

20 SEC. 59. Section 68151 of the Government Code is amended
21 to read:

22 68151. The following definitions apply to this chapter:

23 (a) “Court record” shall consist of the following:

24 (1) All filed papers and documents in the case folder³, but if no
25 case folder is created by the court, all filed papers and documents
26 that would have been in the case folder if one had been created.

27 (2) Administrative records filed in an action or proceeding,
28 depositions, paper exhibits, transcripts, including preliminary
29 hearing transcripts, and ~~tapes~~ *recordings* of electronically recorded
30 proceedings filed, lodged, or maintained in connection with the
31 case, unless disposed of earlier in the case pursuant to law.

32 (3) Other records listed under subdivision (j) of Section 68152.

33 (b) “Notice of destruction and no transfer” means that the clerk
34 has given notice of destruction of the superior court records open
35 to public inspection, and that there is no request and order for
36 transfer of the records as provided in the California Rules of Court.

37 (c) “Final disposition of the case” means that an acquittal,
38 dismissal, or order of judgment has been entered in the case or
39 proceeding, the judgment has become final, and no postjudgment

1 motions or appeals are pending in the case or for the reviewing
2 court upon the mailing of notice of the issuance of the remittitur.

3 In a criminal prosecution, the order of judgment shall mean
4 imposition of sentence, entry of an appealable order (including,
5 but not limited to, an order granting probation, commitment of a
6 defendant for insanity, or commitment of a defendant as a narcotics
7 addict appealable under Section 1237 of the Penal Code), or
8 forfeiture of bail without issuance of a bench warrant or calendaring
9 of other proceedings.

10 (d) “Retain permanently” means that the original court records
11 shall never be transferred or destroyed.

12 SEC. 60. Section 1569.69 of the Health and Safety Code is
13 amended to read:

14 1569.69. (a) Each residential care facility for the elderly
15 licensed under this chapter shall ensure that each employee of the
16 facility who assists residents with the self-administration of
17 medications meets the following training requirements:

18 (1) In facilities licensed to provide care for 16 or more persons,
19 the employee shall complete 16 hours of initial training. This
20 training shall consist of eight hours of hands-on shadowing training,
21 which shall be completed prior to assisting with the
22 self-administration of medications, and eight hours of other training
23 or instruction, as described in subdivision (f), which shall be
24 completed within the first two weeks of employment.

25 (2) In facilities licensed to provide care for 15 or fewer persons,
26 the employee shall complete six hours of initial training. This
27 training shall consist of two hours of hands-on shadowing training,
28 which shall be completed prior to assisting with the
29 self-administration of medications, and four hours of other training
30 or instruction, as described in subdivision (f), which shall be
31 completed within the first two weeks of employment.

32 (3) An employee shall be required to complete the training
33 requirements for hands-on shadowing training described in this
34 subdivision prior to assisting any resident in the self-administration
35 of medications. The training and instruction described in this
36 subdivision shall be completed, in their entirety, within the first
37 two weeks of employment.

38 (4) The training shall cover all of the following areas:

1 (A) The role, responsibilities, and limitations of staff who assist
2 residents with the self-administration of medication, including
3 tasks limited to licensed medical professionals.

4 (B) An explanation of the terminology specific to medication
5 assistance.

6 (C) An explanation of the different types of medication orders:
7 prescription, over-the-counter, controlled, and other medications.

8 (D) An explanation of the basic rules and precautions of
9 medication assistance.

10 (E) Information on medication forms and routes for medication
11 taken by residents.

12 (F) A description of procedures for providing assistance with
13 the self-administration of medications in and out of the facility,
14 and information on the medication documentation system used in
15 the facility.

16 (G) An explanation of guidelines for the proper storage, security,
17 and documentation of centrally stored medications.

18 (H) A description of the processes used for medication ordering,
19 refills, and the receipt of medications from the pharmacy.

20 (I) An explanation of medication side effects, adverse reactions,
21 and errors.

22 (5) To complete the training requirements set forth in this
23 subdivision, each employee shall pass an examination that tests
24 the employee's comprehension of, and competency in, the subjects
25 listed in paragraph (3).

26 (6) Residential care facilities for the elderly shall encourage
27 pharmacists and licensed medical professionals to use plain English
28 when preparing labels on medications supplied to residents. As
29 used in this section, "plain English" means that no abbreviations,
30 symbols, or Latin medical terms shall be used in the instructions
31 for the self-administration of medication.

32 (7) The training requirements of this section are not intended
33 to replace or supplant those required of all staff members who
34 assist residents with personal activities of daily living as set forth
35 in Section 1569.625.

36 (8) The training requirements of this section shall be repeated
37 if either of the following occur:

38 (A) An employee returns to work for the same licensee after a
39 break of service of more than 180 consecutive calendar days.

1 (B) An employee goes to work for another licensee in a facility
2 in which he or she assists residents with the self-administration of
3 medication.

4 (b) Each employee who received training and passed the ~~exam~~
5 *examination* required in paragraph (5) of subdivision (a), and who
6 continues to assist with the self-administration of medicines, shall
7 also complete four hours of in-service training on
8 medication-related issues in each succeeding 12-month period.

9 (c) The requirements set forth in subdivisions (a) and (b) do not
10 apply to persons who are licensed medical professionals.

11 (d) Each residential care facility for the elderly that provides
12 employee training under this section shall use the training material
13 and the accompanying examination that are developed by, or in
14 consultation with, a licensed nurse, pharmacist, or physician. The
15 licensed residential care facility for the elderly shall maintain the
16 following documentation for each medical consultant used to
17 develop the training:

18 (1) The name, address, and telephone number of the consultant.

19 (2) The date when consultation was provided.

20 (3) The consultant's organization affiliation, if any, and any
21 educational and professional qualifications specific to medication
22 management.

23 (4) The training topics for which consultation was provided.

24 (e) Each person who provides employee training under this
25 section shall meet the following education and experience
26 requirements:

27 (1) A minimum of five hours of initial, or certified continuing,
28 education or three semester units, or the equivalent, from an
29 accredited educational institution, on topics relevant to medication
30 management.

31 (2) The person shall meet any of the following practical
32 experience or licensure requirements:

33 (A) Two years *of* full-time experience, within the last four years,
34 as a consultant with expertise in medication management in areas
35 covered by the training described ~~is~~ *in* subdivision (a).

36 (B) Two years *of* full-time experience, or the equivalent, within
37 the last four years, as an administrator for a residential care facility
38 for the elderly, during which time the individual has acted in
39 substantial compliance with applicable regulations.

1 (C) Two years of full-time experience, or the equivalent, within
2 the last four years, as a direct care provider assisting with the
3 self-administration of medications for a residential care facility
4 for the elderly, during which time the individual has acted in
5 substantial compliance with applicable regulations.

6 (D) Possession of a license as a medical professional.

7 (3) The licensed residential care facility for the elderly shall
8 maintain the following documentation on each person who provides
9 employee training under this section:

10 (A) The person's name, address, and telephone number.

11 (B) Information on the topics or subject matter covered in the
12 training.

13 (C) The time, dates, and hours of training provided.

14 (f) Other training or instruction, as required in paragraphs (1)
15 and (2) of subdivision (a), may be provided ~~off-site~~ *offsite*, and
16 may use various methods of instruction, including, but not limited
17 to, all of the following:

18 (1) Lectures by presenters who are knowledgeable about
19 medication management.

20 (2) Video ~~instruction tapes~~ *recorded instruction*, interactive
21 material, online training, and books.

22 (3) Other written or visual materials approved by organizations
23 or individuals with expertise in medication management.

24 (g) Residential care facilities for the elderly licensed to provide
25 care for 16 or more persons shall maintain documentation that
26 demonstrates that a consultant pharmacist or nurse has reviewed
27 the facility's medication management program and procedures at
28 least twice a year.

29 (h) Nothing in this section authorizes unlicensed personnel to
30 directly administer medications.

31 ~~(i) This section shall become operative on January 1, 2008.~~

32 SEC. 61. Section 1736.5 of the Health and Safety Code is
33 amended to read:

34 1736.5. (a) The state department shall deny a training
35 application and deny, suspend, or revoke a certificate issued under
36 this article if the applicant or certificate holder has been convicted
37 of a violation or attempted violation of any of the following Penal
38 Code provisions: Section 187, subdivision (a) of Section 192,
39 Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4,
40 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section

1 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of
2 Section 286, Section 288, subdivisions (c), (d), (f), and (g) of
3 Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475,
4 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488,
5 496, 503, 518, or 666, unless any of the following apply:

6 (1) The person was convicted of a felony and has obtained a
7 certificate of rehabilitation under Chapter 3.5 (commencing with
8 Section 4852.01) of Title 6 of *Part 3* of the Penal Code and the
9 information or accusation against him or her has been dismissed
10 pursuant to Section 1203.4 of the Penal Code.

11 (2) The person was convicted of a misdemeanor and the
12 information or accusation against him or her has been dismissed
13 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

14 (3) The certificate holder was convicted of a felony or a
15 misdemeanor, but has previously disclosed the fact of each
16 conviction to the department, and the department has made a
17 determination in accordance with law that the conviction does not
18 disqualify the applicant from certification.

19 (b) An application or certificate shall be denied, suspended, or
20 revoked upon conviction in another state of an offense that, if
21 committed or attempted in this state, would have been punishable
22 as one or more of the offenses set forth in subdivision (a), unless
23 evidence of rehabilitation comparable to the certificate of
24 rehabilitation or dismissal of a misdemeanor set forth in paragraph
25 (1) or (2) of subdivision (a) is provided.

26 (c) (1) The state department may deny an application or deny,
27 suspend, or revoke a certificate issued under this article for any of
28 the following:

29 (A) Unprofessional conduct, including, but not limited to,
30 incompetence, gross negligence, physical, mental, or verbal abuse
31 of patients, or misappropriation of property of patients or others.

32 (B) Conviction of a crime substantially related to the
33 qualifications, functions, and duties of a home health aide,
34 irrespective of a subsequent order under Section 1203.4, 1203.4a,
35 or 4852.13 of the Penal Code, where the state department
36 determines that the applicant or certificate holder has not
37 adequately demonstrated that he or she has been rehabilitated and
38 will present a threat to the health, safety, or welfare of patients.

39 (C) Conviction for, or use of, any controlled substance as defined
40 in Division 10 (commencing with Section 11000), or any dangerous

1 drug, as defined in Section 4022 of the Business and Professions
2 Code, or alcoholic beverages, to an extent or in a manner dangerous
3 or injurious to the home health aide, any other person, or the public,
4 to the extent that this use would impair the ability to conduct, with
5 safety to the public, the practice authorized by a certificate.

6 (D) Procuring a home health aide certificate by fraud,
7 misrepresentation, or mistake.

8 (E) Making or giving any false statement or information in
9 conjunction with the application for issuance of a home health aide
10 certificate or training and examination application.

11 (F) Impersonating any applicant, or acting as proxy for an
12 applicant, in any examination required under this article for the
13 issuance of a certificate.

14 (G) Impersonating another home health aide, a licensed
15 vocational nurse, or a registered nurse, or permitting or allowing
16 another person to use a certificate for the purpose of providing
17 nursing services.

18 (H) Violating or attempting to violate, directly or indirectly, or
19 assisting in or abetting the violation of, or conspiring to violate
20 any provision or term of, this article.

21 (2) In determining whether or not to deny an application or
22 deny, suspend, or revoke a certificate issued under this article
23 pursuant to this subdivision, the department shall take into
24 consideration the following factors as evidence of good character
25 and rehabilitation:

26 (A) The nature and seriousness of the offense under
27 consideration and its relationship to ~~their~~ *the person's* employment
28 duties and responsibilities.

29 (B) Activities since conviction, including employment or
30 participation in therapy or education, that would indicate changed
31 behavior.

32 (C) The time that has elapsed since the commission of the
33 conduct or offense referred to in subparagraph (A) or (B) and the
34 number of offenses.

35 (D) The extent to which the person has complied with any terms
36 of parole, probation, restitution, or any other sanction lawfully
37 imposed against the person.

38 (E) Any rehabilitation evidence, including character references,
39 submitted by the person.

40 (F) Employment history and current employer recommendations.

1 (G) Circumstances surrounding the commission of the offense
2 that would demonstrate the unlikelihood of repetition.

3 (H) Granting by the Governor of a full and unconditional pardon.

4 (I) A certificate of rehabilitation from a superior court.

5 (d) When the state department determines that a certificate shall
6 be suspended, the state department shall specify the period of actual
7 suspension. The state department may determine that the
8 suspension shall be stayed, placing the certificate holder on
9 probation with specified conditions for a period not to exceed two
10 years. When the state department determines that probation is the
11 appropriate action, the certificate holder shall be notified that in
12 lieu of the state department proceeding with a formal action to
13 suspend the certification and in lieu of an appeal pursuant to
14 subdivision (g), the certificate holder may request to enter into a
15 diversion program agreement. A diversion program agreement
16 shall specify terms and conditions related to matters, including,
17 but not limited to, work performance, rehabilitation, training,
18 counseling, progress reports, and treatment programs. If a
19 certificate holder successfully completes a diversion program, no
20 action shall be taken upon the allegations that were the basis for
21 the diversion agreement. Upon failure of the certificate holder to
22 comply with the terms and conditions of an agreement, the state
23 department may proceed with a formal action to suspend or revoke
24 the certification.

25 (e) A plea or verdict of guilty, or a conviction following a plea
26 of nolo contendere, shall be deemed a conviction within the
27 meaning of this article. The state department may deny an
28 application or deny, suspend, or revoke a certification based on a
29 conviction as provided in this article when the judgment of
30 conviction is entered or when an order granting probation is made
31 suspending the imposition of sentence.

32 (f) Upon determination to deny an application or deny, revoke,
33 or suspend a certificate, the state department shall notify the
34 applicant or certificate holder in writing by certified mail of all of
35 the following:

36 (1) The reasons for the determination.

37 (2) The applicant's or certificate holder's right to appeal the
38 determination if the determination was made under subdivision
39 (c).

(g) (1) Upon written notification that the state department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (c), the applicant or certificate holder may request an administrative hearing by submitting a written request to the state department within 20 business days of receipt of the written notification. Upon receipt of a written request, the state department shall hold an administrative hearing pursuant to the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this section shall be conducted by a hearing officer or administrative law judge designated by the director at a location, other than the work facility, *that is* convenient to the applicant or certificate holder. The hearing shall be ~~tape~~ *audio or video* recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (h), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be 21 business days from written notification of the department's determination to revoke or suspend.

(h) The state department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (f). If the certificate holder requests an administrative hearing pursuant to subdivision (g), the state department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(i) Upon the expiration of the term of suspension, ~~he or she~~ *the certificate holder* shall be reinstated by the state department and shall be entitled to resume practice unless it is established to the satisfaction of the state department that the person has practiced as a home health aide in California during the term of suspension.

1 In this event, the state department shall revoke the person's
2 certificate.

3 (j) Upon a determination to deny an application or deny, revoke,
4 or suspend a certificate, the department shall notify the employer
5 of the applicant or certificate holder in writing of that
6 determination, and whether the determination is final, or whether
7 a hearing is pending relating to this determination. If a licensee or
8 facility is required to deny employment or terminate employment
9 of the employee based upon notice from the state that the employee
10 is determined to be unsuitable for employment under this section,
11 the licensee or facility shall not incur criminal, civil, unemployment
12 insurance, workers' compensation, or administrative liability as a
13 result of that denial or termination.

14 SEC. 62. Section 7158.3 of the Health and Safety Code is
15 amended to read:

16 7158.3. (a) The following definitions shall apply for purposes
17 of this section:

18 (1) "Cosmetic surgery" means surgery that is performed to alter
19 or reshape normal structures of the body in order to improve
20 appearance.

21 (2) "Donee" means a hospital, as defined in subdivision (f) of
22 Section 7150.1, or an organ procurement organization, as defined
23 in subdivision (j) of Section 7150.1, or a tissue bank licensed
24 pursuant to Chapter 4.1 (commencing with Section 1635) of
25 Division 2.

26 (3) "Reconstructive surgery" means surgery performed to correct
27 or repair abnormal structures of the body caused by congenital
28 defects, developmental abnormalities, trauma, infection, tumors,
29 or disease to do either of the following:

30 (A) To improve function.

31 (B) To create a normal appearance, to the extent possible.

32 (b) For purposes of accepting anatomical gifts, as defined in
33 subdivision (a) of Section 7150.1, a donee shall do all of the
34 following:

35 (1) Revise existing informed consent forms and procedures to
36 advise a donor or, if the donor is deceased, the donor's
37 representative, that tissue banks work with both nonprofit and
38 for-profit tissue processors and distributors, that it is possible that
39 donated skin may be used for cosmetic or reconstructive surgery

1 purposes, and that donated tissue may be used for transplants
2 outside of the United States.

3 (2) The revised consent form or procedure shall separately allow
4 the donor or donor's representative to withhold consent for any of
5 the following:

6 (A) Donated skin to be used for cosmetic surgery purposes.

7 (B) Donated tissue to be used for applications outside of the
8 United States.

9 (C) Donated tissue to be used by for-profit tissue processors
10 and distributors.

11 (3) A donee shall be deemed to have complied with paragraph
12 (2) by designating tissue that has been donated with specific
13 restrictions on its use. Once the donee transfers the tissue to a
14 separate entity, the donee's responsibility for compliance with any
15 restrictions on the tissue ceases.

16 (4) The donor may recover, in a civil action against any
17 individual or entity that fails to comply with this subdivision, civil
18 penalties to be assessed in an amount not less than one thousand
19 dollars (\$1,000) and not more than five thousand dollars (\$5,000),
20 plus court costs, as determined by the court. A separate penalty
21 shall be assessed for each individual or entity that fails to comply
22 with this subdivision. Any civil penalty provided under this
23 paragraph shall be in addition to any license revocation or
24 suspension, if appropriate, authorized under subdivision (c).

25 (5) If the consent of the donor or donor's representative is
26 obtained in writing, the donee shall offer to provide the donor or
27 donor's representative with a copy of the completed consent form.
28 If consent is obtained by telephone, the donee shall advise the
29 donor or donor's representative that the conversation will be ~~tape~~
30 *audio* recorded for verification and enforcement purposes, and
31 shall offer to provide the donor or donor's representative with a
32 written copy of the recorded telephonic consent form.

33 (c) Violation of this section by a licensed health care provider
34 constitutes unprofessional conduct.

35 (d) This section shall not apply to the removal of sperm or ova
36 pursuant to Section 2260 of the Business and Professions Code.

37 SEC. 63. Section 13220 of the Health and Safety Code is
38 amended to read:

39 13220. The owner or operator of any of the following buildings
40 shall provide to persons entering those buildings specific

1 emergency procedures to be followed in the event of fire, including
2 procedures for handicapped and nonambulatory persons:

3 (a) In the case of privately owned highrise structures, as defined
4 in Section 13210, and office buildings two stories or more in
5 height, the emergency procedure information shall be made
6 available in a conspicuous area of the structure that is easily
7 accessible to all persons entering the structure, designated pursuant
8 to regulations of the State Fire Marshal.

9 (b) In the case of hotels and motels, as defined in subdivision
10 (b) of Section 25503.16 of the Business and Professions Code, the
11 emergency procedure information shall be posted in a conspicuous
12 place in every room available for rental in the hotel or motel, or,
13 at the option of the hotel or motel operator, it shall be provided
14 through the use of brochures, pamphlets, ~~videotapes~~ *video*
15 *recordings*, or other means, pursuant to regulations adopted by the
16 State Fire Marshal.

17 (c) In the case of apartment houses two stories or more in height
18 that contain three or more dwelling units, and where the front door
19 opens into an interior hallway or an interior lobby area, the
20 emergency information shall be provided as follows:

21 (1) Information for exiting the structure shall be posted on signs
22 using international symbols at every stairway landing, at every
23 elevator landing, at an intermediate point of any hallway exceeding
24 100 feet in length, at all hallway intersections, and immediately
25 inside all public entrances to the building.

26 (2) Information shall be provided to all tenants of record,
27 through the use of brochures, pamphlets, or ~~videotapes~~ *video*
28 *recordings*, if any of these items is available, or this requirement
29 may be satisfied pursuant to regulations adopted by the State Fire
30 Marshal.

31 (3) If the owner or operator, or any individual acting on behalf
32 of the owner or operator, of an apartment house, as ~~defined~~
33 *described* in this subdivision, negotiates a lease, sublease, rental
34 contract, or other term of tenancy contract or agreement in any
35 language other than English, the information required to be
36 provided pursuant to paragraph (2) ~~of this subdivision~~ shall be
37 provided in English, in international symbols, and in the four most
38 common non-English languages spoken in California, as
39 determined by the State Fire Marshal.

40 ~~(4) This subdivision shall become operative on July 1, 1996.~~

(d) On or before July 1, 1996, the State Fire Marshal shall adopt, for use in apartment houses described in subdivision (c), a consumer-oriented model brochure or pamphlet that includes general emergency procedure information in English, in international symbols, and in the four most common non-English languages spoken in California, as determined by the State Fire Marshal.

(e) An owner, agent, operator, translator, or transcriber who provides emergency procedure information pursuant to this section in good faith and without gross negligence shall be held harmless for any errors in the translation or transcription of that emergency information. This limited immunity shall apply only to errors in the translation or transcription and not to the providing of the information required to be provided pursuant to this section.

(f) Unless expressly stated, nothing in this section shall be deemed to require an owner or operator of any of the buildings listed in this section to provide emergency procedure information in any language other than English, or through the use of international symbols.

SEC. 64. Section 13221 of the Health and Safety Code is amended to read:

13221. The State Fire Marshal shall adopt regulations for the furnishing of emergency procedure information according to this chapter. Those regulations may include the general contents of brochures, pamphlets, signs, or ~~videotapes~~ *video recordings* used in furnishing emergency procedure information, but shall provide for at least the following:

(a) A reference to the posting of exit plans for the structure.

(b) A general explanation of operation of the fire alarm system of the structure.

(c) Other fire emergency procedures.

SEC. 65. Section 25201.11 of the Health and Safety Code is amended to read:

25201.11. (a) Copyright protection and all other rights and privileges provided pursuant to Title 17 of the United States Code are available to the department to the fullest extent authorized by law, and the department may sell, lease, or license for commercial or noncommercial use any work, including, but not limited to, ~~videotapes, audiotapes,~~ *video recordings, audio recordings*, books, pamphlets, and computer software as that term is defined in Section

1 6254.9 of the Government Code, that the department produces
2 whether the department is entitled to that copyright protection or
3 not.

4 (b) Any royalties, fees, or compensation of any type that is paid
5 to the department to make use of a work entitled to copyright
6 protection shall be deposited in the Hazardous Waste Control
7 Account.

8 (c) Nothing in this section is intended to limit any powers
9 granted to the department pursuant to Section 6254.9 of the
10 Government Code or any other provision of law.

11 SEC. 66. Section 40828 of the Health and Safety Code is
12 amended to read:

13 40828. (a) A hearing board shall allow interested members of
14 the public a reasonable opportunity to testify with ~~regards~~ *regard*
15 to the matter under consideration, and shall consider ~~such that~~
16 testimony in making its decision.

17 (b) The hearing board shall prepare a record of the witnesses
18 and the testimony of each witness at the hearing. ~~Such a~~ *The* record
19 may be a ~~tape~~ *an audio* recording. The record shall be retained by
20 the hearing board while the variance is in effect, or for the period
21 of one year, whichever is longer.

22 SEC. 67. Section 100171 of the Health and Safety Code is
23 amended to read:

24 100171. Notwithstanding any other provision of law, whenever
25 the department is authorized or required by statute, regulation, due
26 process ~~(14th amendment, (Fourteenth Amendment to the United~~
27 *States Constitution; subdivision (a) of Section 7 of Article I, of*
28 *the California Constitution)*, or a contract, to conduct an
29 adjudicative hearing leading to a final decision of the director or
30 the department, the following shall apply:

31 (a) The proceeding shall be conducted pursuant to the
32 administrative adjudication provisions of Chapter 4.5 (commencing
33 with Section 11400) and Chapter 5 (commencing with Section
34 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
35 except as specified in this section.

36 (b) Notwithstanding Section 11502 of the Government Code,
37 whenever the department conducts a hearing under Chapter 4.5
38 (commencing with Section 11400) or Chapter 5 (commencing with
39 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
40 Code, the hearing shall be conducted before an administrative law

judge selected by the department and assigned to a hearing office that complies with the procedural requirements of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) (1) Notwithstanding Section 11508 of the Government Code, whenever the department conducts a hearing under Chapter 4.5 (commencing with Section 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the time and place of the hearing shall be determined by the staff assigned to the hearing office of the department, except as provided in paragraph (2) or unless the department, by regulation, specifies otherwise.

(2) Formal hearings requested by institutional Medi-Cal providers and health facilities shall be held in Sacramento.

(d) (1) Unless otherwise specified in this section, the following sections of the Government Code shall apply to any adjudicative hearing conducted by the department only if the department has not, by regulation, specified an alternative procedure for the particular type of hearing at issue: Section 11503 (relating to accusations), Section 11504 (relating to statements of issues), Section 11505 (relating to the contents of the statement to respondent), Section 11506 (relating to the notice of defense), Section 11507.6 (relating to discovery rights and procedures), Section 11508 (relating to the time and place of hearings), and Section 11516 (relating to amendment of accusations).

(2) Any alternative procedure specified by the department in accordance with this subdivision shall conform to the purpose of the Government Code provision it replaces insofar as it is possible to do so consistent with the specific procedural requirements applicable to the type of hearing at issue.

(3) Any alternative procedures adopted by the department under this subdivision shall not diminish the amount of notice given of the issues to be heard by the department or deprive appellants of the right to discovery suitable to the particular proceedings. Except as specified in paragraph (2) of subdivision (c), modifications of timeframes or of the place of hearing made by regulation ~~may~~ *shall* not lengthen timeframes within which the department is required to act nor require hearings to be held at a greater distance from the appellant's place of residence or business than is the case under the otherwise applicable Government Code provision.

1 (e) The specific timelines specified in Section 11517 of the
2 Government Code shall not apply to any adjudicative hearing
3 conducted by the department to the extent that the department has,
4 by regulation, specified different timelines for the particular type
5 of hearing at issue.

6 (f) In the case of any adjudicative hearing conducted by the
7 department, “transcript,” as used in subdivision (c) of Section
8 11517 of the Government Code, shall be deemed to include any
9 alternative form of recordation of the oral proceedings, including,
10 but not limited to, an ~~audiotape~~ *audio recording*.

11 (g) Pursuant to Section 11415.50 of the Government Code, the
12 department may, by regulation, provide for any appropriate
13 informal procedure to be used for an informal level of review that
14 does not itself lead to a final decision of the department or the
15 director. The procedures specified in Article 10 (commencing with
16 Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title
17 2 of the Government Code shall not apply to ~~any such~~ an informal
18 level of review *authorized by this subdivision*. Informal conferences
19 concerning appeals by institutional Medi-Cal providers and health
20 facilities may be held in Sacramento or Los Angeles.

21 (h) Notwithstanding any other provision of law, any adjudicative
22 hearing conducted by the department that is conducted pursuant
23 to a federal statutory or regulatory requirement that contains
24 specific procedures may be conducted pursuant to those procedures
25 to the extent they are inconsistent with the procedures specified
26 in this section.

27 (i) Nothing in this section shall apply to a fair hearing involving
28 a Medi-Cal beneficiary insofar as the hearing is, by agreement or
29 otherwise, heard before an administrative law judge employed by
30 the State Department of Social Services, or insofar as the hearing
31 is being held pursuant to Division 4.5 (commencing with Section
32 4500) of the Welfare and Institutions Code in connection with
33 services provided by the State Department of Developmental
34 Services under applicable federal ~~medicaid~~ *Medicaid* waivers.
35 Nothing in this subdivision shall be interpreted as abrogating the
36 authority of the State Department of Health Care Services as the
37 single state agency under the state ~~medicaid~~ *Medicaid* plan.

38 (j) Nothing in this provision shall supersede express provisions
39 of law that apply to any hearing that is not adjudicative in nature
40 or that does not involve due process rights specific to an individual

1 or specific individuals, as opposed to the general public or a
2 segment of the general public.

3 SEC. 68. Section 127240 of the Health and Safety Code is
4 amended to read:

5 127240. (a) Notwithstanding subdivision (b), (c), (d), (e), or
6 (f) of Section 127235, if the office orders a hearing on an
7 application, the applicant may request an informal hearing of the
8 matter, described in this section, in lieu of, and in the alternative
9 to, the formal procedures described in subdivisions (b), (c), (d),
10 (e), and (f) of Section 127235.

11 (b) If an applicant requests an informal hearing and the office
12 concurs with the request, the office shall proceed as follows:

13 (1) Within five calendar days after receipt of the request for an
14 informal public hearing, the office shall order the informal public
15 hearing by the service of a copy of the order on the applicant. The
16 order shall include the staff report and recommendations prepared
17 by *the* staff of the office. Except as otherwise agreed by the
18 applicant and the office, the informal public hearing shall
19 commence within 20 days of the date of the order. Upon the
20 scheduling of the hearing, the office shall promptly serve notice
21 of the date, location, and time of the informal public hearing upon
22 the applicant. The office shall also publish a notice of the date,
23 location, and time of the informal public hearing in at least one
24 newspaper of general circulation in the health service area served
25 by the applicant. The notice shall also include the name and address
26 of the applicant, the nature of the proposed project, and other
27 information; deemed relevant by the office.

28 (2) The informal public hearing shall not be conducted in
29 accordance with Chapter 5 (commencing with Section 11500) of
30 Part 1 of Division 3 of Title 2 of the Government Code. The
31 informal public hearing shall be conducted by an employee of the
32 office designated by the office director. The person conducting
33 the informal public hearing may exercise all powers relating to the
34 conduct of the hearing, including the power to reasonably limit
35 the length of oral presentations by any person who has been
36 allowed to make a statement.

37 The informal public hearing shall be conducted as follows:

38 (A) The applicant shall be given an opportunity to present the
39 merits of the project and to address the issues raised by the staff
40 report and recommendations.

1 (B) The office staff shall be given an opportunity to present
2 their analysis of the project.

3 (C) Other interested persons shall be given an opportunity to
4 present written or oral statements.

5 (D) The person conducting the informal public hearing may
6 question any person making a written or oral statement and may
7 give the applicant and office staff an opportunity to question any
8 person who has made a written or oral statement.

9 (E) The applicant and staff shall be given an opportunity to
10 make closing statements.

11 (F) The office shall make ~~a tape~~ *an audio or video* recording of
12 the hearing, and copies of the ~~tape~~ *recording* shall be made
13 available at cost upon reasonable notice. However, the applicant
14 shall have a right to bring a certified shorthand reporter to be used
15 in place of the ~~tape~~ *audio or video* recording, provided that he or
16 she provides the office with a copy of the transcript.

17 (c) The informal public hearing shall conclude within 10
18 calendar days after commencement of the hearing unless one of
19 the following occurs:

20 (1) The applicant agrees to extend the time for conclusion of
21 the hearing.

22 (2) The hearing is ongoing and continuing during consecutive
23 business days, in which case it shall be concluded as soon as
24 reasonably practicable thereafter.

25 (d) Within 10 days after the conclusion of the informal public
26 hearing, the person conducting the hearing shall render a proposed
27 decision supported by findings of fact, based solely upon the record
28 of the hearing. The proposed decision shall be served upon the
29 applicant and the office staff.

30 (e) The director shall make a final decision on an application
31 within 10 calendar days after issuance of the proposed decision.
32 The decisions shall either approve the application, approve it with
33 modifications, reject it, or approve it with conditions mutually
34 agreed upon by the applicant and the office. The failure of any
35 applicant to fulfill the conditions under which the certificate of
36 need was granted shall constitute grounds for revocation of the
37 certificate of need.

38 (f) Notice of the substance of the office's decisions shall be
39 published in a newspaper of general circulation within the health

1 service area served by the applicant, within 10 calendar days
2 following the decision.

3 (g) Whether or not an informal hearing is granted shall be at
4 the discretion of the office.

5 SEC. 69. Section 1758.97 of the Insurance Code is amended
6 to read:

7 1758.97. A credit insurance agent shall not sell or offer to sell
8 insurance pursuant to this article unless all of the following
9 conditions are satisfied:

10 (a) The credit insurance agent provides brochures or other
11 written materials to the prospective purchaser that do all of the
12 following:

13 (1) Summarize the material terms and conditions of coverage
14 offered, including the identity of the insurer.

15 (2) Describe the process for filing a claim, including a toll-free
16 telephone number to report a claim.

17 (3) Disclose any additional information on the price, benefits,
18 exclusions, conditions, or other limitations of those policies that
19 the commissioner may by rule prescribe.

20 (b) The credit insurance agent makes all of the following
21 disclosures, either with or as part of each individual policy or group
22 certificate, or with a notice of proposed insurance, or, if the
23 insurance is sold at the same time and place as the related credit
24 transaction, in a statement acknowledged by the purchaser in
25 writing on a separate form, electronically, digitally, or by ~~tape~~
26 *audio* recording:

27 (1) That the purchase of the kinds of insurance prescribed in
28 this article is not required in order to secure the loan or an extension
29 of credit.

30 (2) That the insurance coverage offered by the credit insurance
31 agent may provide a duplication of coverage already provided by
32 a purchaser's other personal insurance policies or by another source
33 of coverage.

34 (3) That the endorsee is not qualified or authorized to evaluate
35 the adequacy of the purchaser's existing coverages, unless the
36 individual is licensed pursuant to Article 3 (commencing with
37 Section 1631).

38 (4) That the customer may cancel the insurance at any time. If
39 the customer cancels within 30 days from the delivery of the
40 insurance policy, certificate, or notice of proposed insurance, the

1 premium will be refunded in full. If the customer cancels at any
2 time thereafter, any unearned premium will be refunded in
3 accordance with applicable law.

4 (c) Evidence of coverage is provided to every person who elects
5 to purchase that coverage.

6 (d) Costs for the insurance are separately itemized in any loan,
7 credit, or retail agreement.

8 (e) The insurance is provided under an individual policy issued
9 to the purchaser or under a group or master policy issued to the
10 organization licensed as a credit insurance agent by an insurer
11 authorized to transact the applicable kinds or types of insurance
12 in this state. Any of the conditions and disclosures specified in this
13 section shall be deemed satisfied if the consumer is otherwise
14 provided with the information required in this section by any other
15 disclosures required by existing federal or state law or regulations.

16 No statement, disclosure, or notice made for the purpose of
17 compliance with this section shall be construed to cause the policy
18 form, certificate of insurance, or notice of proposed insurance, by
19 themselves, to be considered nonstandard forms, as described in
20 Article 6.9 (commencing with Section 2249) of Subchapter 2 of
21 Chapter 5 of Title 10 of the California Code of Regulations.

22 SEC. 70. Section 2071.1 of the Insurance Code is amended to
23 read:

24 2071.1. (a) This section applies to an examination of an insured
25 under oath pursuant to Section 2071 labeled “Requirements in case
26 loss occurs” and other relevant provisions of that section, and to
27 any policy that insures property and contains a provision for
28 examining an insured under oath, when the policy is originated or
29 renewed on and after January 1, 2002.

30 The following are among the rights of each insured who is
31 requested to submit to an examination under oath:

32 (1) An insurer that determines that it will conduct an
33 examination under oath of an insured shall notify the insured of
34 that determination and shall include a copy of this section in the
35 notification.

36 (2) An insurer may conduct an examination under oath only to
37 obtain information that is relevant and reasonably necessary to
38 process or investigate the claim.

1 (3) An examination under oath may only be conducted upon
2 reasonable notice, at a reasonably convenient place and for a
3 reasonable length of time.

4 (4) The insured may be represented by counsel and may record
5 the examination proceedings in their entirety.

6 (5) The insurer shall notify the insured that, upon request and
7 free of charge, it will provide the insured with a copy of the
8 transcript of the proceedings and ~~a tape~~ *an audio or video recording*
9 of the proceedings, if one exists. Where an insured requests a copy
10 of the transcript, the ~~tape~~ *recording*, or both, of ~~their~~ *the*
11 examination under oath, the insurer shall provide it within 10
12 business days of receipt by the insurer or its counsel of the
13 transcript, the ~~tape~~ *recording*, or both. An insured may make sworn
14 corrections to the transcript so it accurately reflects the testimony
15 under oath.

16 (6) In an examination under oath, an insured may assert any
17 objection that can be made in a deposition under state or federal
18 law. However, if as a result of asserting an objection, an insured
19 fails to provide an answer to a material question, and that failure
20 prevents the insurer from being able to determine the extent of
21 loss and validity of the claim, the rights of the insured under the
22 contract may be affected.

23 (7) An insured who submits a fraudulent claim may be subject
24 to all criminal and civil penalties applicable under law.

25 (b) The department shall conduct a study quantifying the number
26 of examinations under oath performed by carriers regulated by the
27 department and the number of contacts made by consumers
28 regarding alleged concerns with the utilization of the examination
29 under oath process for the resolution of pending claims. The
30 department shall report both the number of examinations under
31 oath performed by each carrier and the number of justified and
32 unjustified claims alleged by insureds as defined in ~~the Insurance~~
33 ~~Code~~ *this code*. To the best extent practicable, the department shall
34 also determine if any of these complaints also resulted in suspected
35 fraudulent claims with the department's fraud division.

36 (c) The department shall also survey licensed carriers as to the
37 number of suspected fraudulent claims under residential property
38 insurance policies that are submitted to the department's fraud
39 division as required by law, and that resulted, or eventually
40 resulted, in the utilization of the examination under oath process.

1 Policies of residential property insurance shall be as defined in
2 Section 10087.

3 (d) The department shall submit the findings of this report to
4 the ~~Chairs~~ *chairpersons* of the Assembly and Senate Committees
5 on Insurance no later than March 1, 2003.

6 SEC. 71. Section 298.1 of the Penal Code is amended to read:

7 298.1. (a) ~~As of the effective date of this chapter~~ *On and after*
8 *January 1, 1999*, any person who refuses to give any or all of the
9 following, blood specimens, saliva samples, or thumb or palm
10 print impressions as required by this chapter, once he or she has
11 received written notice from the Department of Justice, the
12 Department of Corrections and Rehabilitation, any law enforcement
13 personnel, or officer of the court that he or she is required to
14 provide specimens, samples, and print impressions pursuant to this
15 chapter is guilty of a misdemeanor. The refusal or failure to give
16 any or all of the following, a blood specimen, saliva sample, or
17 thumb or palm print impression is punishable as a separate offense
18 by both a fine of five hundred dollars (\$500) and imprisonment of
19 up to one year in a county jail, or if the person is already
20 imprisoned in the state prison, by sanctions for misdemeanors
21 according to a schedule determined by the Department of
22 Corrections and Rehabilitation.

23 (b) (1) Notwithstanding subdivision (a), authorized law
24 enforcement, custodial, or corrections personnel, including peace
25 officers as defined in Sections 830, 830.1, subdivision (d) of
26 Section 830.2, Sections ~~830.5~~, 830.38, *830.5*, or 830.55, may
27 employ reasonable force to collect blood specimens, saliva samples,
28 or thumb or palm print impressions pursuant to this chapter from
29 individuals who, after written or oral request, refuse to provide
30 those specimens, samples, or thumb or palm print impressions.

31 (2) The withdrawal of blood shall be performed in a medically
32 approved manner in accordance with the requirements of paragraph
33 (2) of subdivision (b) of Section 298.

34 (3) The use of reasonable force as provided in this subdivision
35 shall be carried out in a manner consistent with regulations and
36 guidelines adopted pursuant to subdivision (c).

37 (c) (1) The Department of Corrections and Rehabilitation and
38 the Division of Juvenile Justice shall adopt regulations governing
39 the use of reasonable force as provided in subdivision (b), which
40 shall include the following:

1 (A) "Use of reasonable force" shall be defined as the force that
2 an objective, trained, and competent correctional employee, faced
3 with similar facts and circumstances, would consider necessary
4 and reasonable to gain compliance with this chapter.

5 (B) The use of reasonable force shall not be authorized without
6 the prior written authorization of the supervising officer on duty.
7 The authorization shall include information that reflects the fact
8 that the offender was asked to provide the requisite specimen,
9 sample, or impression and refused.

10 (C) The use of reasonable force shall be preceded by efforts to
11 secure voluntary compliance with this section.

12 (D) If the use of reasonable force includes a cell extraction, the
13 regulations shall provide that the extraction be ~~videotaped~~ *video*
14 *recorded*.

15 (2) The Corrections Standards Authority shall adopt guidelines
16 governing the use of reasonable force as provided in subdivision
17 (b) for local detention facilities, which shall include the following:

18 (A) "Use of reasonable force" shall be defined as the force that
19 an objective, trained and competent correctional employee, faced
20 with similar facts and circumstances, would consider necessary
21 and reasonable to gain compliance with this chapter.

22 (B) The use of reasonable force shall not be authorized without
23 the prior written authorization of the supervising officer on duty.
24 The authorization shall include information that reflects the fact
25 that the offender was asked to provide the requisite specimen,
26 sample, or impression and refused.

27 (C) The use of reasonable force shall be preceded by efforts to
28 secure voluntary compliance with this section.

29 (D) If the use of reasonable force includes a cell extraction, the
30 extraction shall be ~~videotaped~~ *video recorded*.

31 (3) The Department of Corrections and Rehabilitation, the
32 Division of Juvenile Justice, and the Corrections Standards
33 Authority shall report to the Legislature not later than January 1,
34 2005, on the use of reasonable force pursuant to this section. The
35 report shall include, but is not limited to, the number of refusals,
36 the number of incidents of the use of reasonable force under this
37 section, the type of force used, the efforts undertaken to obtain
38 voluntary compliance, if any, and whether any medical attention
39 was needed by the prisoner or personnel as a result of force being
40 used.

1 SEC. 72. Section 599aa of the Penal Code is amended to read:

2 599aa. (a) Any authorized officer making an arrest under
3 Section 597.5 shall, and any authorized officer making an arrest
4 under Section 597b, 597c, 597j, or 599a may, lawfully take
5 possession of all birds or animals and all paraphernalia,
6 implements, or other property or things used or employed, or about
7 to be employed, in the violation of any of the provisions of this
8 code relating to the fighting of birds or animals that can be used
9 in animal or bird fighting, in training animals or birds to fight, or
10 to inflict pain or cruelty upon animals or birds ~~in~~ with respect to
11 animal or bird fighting.

12 (b) Upon taking possession, the officer shall inventory the items
13 seized and question the persons present as to the identity of the
14 owner or owners of the items. The inventory list shall identify the
15 location where the items were seized, the names of the persons
16 from whom the property was seized, and the names of any known
17 owners of the property.

18 Any person claiming ownership or possession of any item shall
19 be provided with a signed copy of the inventory list, which shall
20 identify the seizing officer and his or her employing agency. If no
21 person claims ownership or possession of the items, a copy of the
22 inventory list shall be left at the location from which the items
23 were seized.

24 (c) The officer shall file with the magistrate before whom the
25 complaint against the arrested person is made, a copy of the
26 inventory list and an affidavit stating the affiant's basis for his or
27 her belief that the property and items taken were in violation of
28 this code. On receipt of the affidavit, the magistrate shall order the
29 items seized to be held until the final disposition of any charges
30 filed in the case subject to subdivision (e).

31 (d) All animals and birds seized shall, at the discretion of the
32 seizing officer, be taken promptly to an appropriate animal storage
33 facility. For purposes of this subdivision, an appropriate animal
34 storage facility is one in which the animals or birds may be stored
35 humanely. However, if an appropriate animal storage facility is
36 not available, the officer may cause the animals or birds used in
37 committing or possessed for the purpose of the alleged offenses
38 to remain at the location at which they were found. In determining
39 whether it is more humane to leave the animals or birds at the
40 location at which they were found than to take the animals or birds

1 to an animal storage facility, the officer shall, at a minimum,
2 consider the difficulty of transporting the animals or birds and the
3 adequacy of the available animal storage facility. When the officer
4 does not seize and transport all animals or birds to a storage facility,
5 he or she shall do both of the following:

6 (1) Seize a representative sample of animals or birds for
7 evidentiary purposes from the animals or birds found at the site of
8 the alleged offenses. The animals or birds seized as a representative
9 sample shall be transported to an appropriate animal storage
10 facility.

11 (2) Cause all animals or birds used in committing or possessed
12 for the purpose of the alleged offenses to be banded, tagged, or
13 marked by microchip, and photographed or ~~videotaped~~ *video*
14 *recorded* for evidentiary purposes.

15 (e) (1) If ownership of the seized animals or birds cannot be
16 determined after reasonable efforts, the officer or other person
17 named and designated in the order as custodian of the animals or
18 birds may, after holding the animals and birds for a period of not
19 less than 10 days, petition the magistrate for permission to
20 humanely destroy or otherwise dispose of the animals or birds.
21 The petition shall be published for three successive days in a
22 newspaper of general circulation. The magistrate shall hold a
23 hearing on the petition not less than 10 days after seizure of the
24 animals or birds, after which he or she may order the animals or
25 birds to be humanely destroyed or otherwise disposed of, or to be
26 retained by the officer or person with custody until the conviction
27 or final discharge of the arrested person. No animal or bird may
28 be destroyed or otherwise disposed of until ~~4~~ *four* days after the
29 order.

30 (2) Paragraph (1) shall apply only to those animals and birds
31 seized under any of the following circumstances:

32 (A) After having been used in violation of any of the provisions
33 of this code relating to the fighting of birds or animals.

34 (B) At the scene or site of a violation of any of the provisions
35 of this code relating to the fighting of birds or animals.

36 (f) Upon the conviction of the arrested person, all property
37 seized shall be adjudged by the court to be forfeited and shall then
38 be destroyed or otherwise disposed of as the court may order. Upon
39 the conviction of the arrested person, the court may order the
40 person to make payment to the appropriate public entity for the

1 costs incurred in the housing, care, feeding, and treatment of the
2 animals or birds. Each person convicted in connection with a
3 particular animal or bird, excluding any person convicted as a
4 spectator pursuant to Section 597b or 597c, or subdivision (b) of
5 Section 597.5, may be held jointly and severally liable for
6 restitution pursuant to this subdivision. This payment shall be in
7 addition to any other fine or other sentence ordered by the court.
8 The court shall specify in the order that the public entity shall not
9 enforce the order until the defendant satisfies all other outstanding
10 fines, penalties, assessments, restitution fines, and restitution
11 orders. The court may relieve any convicted person of the
12 obligation to make payment pursuant to this subdivision for good
13 cause but shall state the reasons for that decision in the record. In
14 the event of the acquittal or final discharge without conviction of
15 the arrested person, the court shall, on demand, direct the delivery
16 of the property held in custody to the owner. If the owner is
17 unknown, the court shall order the animals or birds to be humanely
18 destroyed or otherwise disposed of.

19 SEC. 73. Section 868.7 of the Penal Code is amended to read:

20 868.7. (a) Notwithstanding any other provision of law, the
21 magistrate may, upon motion of the prosecutor, close the
22 examination in the manner described in Section 868 during the
23 testimony of a witness:

24 (1) Who is a minor or a dependent person, *as defined in*
25 *paragraph (3) of subdivision (f) of Section 288*, with a substantial
26 cognitive impairment, ~~as defined in paragraph (3) of subdivision~~
27 ~~(f) of Section 288~~, and is the complaining victim of a sex offense,
28 where testimony before the general public would be likely to cause
29 serious psychological harm to the witness and where no alternative
30 procedures, including, but not limited to, ~~videotaped~~ *video recorded*
31 deposition or contemporaneous examination in another place
32 communicated to the courtroom by means of closed-circuit
33 television, are available to avoid the perceived harm.

34 (2) Whose life would be subject to a substantial risk in appearing
35 before the general public, and where no alternative security
36 measures, including, but not limited to, efforts to conceal his or
37 her features or physical description, searches of members of the
38 public attending the examination, or the temporary exclusion of
39 other actual or potential witnesses, would be adequate to minimize
40 the perceived threat.

1 (b) In any case where public access to the courtroom is restricted
2 during the examination of a witness pursuant to this section, a
3 transcript of the testimony of the witness shall be made available
4 to the public as soon as is practicable.

5 ~~This section shall become operative on January 1, 1987.~~

6 SEC. 74. Section 1203.098 of the Penal Code is amended to
7 read:

8 1203.098. (a) Unless otherwise provided, a person who works
9 as a facilitator in a batterers' intervention program that provides
10 programs for batterers pursuant to subdivision (c) of Section
11 1203.097 shall complete the following requirements before being
12 eligible to work as a facilitator in a batterers' intervention program:

13 (1) Forty hours of core-basic training. A minimum of eight hours
14 of this instruction shall be provided by a shelter-based or
15 shelter-approved trainer. The core curriculum shall include the
16 following components:

17 (A) A minimum of eight hours in basic domestic violence
18 knowledge focusing on victim safety and the role of domestic
19 violence shelters in a community-coordinated response.

20 (B) A minimum of eight hours in multicultural, ~~cross-cultural~~
21 ~~cross-cultural~~, and multiethnic diversity and domestic violence.

22 (C) A minimum of four hours in substance abuse and domestic
23 violence.

24 (D) A minimum of four hours in intake and assessment,
25 including the history of violence and the nature of threats and
26 substance abuse.

27 (E) A minimum of eight hours in group content areas focusing
28 on gender roles and socialization, the nature of violence, the
29 dynamics of power and control, and the ~~affects~~ *effects* of abuse on
30 children and others as required by Section 1203.097.

31 (F) A minimum of four hours in group facilitation.

32 (G) A minimum of four hours in domestic violence and the law,
33 ethics, all requirements specified by the probation department
34 pursuant to Section 1203.097, and the role of batterers' intervention
35 programs in a coordinated-community response.

36 (H) Any person that provides documentation of coursework, or
37 equivalent training, that he or she has satisfactorily completed,
38 shall be exempt from that part of the training that was covered by
39 the satisfactorily completed coursework.

1 (I) The coursework that this person performs shall count ~~towards~~
2 ~~toward~~ the continuing education requirement.

3 (2) Fifty-two weeks or no less than 104 hours in six months, as
4 a trainee in an approved batterers' intervention program with a
5 minimum of a two-hour group each week. A training program
6 shall include at least one of the following:

7 (A) Cofacilitation internship in which an experienced facilitator
8 is present in the room during the group session.

9 (B) Observation by a trainer of the trainee conducting a group
10 session via a one-way mirror.

11 (C) Observation by a trainer of the trainee conducting a group
12 session via a video or audio ~~tape~~ recording.

13 (D) Consultation and or supervision twice a week in a six-month
14 program or once a week in a 52-week program.

15 (3) An experienced facilitator is one who has the following
16 qualifications:

17 (A) Documentation on file, approved by the agency, evidencing
18 that the experienced facilitator has the skills needed to provide
19 quality supervision and training.

20 (B) Documented experience working with batterers for three
21 years, and a minimum of two years working with ~~batterer's~~
22 ~~batterers'~~ groups.

23 (C) Documentation by January 1, 2003, of coursework or
24 equivalent training that demonstrates satisfactory completion of
25 the 40-hour basic-core training.

26 (b) A facilitator of a batterers' intervention program shall
27 complete, as a minimum continuing education requirement, 16
28 hours annually of continuing education in either domestic violence
29 or a related field with a minimum of ~~8~~ *eight* hours in domestic
30 violence.

31 (c) A person or agency with a specific hardship may request the
32 probation department, in writing, for an extension of time to
33 complete the training or to complete alternative training options.

34 (d) (1) An experienced facilitator, as defined in paragraph (3)
35 of subdivision (a), is not subject to the supervision requirements
36 of this section, ~~if they meet~~ *he or she meets* the requirements of
37 subparagraph (C) of paragraph (3) of subdivision (a).

38 (2) This section does not apply to a person who provides
39 batterers' treatment through a jail education program if the person

1 in charge of that program determines that such person has adequate
2 education or training in domestic violence or a related field.

3 (e) A person who satisfactorily completes the training
4 requirements of a county probation department whose training
5 program is equivalent to or exceeds the training requirements of
6 this act shall be exempt from the training requirements of this act.

7 SEC. 75. Section 4423.1 of the Public Resources Code is
8 amended to read:

9 4423.1. Burning under permit by any person on public or
10 private lands, except within incorporated cities, may be suspended,
11 restricted, or otherwise prohibited by proclamation. Any of the
12 following public officers may issue a proclamation, which shall
13 be applicable within their respective jurisdictions:

14 (a) The director or his or her designee.

15 (b) Any county fire warden with the approval of the director.

16 (c) The federal officers directing activities within California of
17 the United States Bureau of Land Management, the National Park
18 Service, and the United States Forest Service.

19 The proclamation may be issued when, in the judgment of the
20 issuing public official, the menace of destruction by fire to life,
21 improved property, or natural resources is, or is forecast to become,
22 extreme due to critical fire weather, fire suppression forces being
23 heavily committed to control fires already burning, acute dryness
24 of the vegetation, or other factors that may cause the rapid spread
25 of fire. A proclamation is effective on issuance or at a time
26 specified therein and shall remain in effect until a proclamation
27 removing the suspension, restriction, or prohibition is issued. The
28 proclamation may be effective for a single day or longer. The
29 proclamation shall declare the conditions that necessitate its
30 issuance, designate the geographic area to which it applies, require
31 that all or specified burning under permit be suspended, restricted,
32 or prohibited until the conditions necessitating the proclamation
33 abate, and identify the public official issuing the proclamation.
34 The proclamation may be in the form of a verbal or ~~tape-recorded~~
35 *audio recorded* telephone message, a press release, or a posted
36 order.

37 The proclamation may be issued without complying with Chapter
38 3.5 (commencing with Section 11340) and Chapter 5 (commencing
39 with Section 11500) of Part 1 of Division 3 of Title 2 of the
40 Government Code.

1 SEC. 76. Section 1611 of the Revenue and Taxation Code is
2 amended to read:

3 1611. The county board shall make a record of the hearing and,
4 upon request, shall furnish the party with ~~a tape~~ *an audio* recording
5 or a transcript thereof at his *or her* expense. Request for ~~a tape~~ *an*
6 *audio* recording or a transcript may be made at any time, but not
7 later than 60 days following the final determination by the county
8 board.

9 SEC. 77. Section 19639 of the Welfare and Institutions Code
10 is amended to read:

11 19639. (a) The director shall adopt and promulgate necessary
12 rules and regulations, in compliance with Chapter 3.5 (commencing
13 with Section 11340) of Part 1 of Division 3 of Title 2 of the
14 Government Code, and do all things necessary and proper to carry
15 out this article. The director shall review these regulations for
16 possible revision at least every three years.

17 (b) These regulations shall include, but not be limited to:

18 (1) Uniform procedures for vendor application and termination.

19 (2) Criteria and standards for selecting vendors and matching
20 vendors to facilities ~~which~~ *that* shall ensure that the most qualified
21 person is selected for a facility.

22 (3) Equipment life standards and service standards for the
23 inventory, repair, and purchase of equipment, as required under
24 subdivision (a) of Section 19626.5.

25 (4) The minimum requirements for installation of a facility.

26 (5) A fair minimum of return to vendors.

27 (6) Standards for training, in-service retraining, and upward
28 mobility.

29 (7) The policies and procedures used by the department for
30 collection and deposit or disbursement of all vending facility
31 income, including, but not limited to, the frequency, rules
32 regarding, and method of collection of funds from facilities
33 operated by licensed blind vendors and facilities operated by other
34 individuals or entities.

35 (c) The director shall provide a written copy of all rules and
36 regulations adopted pursuant to this section to all vendors. Upon
37 request by a vendor, the rules and regulations shall be supplied to
38 the vendor ~~on cassette tapes~~ *as an audio recording* in lieu of the
39 written copy. In addition, the director shall notify all vendors of
40 any proposed changes to the rules and regulations.

1 SEC. 78. Any section of any act other than ____ of the 2009–10
2 Regular Session enacted by the Legislature during the 2009
3 calendar year that takes effect on or before January 1, 2010, and
4 that amends, amends and renumbers, adds, repeals and adds, or
5 repeals a section that is amended by this act, shall prevail over this
6 act, whether that act is enacted prior to, or subsequent to, the
7 enactment of this act.

O