Assembly Bill No. 176

Passed the Assembly June 18, 2009

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Chief Clerk of the Assembly

Passed the Senate June 15, 2009

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2009, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

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, 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.

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

SECTION 1. Section 2293 of the Business and Professions Code is amended to read:

2293. (a) The professional competency examination shall be in the form of an oral clinical examination to be administered by three physician examiners selected by the division or its designee, who shall test for medical knowledge specific to the physician's specialty or specific suspected deficiency. The examination shall be audio recorded.

(b) A failing grade from two of the examiners shall constitute a failure of an examination. In the event of a failure, the board shall supply a true and correct copy of the audio recording of the examination to the unsuccessful examinee.

(c) Within 45 days following receipt of the audio recording of the examination, a physician who fails the examination may request a hearing before the administrative law judge as designated in Section 11371 of the Government Code to determine whether he or she is entitled to take a second examination.

(d) If the physician timely requests a hearing concerning the right to reexamination under subdivision (c), the hearing shall be held in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). Upon a finding that the examination or procedure is unfair or that one or more of the examiners manifest bias toward the examinee, a reexamination shall be ordered.

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

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

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

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

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

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

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

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

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

(b) The continuing education requirements of this section may be met through continuing education courses approved by the California Naturopathic Doctors Association, the American Association of Naturopathic Physicians, the Medical Board of California, the California State Board of Pharmacy, the State Board of Chiropractic Examiners, or other courses approved by the bureau.

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

4846.5. (a) Except as provided in this section, the board shall issue renewal licenses only to those applicants that have completed a minimum of 36 hours of continuing education in the preceding two years.

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

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

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

(C) The American Veterinary Medical Association.

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

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

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

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

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

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

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

(2) Continuing education credits shall be granted to those veterinarians taking self-study courses, which may include, but are not limited to, reading journals, viewing video recordings, or listening to audio recordings. The taking of these courses shall be limited to no more than six hours biennially.

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

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

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

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

(5) Continuing education hours earned by attending courses sponsored or cosponsored by those entities listed in paragraph (1) between January 1, 2000, and January 1, 2001, shall be credited toward a veterinarian's continuing education requirement under this section.

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

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

(e) The board shall have the right to audit the records of all applicants to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a period of four years and shall make these records available to the board for auditing purposes upon request. If the board, during this audit, questions whether any course reported by the veterinarian satisfies the continuing education requirement, the veterinarian shall provide information to the board concerning the content of the course; the name of its sponsor and cosponsor, if any; and specify the specific 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 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 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 state, or is accredited by the Western Association of Schools and Colleges.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections 8016 and 8017. Its educational program shall be on the postsecondary or collegiate level. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer all components of the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained in a manner to render them safe from theft, fire, or other loss. The records shall indicate positive daily and clock-hour attendance of each student for all

classes, apprenticeship and graduation reports, high school transcripts or the equivalent or self-certification of high school graduation or the equivalent, transcripts of other education, and student progress to date, including all progress and counseling reports.

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

(d) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b) and this subdivision. Recognition may be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of study established by the board and complied with the provisions of Section 8020, and has been issued a certificate to practice shorthand reporting as defined in Sections 8016 and 8017. The board may, for good cause shown, extend the three-year provisional recognition period for not more than one year. Failure to meet the provisions and terms of this section shall require the board to deny recognition. Once granted, recognition may be withdrawn by the board for failure to comply with all applicable laws and regulations.

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

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

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

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

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

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

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

"IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE THE STATE LICENSING EXAMINATION, THE PERSON SHALL COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE RECOGNIZED, CONTACT: THE COURT REPORTERS

BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER)."

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) Schools shall make available a comprehensive final examination in each academic subject to any student desiring to challenge an academic class in order to obtain credit towards certification for the state licensing examination. The points required to pass a challenge examination shall not be higher than the minimum points required of other students completing the academic class.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The registration shall include the following information:

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

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

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

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

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

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

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

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

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

(10) The names of the carriers that the information provider plans to utilize to carry the 900 number calls.

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

(d) It shall be unlawful for any information provider that operates a sweepstakes to make reference, in any contact with the public, to the fact that the information provider is registered with the Department of Justice, as required by this section, or in any other manner imply that that registration represents approval of the sweepstakes by the Department of Justice.

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

19513. (a) The board shall prepare both written and oral examinations. All examinations shall be standardized and, in the case of oral examinations, audio recorded. Written examinations may be administered by members of the board staff. Oral examinations shall be conducted by a panel of not fewer than three board members.

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

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

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

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

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

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

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

19861. Notwithstanding subdivision (i) of Section 19801, the commission shall not deny a license to a gambling establishment solely because it is not open to the public, provided that all of the following are true: (a) the gambling establishment is situated in a local jurisdiction that has an ordinance allowing only private clubs, and the gambling establishment was in operation as a private club under that ordinance on December 31, 1997, and met all applicable state and local gaming registration requirements; (b) the gambling establishment consists of no more than five gaming tables; (c) video recordings of the entrance to the gambling room or rooms and all tables situated therein are made during all hours of operation by means of closed-circuit television cameras, and these recordings are retained for a period of 30 days and are made available for review by the department or commission upon request; and (d) the gambling establishment is open to members of the private club and their spouses in accordance with membership criteria in effect as of December 31, 1997.

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

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

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

(b) When the commission grants an application for a license or approval, the commission may limit or place restrictions thereon as it may deem necessary in the public interest, consistent with the 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 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 ($20,000) per shipment. Proof of cargo insurance coverage shall be maintained on file and presented to the Department of Motor Vehicles or Public Utilities Commission upon written request.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) A list of items that are not recommended to be packed in light of foreseeable hazards inherent in the company's handling

of the containers and in light of any limitation of liability contained in the rental agreement.

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

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

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

(1) It shall be fully enclosed and locked.

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

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

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

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

25658.4. (a) No clerk shall make an off sale of alcoholic beverages unless the clerk executes under penalty of perjury on the first day he or she makes that sale an application and

acknowledgment. The application and acknowledgment shall be in a form understandable to the clerk.

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

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

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

(C) Hours of operation as provided in Article 2 (commencing with Section 25631).

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

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

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

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

(3) The licensee shall keep the executed application and acknowledgment on the premises at all times and available for inspection by the department. A licensee with more than one licensed off-sale premises in the state may comply with this subdivision by maintaining an executed application and acknowledgment at a designated licensed premises, regional office, or headquarters office in the state. An executed application and acknowledgment maintained at the designated locations shall be valid for all licensed off-sale premises owned by the licensee. Any licensee maintaining an application and acknowledgment at a designated site other than the individual licensed off-sale premises shall notify the department in advance and in writing of the site where the application and acknowledgment shall be maintained and available for inspection. A licensee electing to maintain

application and acknowledgments at a designated site other than the licensed premises shall maintain at each licensed premises a notice of where the executed application and acknowledgments are located. Any licensee with more than one licensed off-sale premises who elects to maintain the application and acknowledgments at a designated site other than each licensed premises shall provide the department, upon written demand, a copy of any employee's executed application and acknowledgment within 10 business days. A violation of this subdivision by a licensee constitutes grounds for discipline by the department.

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

(c) A retail licensee shall post a notice that contains and describes, in concise terms, the fines and penalties for any violation of Section 25658, relating to the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, any person under the age of 21 years.

(d) Nonprofit organizations or licensees may obtain video recordings and other training materials from the department on the Licensee Education on Alcohol and Drugs (LEAD) program. The video recordings and training materials may be updated periodically and may be provided in English and other languages, and when made available by the department, shall be provided at cost.

(e) As used in this section:

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

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

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

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

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

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

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

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

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service

company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision does not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

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

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 belongs to the surviving spouse of the deceased personality unless there are any surviving children or grandchildren of the deceased personality, in which case one-half of the entire interest in those rights belongs to the surviving spouse.

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

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

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

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

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

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

(3) Upon receipt and after filing of any document under this section, the Secretary of State shall post the document along with the entire registry of persons claiming to be a successor in interest to the rights of a deceased personality or a registered licensee under this section upon the World Wide Web, also known as the Internet. The Secretary of State may microfilm or reproduce by other techniques any of the filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under this section shall be admissible in any court of law. The microfilm or other reproduction of any document may be destroyed by the Secretary of State 70 years after the death of the personality named therein.

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

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

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

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

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

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

(*l*) Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any

advertisement or solicitation in violation of this section is published or disseminated, unless it is established that the owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

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

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

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

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

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

129. Notwithstanding any other provision of law, no copy, reproduction, or facsimile of any kind shall be made of any photograph, negative, or print, including instant photographs and video recordings, of the body, or any portion of the body, of a deceased person, taken by or for the coroner at the scene of death or in the course of a post mortem examination or autopsy made by or caused to be made by the coroner, except for use in a criminal

action or proceeding in this state that relates to the death of that person, or except as a court of this state permits, by order after good cause has been shown and after written notification of the request for the court order has been served, at least five days before the order is made, upon the district attorney of the county in which the post mortem examination or autopsy has been made or caused to be made.

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

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

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

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

(1) Filing, motion, and jury fees.

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

(3) Taking, video recording, and transcribing necessary depositions including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed, and travel expenses to attend 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 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 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's fees, when authorized by any of the following:

(A) Contract.

(B) Statute.

(C) Law.

(11) Court 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.

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

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

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

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

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

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

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

(3) Allowable costs shall be reasonable in amount.

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

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

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

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

2025.560. (a) An audio or video recording of deposition testimony made by, or at the direction of, any party, including a certified recording made by an operator qualified under subdivisions (b) to (f), inclusive, of Section 2025.340, shall not be filed with the court. Instead, the operator shall retain custody of that recording and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the recording and the integrity of the testimony and images it contains.

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

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

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

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

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

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

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

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

(c) "Integrated, experiential, and developmentally appropriate educational program" means a program that is designed around the abilities and interests of the children in the program and one in which children learn about the various subjects simultaneously, as opposed to segmented courses, and through "hands-on" or "active learning" teaching methods that are more appropriate for young children than the academic "textbook" approach.

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

(e) "Portfolio material" means a selection of representative samples of the child's performance within the program setting that may include, but not be limited to, teacher observations, work samples, developmental profiles, photographs, and audio or video recordings that present a picture of the child's progress over time.

(f) "School district" includes county offices of education.

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

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

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

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

(b) "Board" means the State Allocation Board.

(c) "Cost of project" includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, "educational technology hardware" includes, but is not limited to, computers, telephones, televisions, and video 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) Mechanical systems, including heating, ventilation, and air-conditioning systems, 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.

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

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

(H) Fire sprinklers, fire extinguishers, emergency alarm systems, and all emergency equipment and systems appear to be functioning properly. Fire alarm pull stations are clearly visible. Fire extinguishers are current and placed in all required areas, including

every classroom and assembly area. Emergency exits are clearly marked and unobstructed.

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

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

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

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

(M) Restrooms and restroom fixtures satisfy the following:

(i) Are functional.

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

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

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

(N) The sanitary sewer system controls odor as designed, displays no signs of stoppage, backup, or flooding, in the facilities 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 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 video recordings shall, by a majority vote of the governing board, adopt

a policy regarding access by minors to 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, audio recordings of books and other related materials. The 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 including proteins or their constituents that are usually digested in an internal cavity before assimilation into the body proper, and beings that are distinguished from typical plants by lack of chlorophyll, by an inability to perform photosynthesis, by cells that lack cellulose walls, and by the frequent presence of discrete complex sense organs.

(b) "Alternative education project" includes, but is not limited to, the use of video recordings, models, films, books, and computers, which would provide an alternate avenue for obtaining the knowledge, information, or experience required by the course of study in question. "Alternative education project" also includes "alternative test."

(c) "Pupil" means a person under 18 years of age who is matriculated in a course of instruction in an educational institution within the scope of Section 32255.5. For the purpose of asserting the pupil's rights and receiving any notice or response pursuant to

this chapter, "pupil" also includes the parents of the matriculated minor.

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

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

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

(b) The Legislature finds and declares that there are few films or 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 video

recordings on these subjects is especially true for the Armenian genocide.

(c) The Legislature hereby finds and declares that films and 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 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 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:

52743. The State Department of Education shall make available the films or video recordings produced pursuant to this article to schools.

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

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

(1) The strengths of the pupil.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The pupil's anticipated needs.

(5) Any other relevant matter.

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

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

(g) (1) Notwithstanding Section 632 of the Penal Code, the parent or guardian or local educational agency shall have the right to audio record the proceedings of individualized education program team meetings. The parent or guardian or local educational agency shall notify the members of the individualized education program team of his, her, or its intent to audio record a meeting at least 24 hours prior to the meeting. If the local educational agency initiates the notice of intent to audio record a meeting and the parent or guardian objects or refuses to attend the meeting because it will be audio recorded, the meeting shall not be audio recorded.

(2) The Legislature hereby finds as follows:

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

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

(i) Inspect and review the audio recordings.

(ii) Request that the audio recordings be amended if the parent or guardian believes that they contain information that is inaccurate,

misleading, or in violation of the rights of privacy or other rights of the individual with exceptional needs.

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

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

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

60204. The commission shall:

(a) Recommend curriculum frameworks to the state board.

(b) Develop criteria for evaluating instructional materials submitted for adoption so that the materials adopted shall adequately cover the subjects in the indicated grade or grades and comply with the provisions of Article 3 (commencing with Section 60040) of Chapter 1. The criteria developed by the commission shall be consistent with the duties of the state board pursuant to Section 60200. The criteria shall be public information and shall be provided in written or printed form to any person requesting such information.

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

(d) Recommend to the state board instructional materials that it approves for adoption.

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

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

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

2052. It is the intent of the Legislature to promote the fundamental right to vote of visually impaired individuals, and to make efforts to improve public awareness of the availability of

ballot pamphlet audio recordings and improve their delivery to these voters.

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

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

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

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

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

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

(2) Make recommendations to the Secretary of State for improving the availability and accessibility of ballot pamphlet audio recordings and their delivery to visually impaired voters. The Secretary of State may implement the recommendations made by the board.

(3) Increase the distribution of public service announcements identifying the availability of ballot pamphlet 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 audio recorded version of the state ballot pamphlet. This audio recorded 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 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, 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.

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

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

795. (a) The testimony of a witness is not inadmissible in a criminal proceeding by reason of the fact that the witness has previously undergone hypnosis for the purpose of recalling events that are the subject of the witness's testimony, if all of the following conditions are met:

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

(2) The substance of the prehypnotic memory was preserved in a writing, audio recording, or video recording prior to the hypnosis.

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

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

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

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

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

(4) Prior to admission of the testimony, the court holds a hearing pursuant to Section 402 at which the proponent of the evidence proves by clear and convincing evidence that the hypnosis did not so affect the witness as to render the witness's prehypnosis recollection unreliable or to substantially impair the ability to cross-examine the witness concerning the witness's prehypnosis recollection. At the hearing, each side shall have the right to present expert testimony and to cross-examine witnesses.

(b) Nothing in this section shall be construed to limit the ability of a party to attack the credibility of a witness who has undergone hypnosis, or to limit other legal grounds to admit or exclude the testimony of that witness.

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

1118. An oral agreement "in accordance with Section 1118" means an oral agreement that satisfies all of the following conditions:

(a) The oral agreement is recorded by a court reporter or reliable means of audio recording.

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

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

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

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

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

(1) A video recorded statement introduced at a preliminary hearing or prior proceeding concerning the same criminal matter.

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

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

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

3170. (a) If it appears on the face of a petition, application, or other pleading to obtain or modify a temporary or permanent custody or visitation order that custody, visitation, or both are 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, 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 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 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 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, 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, 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.

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

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

(5) Assisting the clerk in maintaining records.

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

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

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

(9) Developing programs for bar and community outreach through day and evening programs, 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 temporary support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9), modification of support orders (Article 3 (commencing with Section 3680) of Chapter 6 of Part 1 of Division 9), and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children.

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

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

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

(a) A lottery game may be based on the results of a horse race with the consent of the association conducting the race and the

California Horse Racing Board. Any compensation received by an association for the use of its races to determine the winners of a lottery game shall be divided equally between commissions and purses.

(b) If a lottery game utilizes a drawing of winning numbers, a drawing among entries, or a drawing among finalists, the drawings shall always be open to the public. No manual or physical selection in the drawings shall be conducted by any employee of the Lottery. Except for computer automated drawings, drawings shall be witnessed by an independent lottery contractor having qualifications established by the commission. Any equipment used in the drawings shall be inspected by the independent lottery contractor and an employee of the Lottery both before and after the drawings. The drawings and the inspections shall be both audio and video recorded.

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

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

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

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would 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 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 audio record its closed sessions and preserve the 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 audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the 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 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this section, "recordings of telephone and radio communications" means the routine daily recording of telephone communications to and from a county and all radio communications relating to the operations of the departments.

(c) For purposes of this section, "routine video monitoring" means video recording by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in subdivision (a), including mobile in-car video systems, jail observation and monitoring systems, and building security recording systems.

(d) For purposes of this section, "department" includes a public safety communications center operated by the county and the governing board of any special district the membership of which is the same as the membership of the board of supervisors.

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

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

For purposes of this section, video recording media, including recordings of "routine video monitoring" pursuant to Section 26202.6, shall be considered duplicate records if the county keeps another record, such as written minutes or an audio recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for a period of at least 90 days after occurrence of the event recorded thereon.

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

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

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

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

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

(b) Notwithstanding any other provision of law, 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 video recordings or other recordings are evidence in any claim filed or any pending litigation, in which case the video

recordings or other recordings shall be preserved until the claim or the pending litigation is resolved.

(2) The video recordings or other recordings recorded an event that was or is the subject of an incident report, in which case the 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 video recordings or other recordings shall be preserved for as long as the installed technology allows.

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

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

(1) The autopsy has otherwise been authorized.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For purposes of this section, "routine video monitoring" means video recording by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in subdivision (a), including mobile in-car video systems, jail observation and monitoring systems, and building security recording systems.

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

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

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

For purposes of this section, video recording media, including recordings of "routine video monitoring" pursuant to Section 34090.6, shall be considered duplicate records if the city keeps another record, such as written minutes or an audio recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for a period of at least 90 days after occurrence of the event recorded thereon.

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

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

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

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

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

(b) Notwithstanding any other provision of law, 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 video recordings or other recordings are evidence in any claim filed or any pending litigation, in which case the video recordings or other recordings shall be preserved until the claim or the pending litigation is resolved.

(2) The video recordings or other recordings recorded an event that was or is the subject of an incident report, in which case the 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 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 that will count each coin, and accumulate that count or the accumulated amount of money, deposited in the coin-operated viewing machine. 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 purposes of this section, "coin-operated viewing machine" means any projector, machine, television, or other device that displays for viewing motion pictures, projection slides, filmstrips, photographic pictures, video recordings, or drawings, and 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 the device, or any other device electrically or mechanically connected thereto. For 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 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 that county ordinance has been adopted, in which case the county ordinance shall be enforceable in the area of the county outside 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 machine and each day in which a violation occurs.

(2) In determining the amount of the penalty, the court shall take into consideration all relevant circumstances, including, but not limited to, the frequency of inspection, the cashflow through the machine, the amount of revenue derived by other 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 tally counters, provided, however, that an ordinance adopted pursuant to this section may provide for checking of 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 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 agency attorney shall be obtained. In the event that the recordings

are evidence in any claim filed or any pending litigation, they shall be preserved until pending litigation is resolved.

(b) For purposes of this article, "recordings of telephone and radio communications" means the routine daily recording of telephone communications to and from a special district, and all radio communications relating to the operations of the special district.

(c) For purposes of this article, "routine video monitoring" means video recording by a video or electronic imaging system designed to record the regular and ongoing operations of the special district, including mobile in-car video systems, jail observation and monitoring systems, and building security recording systems.

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

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

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

For purposes of this section, video recording media, including recordings of "routine video monitoring" pursuant to Section 53160, shall be considered duplicate records if the special district keeps another record, such as written minutes or an audio recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for at least 90 days after occurrence of the event recorded thereon.

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

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

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

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

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

(b) Notwithstanding any other provision of law, 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 video recordings or other recordings are evidence in any claim filed or any pending litigation, in which case the video recordings or other recordings shall be preserved until the claim or the pending litigation is resolved.

(2) The video recordings or other recordings recorded an event that was or is the subject of an incident report, in which case the 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 video recordings or other recordings shall be preserved for as long as the installed technology allows.

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

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

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection

of an audio or video recording shall be provided without charge on equipment made available by the local agency.

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

54960. (a) 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 chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative 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 legislative body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to audio record its closed sessions and preserve the 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 audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter 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 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.

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

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

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

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

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

68151. The following definitions apply to this chapter:

(a) "Court record" shall consist of the following:

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

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

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

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

(c) "Final disposition of the case" means that an acquittal, dismissal, or order of judgment has been entered in the case or proceeding, the judgment has become final, and no postjudgment motions or appeals are pending in the case or for the reviewing court upon the mailing of notice of the issuance of the remittitur.

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

(d) "Retain permanently" means that the original court records shall never be transferred or destroyed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The date when consultation was provided.

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

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

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

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

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

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

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

(C) Two years of full-time experience, or the equivalent, within the last four years, as a direct care provider assisting with the self-administration of medications for a residential care facility

for the elderly, during which time the individual has acted in substantial compliance with applicable regulations.

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

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

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

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

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

(f) Other training or instruction, as required in paragraphs (1) and (2) of subdivision (a), may be provided offsite, and may use various methods of instruction, including, but not limited to, all of the following:

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

(2) Video recorded instruction, interactive material, online training, and books.

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

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

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

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

1736.5. (a) The state department shall deny a training application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475,

484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or 666, unless any of the following apply:

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

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

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

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

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

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

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

(C) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Section 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the home health aide, any other person, or the public,

to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

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

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

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

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

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

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

(A) The nature and seriousness of the offense under consideration and its relationship to the person's employment duties and responsibilities.

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

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

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

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

(F) Employment history and current employer recommendations.

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

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

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

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

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

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

(1) The reasons for the determination.

(2) The applicant’s or certificate holder’s right to appeal the determination if the determination was made under subdivision (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 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, 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. In this event, the state department shall revoke the person's certificate.

(j) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the employer of the applicant or certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or

facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the licensee or facility shall not incur criminal, civil, unemployment insurance, workers' compensation, or administrative liability as a result of that denial or termination.

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

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

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

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

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

(A) To improve function.

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

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

(1) Revise existing informed consent forms and procedures to advise a donor or, if the donor is deceased, the donor's representative, that tissue banks work with both nonprofit and for-profit tissue processors and distributors, that it is possible that donated skin may be used for cosmetic or reconstructive surgery purposes, and that donated tissue may be used for transplants outside of the United States.

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

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

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

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

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

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

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

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

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

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

13220. The owner or operator of any of the following buildings shall provide to persons entering those buildings specific emergency procedures to be followed in the event of fire, including procedures for handicapped and nonambulatory persons:

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

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

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

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

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

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

(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 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, video recordings, audio recordings, books, pamphlets, and computer software as that term is defined in Section 6254.9 of the Government Code, that the department produces whether the department is entitled to that copyright protection or not.

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

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

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

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

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

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

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

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

(b) Notwithstanding Section 11502 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 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 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.

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

(f) In the case of any adjudicative hearing conducted by the department, "transcript," as used in subdivision (c) of Section 11517 of the Government Code, shall be deemed to include any alternative form of recordation of the oral proceedings, including, but not limited to, an audio recording.

(g) Pursuant to Section 11415.50 of the Government Code, the department may, by regulation, provide for any appropriate

informal procedure to be used for an informal level of review that does not itself lead to a final decision of the department or the director. The procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to an informal level of review authorized by this subdivision. Informal conferences concerning appeals by institutional Medi-Cal providers and health facilities may be held in Sacramento or Los Angeles.

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

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

(j) Nothing in this provision shall supersede express provisions of law that apply to any hearing that is not adjudicative in nature or that does not involve due process rights specific to an individual or specific individuals, as opposed to the general public or a segment of the general public.

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

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

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

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

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

The informal public hearing shall be conducted as follows:

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

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

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

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

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

(F) The office shall make an audio or video recording of the hearing, and copies of the recording shall be made available at

cost upon reasonable notice. However, the applicant shall have a right to bring a certified shorthand reporter to be used in place of the audio or video recording, provided that he or she provides the office with a copy of the transcript.

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

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

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

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

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

(f) Notice of the substance of the office's decisions shall be published in a newspaper of general circulation within the health service area served by the applicant, within 10 calendar days following the decision.

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

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

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

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

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

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

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

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

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

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

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

(4) That the customer may cancel the insurance at any time. If the customer cancels within 30 days from the delivery of the insurance policy, certificate, or notice of proposed insurance, the premium will be refunded in full. If the customer cancels at any time thereafter, any unearned premium will be refunded in accordance with applicable law.

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

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

(e) The insurance is provided under an individual policy issued to the purchaser or under a group or master policy issued to the organization licensed as a credit insurance agent by an insurer authorized to transact the applicable kinds or types of insurance in this state. Any of the conditions and disclosures specified in this

section shall be deemed satisfied if the consumer is otherwise provided with the information required in this section by any other disclosures required by existing federal or state law or regulations.

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

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

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

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

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

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

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

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

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

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

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

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

(c) The department shall also survey licensed carriers as to the number of suspected fraudulent claims under residential property insurance policies that are submitted to the department's fraud division as required by law, and that resulted, or eventually resulted, in the utilization of the examination under oath process. Policies of residential property insurance shall be as defined in Section 10087.

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

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

298.1. (a) On and after January 1, 1999, any person who refuses to give any or all of the following, blood specimens, saliva samples, or thumb or palm print impressions as required by this chapter, once he or she has received written notice from the Department of Justice, the Department of Corrections and Rehabilitation, any law enforcement personnel, or officer of the court that he or she is required to provide specimens, samples, and print impressions pursuant to this chapter is guilty of a misdemeanor. The refusal or failure to give any or all of the

following, a blood specimen, saliva sample, or thumb or palm print impression is punishable as a separate offense by both a fine of five hundred dollars ($500) and imprisonment of up to one year in a county jail, or if the person is already imprisoned in the state prison, by sanctions for misdemeanors according to a schedule determined by the Department of Corrections and Rehabilitation.

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

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

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

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

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

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

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

(D) If the use of reasonable force includes a cell extraction, the regulations shall provide that the extraction be video recorded.

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

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

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

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

(D) If the use of reasonable force includes a cell extraction, the extraction shall be video recorded.

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

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

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

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

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

(c) The officer shall file with the magistrate before whom the complaint against the arrested person is made, a copy of the inventory list and an affidavit stating the affiant's basis for his or her belief that the property and items taken were in violation of this code. On receipt of the affidavit, the magistrate shall order the items seized to be held until the final disposition of any charges filed in the case subject to subdivision (e).

(d) All animals and birds seized shall, at the discretion of the seizing officer, be taken promptly to an appropriate animal storage facility. For purposes of this subdivision, an appropriate animal storage facility is one in which the animals or birds may be stored humanely. However, if an appropriate animal storage facility is not available, the officer may cause the animals or birds used in committing or possessed for the purpose of the alleged offenses to remain at the location at which they were found. In determining whether it is more humane to leave the animals or birds at the location at which they were found than to take the animals or birds to an animal storage facility, the officer shall, at a minimum, consider the difficulty of transporting the animals or birds and the adequacy of the available animal storage facility. When the officer does not seize and transport all animals or birds to a storage facility, he or she shall do both of the following:

(1) Seize a representative sample of animals or birds for evidentiary purposes from the animals or birds found at the site of the alleged offenses. The animals or birds seized as a representative sample shall be transported to an appropriate animal storage facility.

(2) Cause all animals or birds used in committing or possessed for the purpose of the alleged offenses to be banded, tagged, or marked by microchip, and photographed or video recorded for evidentiary purposes.

(e) (1) If ownership of the seized animals or birds cannot be determined after reasonable efforts, the officer or other person named and designated in the order as custodian of the animals or

birds may, after holding the animals and birds for a period of not less than 10 days, petition the magistrate for permission to humanely destroy or otherwise dispose of the animals or birds. The petition shall be published for three successive days in a newspaper of general circulation. The magistrate shall hold a hearing on the petition not less than 10 days after seizure of the animals or birds, after which he or she may order the animals or birds to be humanely destroyed or otherwise disposed of, or to be retained by the officer or person with custody until the conviction or final discharge of the arrested person. No animal or bird may be destroyed or otherwise disposed of until four days after the order.

(2) Paragraph (1) shall apply only to those animals and birds seized under any of the following circumstances:

(A) After having been used in violation of any of the provisions of this code relating to the fighting of birds or animals.

(B) At the scene or site of a violation of any of the provisions of this code relating to the fighting of birds or animals.

(f) Upon the conviction of the arrested person, all property seized shall be adjudged by the court to be forfeited and shall then be destroyed or otherwise disposed of as the court may order. Upon the conviction of the arrested person, the court may order the person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the animals or birds. Each person convicted in connection with a particular animal or bird, excluding any person convicted as a spectator pursuant to Section 597b or 597c, or subdivision (b) of Section 597.5, may be held jointly and severally liable for restitution pursuant to this subdivision. This payment shall be in addition to any other fine or other sentence ordered by the court. The court shall specify in the order that the public entity shall not enforce the order until the defendant satisfies all other outstanding fines, penalties, assessments, restitution fines, and restitution orders. The court may relieve any convicted person of the obligation to make payment pursuant to this subdivision for good cause but shall state the reasons for that decision in the record. In the event of the acquittal or final discharge without conviction of the arrested person, the court shall, on demand, direct the delivery of the property held in custody to the owner. If the owner is

unknown, the court shall order the animals or birds to be humanely destroyed or otherwise disposed of.

SEC. 73. Section 868.7 of the Penal Code is amended to read:

868.7. (a) Notwithstanding any other provision of law, the magistrate may, upon motion of the prosecutor, close the examination in the manner described in Section 868 during the testimony of a witness:

(1) Who is a minor or a dependent person, as defined in paragraph (3) of subdivision (f) of Section 288, with a substantial cognitive impairment and is the complaining victim of a sex offense, where testimony before the general public would be likely to cause serious psychological harm to the witness and where no alternative procedures, including, but not limited to, video recorded deposition or contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, are available to avoid the perceived harm.

(2) Whose life would be subject to a substantial risk in appearing before the general public, and where no alternative security measures, including, but not limited to, efforts to conceal his or her features or physical description, searches of members of the public attending the examination, or the temporary exclusion of other actual or potential witnesses, would be adequate to minimize the perceived threat.

(b) In any case where public access to the courtroom is restricted during the examination of a witness pursuant to this section, a transcript of the testimony of the witness shall be made available to the public as soon as is practicable.

SEC. 74. Section 1203.098 of the Penal Code is amended to read:

1203.098. (a) Unless otherwise provided, a person who works as a facilitator in a batterers' intervention program that provides programs for batterers pursuant to subdivision (c) of Section 1203.097 shall complete the following requirements before being eligible to work as a facilitator in a batterers' intervention program:

(1) Forty hours of core-basic training. A minimum of eight hours of this instruction shall be provided by a shelter-based or shelter-approved trainer. The core curriculum shall include the following components:

(A) A minimum of eight hours in basic domestic violence knowledge focusing on victim safety and the role of domestic violence shelters in a community-coordinated response.

(B) A minimum of eight hours in multicultural, cross-cultural, and multiethnic diversity and domestic violence.

(C) A minimum of four hours in substance abuse and domestic violence.

(D) A minimum of four hours in intake and assessment, including the history of violence and the nature of threats and substance abuse.

(E) A minimum of eight hours in group content areas focusing on gender roles and socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others as required by Section 1203.097.

(F) A minimum of four hours in group facilitation.

(G) A minimum of four hours in domestic violence and the law, ethics, all requirements specified by the probation department pursuant to Section 1203.097, and the role of batterers' intervention programs in a coordinated-community response.

(H) Any person that provides documentation of coursework, or equivalent training, that he or she has satisfactorily completed, shall be exempt from that part of the training that was covered by the satisfactorily completed coursework.

(I) The coursework that this person performs shall count toward the continuing education requirement.

(2) Fifty-two weeks or no less than 104 hours in six months, as a trainee in an approved batterers' intervention program with a minimum of a two-hour group each week. A training program shall include at least one of the following:

(A) Cofacilitation internship in which an experienced facilitator is present in the room during the group session.

(B) Observation by a trainer of the trainee conducting a group session via a one-way mirror.

(C) Observation by a trainer of the trainee conducting a group session via a video or audio recording.

(D) Consultation and or supervision twice a week in a six-month program or once a week in a 52-week program.

(3) An experienced facilitator is one who has the following qualifications:

(A) Documentation on file, approved by the agency, evidencing that the experienced facilitator has the skills needed to provide quality supervision and training.

(B) Documented experience working with batterers for three years, and a minimum of two years working with batterers' groups.

(C) Documentation by January 1, 2003, of coursework or equivalent training that demonstrates satisfactory completion of the 40-hour basic-core training.

(b) A facilitator of a batterers' intervention program shall complete, as a minimum continuing education requirement, 16 hours annually of continuing education in either domestic violence or a related field with a minimum of eight hours in domestic violence.

(c) A person or agency with a specific hardship may request the probation department, in writing, for an extension of time to complete the training or to complete alternative training options.

(d) (1) An experienced facilitator, as defined in paragraph (3) of subdivision (a), is not subject to the supervision requirements of this section, if he or she meets the requirements of subparagraph (C) of paragraph (3) of subdivision (a).

(2) This section does not apply to a person who provides batterers' treatment through a jail education program if the person in charge of that program determines that such person has adequate education or training in domestic violence or a related field.

(e) A person who satisfactorily completes the training requirements of a county probation department whose training program is equivalent to or exceeds the training requirements of this act shall be exempt from the training requirements of this act.

SEC. 75. Section 4423.1 of the Public Resources Code is amended to read:

4423.1. Burning under permit by any person on public or private lands, except within incorporated cities, may be suspended, restricted, or otherwise prohibited by proclamation. Any of the following public officers may issue a proclamation, which shall be applicable within their respective jurisdictions:

(a) The director or his or her designee.

(b) Any county fire warden with the approval of the director.

(c) The federal officers directing activities within California of the United States Bureau of Land Management, the National Park Service, and the United States Forest Service.

The proclamation may be issued when, in the judgment of the issuing public official, the menace of destruction by fire to life, improved property, or natural resources is, or is forecast to become, extreme due to critical fire weather, fire suppression forces being heavily committed to control fires already burning, acute dryness of the vegetation, or other factors that may cause the rapid spread of fire. A proclamation is effective on issuance or at a time specified therein and shall remain in effect until a proclamation removing the suspension, restriction, or prohibition is issued. The proclamation may be effective for a single day or longer. The proclamation shall declare the conditions that necessitate its issuance, designate the geographic area to which it applies, require that all or specified burning under permit be suspended, restricted, or prohibited until the conditions necessitating the proclamation abate, and identify the public official issuing the proclamation. The proclamation may be in the form of a verbal or audio recorded telephone message, a press release, or a posted order.

The proclamation may be issued without complying with Chapter 3.5 (commencing with Section 11340) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 76. Section 1611 of the Revenue and Taxation Code is amended to read:

1611. The county board shall make a record of the hearing and, upon request, shall furnish the party with an audio recording or a transcript thereof at his or her expense. Request for an audio recording or a transcript may be made at any time, but not later than 60 days following the final determination by the county board.

SEC. 77. Section 19639 of the Welfare and Institutions Code is amended to read:

19639. (a) The director shall adopt and promulgate necessary rules and regulations, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and do all things necessary and proper to carry out this article. The director shall review these regulations for possible revision at least every three years.

(b) These regulations shall include, but not be limited to:

(1) Uniform procedures for vendor application and termination.

(2) Criteria and standards for selecting vendors and matching vendors to facilities that shall ensure that the most qualified person is selected for a facility.

(3) Equipment life standards and service standards for the inventory, repair, and purchase of equipment, as required under subdivision (a) of Section 19626.5.

(4) The minimum requirements for installation of a facility.

(5) A fair minimum of return to vendors.

(6) Standards for training, in-service retraining, and upward mobility.

(7) The policies and procedures used by the department for collection and deposit or disbursement of all vending facility income, including, but not limited to, the frequency, rules regarding, and method of collection of funds from facilities operated by licensed blind vendors and facilities operated by other individuals or entities.

(c) The director shall provide a written copy of all rules and regulations adopted pursuant to this section to all vendors. Upon request by a vendor, the rules and regulations shall be supplied to the vendor as an audio recording in lieu of the written copy. In addition, the director shall notify all vendors of any proposed changes to the rules and regulations.

SEC. 78. Any section of any act other than Assembly Bill 1164 of the 2009−10 Regular Session enacted by the Legislature during the 2009 calendar year that takes effect on or before January 1, 2010, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

Approved _____, 2009

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Governor