ASSEMBLY BILL No. 1164

Introduced by Assembly Member Tran

February 27, 2009

An act to amend Sections 315, 650, 809, 1627.5, 1754.5, 1915, 1925, 1950, 2361, 2660.3, 3041, 4060, 4200, 4301, 4989.54, 7403, 7847, 8027, 17533.6, 17537.12, 21606.5, 23356.2, 24045.4, and 24045.6 of the Business and Professions Code, to amend Sections 1675, 1770, 1780, 1936, 1993, 1993.02, 1993.03, 1993.04, 1993.05, 1993.07, 1993.08, 1993.09, and 2782.96 of the Civil Code, to amend Sections 416.80 and 697.350 of the Code of Civil Procedure, to amend Sections 8210 and 31155 of the Corporations Code, to amend Sections 8300, 8447, 8483.7, 10802, 17078.57, 17282.5, 35400, 41003.3, 42133.5, 42238, 48646, 51241, 52055.650, 54712, 60200.1, 69613, and 69662 of, to amend the heading of Article 14 (commencing with Section 69785) of Chapter 2 of Part 42 of Division 5 of Title 3 of, to repeal Chapter 5 (commencing with Section 35900) of Part 21 of Division 3 of Title 2 of, and to amend and renumber Sections 219 and 66269 of, the Education Code, to amend Sections 9604 and 10704 of the Elections Code, to amend Sections 3041.5 and 17706 of the Family Code, to amend Sections 287, 550, 767, and 17409 of, and to amend the heading of Chapter 4.5 (commencing with Section 550) of Division 1 of, the Financial Code, to amend Sections 2302 and 5655 of the Fish and Game Code, to amend Sections 35783.1, 47000, 52891.1, 52892, 52931, and 52932 of the Food and Agriculture Code, to amend Sections 8206, 8299.01, 8879.73, 8880.321, 11011.1, 14679, 31485.14, 53075.9, 65080, 66704, 70321, and 70374 of the Government Code, to amend Section 1760 of the Harbors and Navigation Code, to amend Sections 442.5, 1266, 1324.21, 1361.1, 1371, 1371.1, 1522.41, 1798.200, 11752.1, 11758.46, 18931.7, 19997, 25214.12, 25252, 25253, 33684, 42310,

50707, 52013, 103526.5, 107115, 112877, 114094, 130501, and 130506 of, to repeal Sections 1373.65, 1373.95, and 1373.96 of, and to amend and renumber Section 1571.71 of, the Health and Safety Code, to amend Sections 779.11, 790.037, 1063.1, 1063.2, 1765, 10123.145, 12693.43, and 12957 of, and to repeal Section 10232.2 of, the Insurance Code, to amend Sections 87, 2699.5, and 3702.1 of the Labor Code, to amend Section 1023 of the Military and Veterans Code, to amend Sections 166, 326.4, 599f, 626.2, 626.8, 653.2, 831.5, 1170.3, 1369.1, 12011, 12071, 12076, and 13777.2 of the Penal Code, to amend Section 3140 of the Probate Code, to amend Section 7103 of the Public Contract Code, to amend Sections 4291, 14514.7, 14581, 29735, 41825, 71205.3, and 75125 of the Public Resources Code, to amend Sections 739, 99171, 101223, 103311, 120508, 130680, 130720, and 240308 of, and to amend and renumber Section 281 of, the Public Utilities Code, to amend Sections 7093.6, 18862, and 19551.5 of the Revenue and Taxation Code, to amend Sections 164.53, 1967.10, and 30914 of the Streets and Highways Code, to amend Sections 1808.4, 4156, 22651, and 26708 of the Vehicle Code, to amend Sections 35521, 79441, and 83002 of the Water Code, to amend Sections 223.1, 241.1, 391, 903.1, 4688.6, 4691, 4783, 4860, 5777, 11402.6, 12315, 14005.25, 14007.9, 14011.16, 14091.3, 14105.19, 14105.191, 14105.3, 14105.86, 14107.2, 14126.033, 14126.034, 14132.725, 14154, 14154.5, 14166.9, 14166.25, 14199.2, 14301.1, 14526.1, and 15660 of, and to amend and renumber Section 618.5 of, the Welfare and Institutions Code, and to amend Section 5 of Chapter 898 of the Statutes of 1997, Section 2 of Chapter 235 of the Statutes of 2008, and Section 65 of Chapter 758 of the Statutes of 2008, and to add Section 3 to Chapter 635 of the Statutes of 1999, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1164, as introduced, Tran. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

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

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

SECTION 1. Section 315 of the Business and Professions Code is amended to read:

315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in ~~subdivision (a)~~ *paragraph (1)* and any treatment recommended by the evaluator described in ~~subdivision (a)~~ *paragraph (1)* and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, ~~randomnicity~~ *randomness*,

method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval

process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

SEC. 2. Section 650 of the Business and Professions Code is amended to read:

650. (a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

(c) The offer, delivery, receipt, or acceptance of any consideration between a federally qualified health center, as defined in Section 1396d(*l*)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services,

donations, loans, or a combination thereof~~,~~ to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, shall be permitted only to the extent sanctioned or permitted by federal law.

(d) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 *of this code*, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility~~;~~, provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

(e) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 *of this code*, it shall not be unlawful to provide nonmonetary remuneration, in the form of hardware, software, or information technology and training services, as described in subsections (x) and (y) of Section 1001.952 of Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the Federal Register (72 Fed. Reg. 56632~~,~~ *and* 56644), and subsequently amended versions.

(f) "Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Public Health under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(g) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in ~~the~~ *a* county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding fifty thousand dollars ($50,000),

or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars ($50,000).

SEC. 3. Section 809 of the Business and Professions Code is amended to read:

809. (a) The Legislature hereby finds and declares the following:

(1) In 1986, Congress enacted the Health Care Quality Improvement Act of 1986 ~~(Chapter 117 (commencing with Section 11101) Title 42, United States Code)~~ *(42 U.S.C. Sec. 11101 et seq.)*, to encourage physicians to engage in effective professional peer review, but giving each state the opportunity to "opt-out" of some of the provisions of the federal act.

(2) Because of deficiencies in the federal act and the possible adverse interpretations by the courts of the federal act, it is preferable for California to "opt-out" of the federal act and design its own peer review system.

(3) Peer review, fairly conducted, is essential to preserving the highest standards of medical practice.

(4) Peer review that is not conducted fairly results in harm *to* both ~~to~~ patients and healing arts practitioners by limiting access to care.

(5) Peer review, fairly conducted, will aid the appropriate state licensing boards in their responsibility to regulate and discipline errant healing arts practitioners.

(6) To protect the health and welfare of the people of California, it is the policy of the State of California to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners who provide substandard care or who engage in professional misconduct, regardless of the effect of that exclusion on competition.

(7) It is the intent of the Legislature that peer review of professional health care services be done efficiently, on an ongoing basis, and with an emphasis on early detection of potential quality problems and resolutions through informal educational interventions.

(8) Sections 809 to 809.8, inclusive, shall not affect the respective responsibilities of the organized medical staff or the governing body of an acute care hospital with respect to peer

review in the acute care hospital setting. It is the intent of the Legislature that written provisions implementing Sections 809 to 809.8, inclusive, in the acute care hospital setting shall be included in medical staff bylaws that shall be adopted by a vote of the members of the organized medical staff and shall be subject to governing body approval, which approval shall not be withheld unreasonably.

(9) (A) The Legislature thus finds and declares that the laws of this state pertaining to the peer review of healing arts practitioners shall apply in lieu of ~~Chapter 117 (commencing with Section 11101)~~ *11101 and following* of Title 42 of the United States Code, because the laws of this state provide a more careful articulation of the protections for both those undertaking peer review activity and those subject to review, and better integrate public and private systems of peer review. Therefore, California exercises its right to opt out of specified provisions of the Health Care Quality Improvement Act relating to professional review actions, pursuant to Section 11111(c)(2)(B) of Title 42 of the United States Code. This election shall not affect the availability of any immunity under California law.

(B) The Legislature further declares that it is not the intent or ~~purposes~~ *purpose* of Sections 809 to 809.8, inclusive, to opt out of any mandatory national data bank established pursuant to ~~Subchapter II (commencing with Section 11131) of Chapter 117~~ *Section 11131 and following* of Title 42 of the United States Code.

(b) For the purpose of this section and Sections 809.1 to 809.8, inclusive, "healing arts practitioner" or "licentiate" means a physician and surgeon, podiatrist, clinical psychologist, marriage and family therapist, clinical social worker, or dentist; and "peer review body" means a peer review body as specified in paragraph (1) of subdivision (a) of Section 805, and includes any designee of the peer review body.

SEC. 4. Section 1627.5 of the Business and Professions Code is amended to read:

1627.5. (a) No person licensed under this chapter, who in good faith renders emergency care at the scene of an emergency occurring outside the place of that person's practice, or who, upon the request of another person so licensed, renders emergency care to a person for a complication arising from prior care of another person so licensed, shall be liable for any civil damages as a result

of any acts or omissions by that person in rendering the emergency care.

(b) A person licensed under this chapter who voluntarily and without compensation or expectation of compensation, and consistent with the dental education and emergency training that he or she ~~receives~~ *has received*, provides emergency medical care to a person during a state of emergency declared pursuant to a proclamation issued pursuant to Section 8588, 8625, or 8630 of the Government Code or a declaration of health emergency issued pursuant to Section 101080 of the Health and Safety Code shall not be liable in negligence for any personal injury, wrongful death, or property damage caused by the licensee's good faith but negligent act or omission. This subdivision shall not provide immunity for acts or omissions of gross negligence or willful misconduct. This subdivision ~~shall~~ *does* not limit any immunity provided under subdivision (a).

(c) Notwithstanding any other provision of law, for the duration of a declared state of emergency, pursuant to a proclamation of emergency issued pursuant to Section 8625 of the Government Code, the board may suspend compliance with any provision of this chapter or regulation adopted thereunder that would adversely affect a licensee's ability to provide emergency services.

SEC. 5. Section 1754.5 of the Business and Professions Code is amended to read:

1754.5. As used in this article, the following definitions shall apply:

(a) "Clinical instruction" means instruction in which students receive supervised experience in performing procedures in a clinical setting on patients. Clinical instruction shall only be performed upon successful demonstration and evaluation of preclinical skills. There shall be at least one instructor for every six students who are simultaneously engaged in clinical instruction.

~~(a)~~

(b) "Didactic instruction" means lectures, demonstrations, and other instruction without active participation by students. The approved provider or its designee may provide didactic instruction via electronic media, home study materials, or live lecture methodology if the provider has submitted that content for approval.

~~(b)~~

(c) "Laboratory instruction" means instruction in which students receive supervised experience performing procedures using study models, mannequins, or other simulation methods. There shall be at least one instructor for every 14 students who are simultaneously engaged in laboratory instruction.

~~(c)~~

(d) "Preclinical instruction" means instruction in which students receive supervised experience performing procedures on students, faculty, or staff members. There shall be at least one instructor for every six students who are simultaneously engaged in preclinical instruction.

~~(d) "Clinical instruction" means instruction in which students receive supervised experience in performing procedures in a clinical setting on patients. Clinical instruction shall only be performed upon successful demonstration and evaluation of preclinical skills. There shall be at least one instructor for every six students who are simultaneously engaged in clinical instruction.~~

~~(E)~~

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

SEC. 6. Section 1915 of the Business and Professions Code is amended to read:

1915. No person other than a registered dental hygienist, registered dental hygienist in alternative functions, or registered dental hygienist in extended functions or a licensed dentist may engage in the practice of dental hygiene or perform dental hygiene procedures on patients, including, but not limited to, supragingival and subgingival scaling, dental hygiene assessment, and treatment planning, except for the following persons:

(a) A student enrolled in a dental or a dental hygiene school who is performing procedures as part of the regular curriculum of that program under the supervision of the faculty of that program.

(b) A dental assistant acting in accordance with the rules of the dental board in performing the following procedures:

(1) Applying nonaerosol and noncaustic topical agents.

(2) Applying topical fluoride.

(3) Taking ~~impression~~ *impressions* for bleaching trays.

(c) A registered dental assistant acting in accordance with the rules of the dental board in performing the following procedures:

(1) Polishing the coronal surfaces of teeth.

(2) Applying bleaching agents.

(3) Activating bleaching agents with a nonlaser light-curing device.

(4) Applying pit and fissure sealant.

(d) A registered dental assistant in extended functions acting in accordance with the rules of the dental board in applying pit and fissure sealants.

(e) A registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions licensed in another jurisdiction, performing a clinical demonstration for educational purposes.

SEC. 7. Section 1925 of the Business and Professions Code is amended to read:

1925. A registered dental hygienist in alternative practice may practice, pursuant to subdivision (a) of Section 1907, subdivision (a) of Section 1908, and subdivisions (a) ~~of~~ *and* (b) of Section 1910, as an employee of a dentist or of another registered dental hygienist in alternative practice, as an independent contractor, as a sole proprietor of an alternative dental hygiene practice, as an employee of a primary care clinic or specialty clinic that is licensed pursuant to Section 1204 of the Health and Safety Code, as an employee of a primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code, as an employee of a clinic owned or operated by a public hospital or health system, or as an employee of a clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

SEC. 8. Section 1950 of the Business and Professions Code is amended to read:

1950. (a) A licensee may have his or her license revoked or suspended, or may be reprimanded or placed on probation by the committee, for conviction of a crime substantially related to the licensee's qualifications, functions, or duties. The record of conviction or a copy certified by the clerk of the court or by the judge in whose court the conviction ~~is had,~~ *occurred* shall be conclusive evidence of conviction.

(b) The committee shall undertake proceedings under this section upon the receipt of a certified copy of the record of conviction. A

plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any misdemeanor substantially related to the licensee's qualifications, functions, or duties is deemed to be a conviction within the meaning of this section.

(c) The committee may order a license suspended or revoked, or may decline to issue a license, when any of the following occur:

(1) The time for appeal has elapsed.

(2) The judgment of conviction has been affirmed on appeal.

(3) An order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under any provision of the Penal Code, including, but not limited to, Section 1203.4 of the Penal Code, allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 9. Section 2361 of the Business and Professions Code is amended to read:

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a ~~California licensed~~ *California-licensed* osteopathic physician and surgeon.

(e) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 10. Section 2660.3 of the Business and Professions Code is amended to read:

2660.3. In lieu of filing or prosecuting a formal accusation against a licensee, the board may, upon stipulation or agreement by the licensee, issue a public letter of reprimand after it has conducted an investigation or inspection as provided for in this chapter. The board shall notify the licensee of its intention to issue the letter 30 days before the intended issuance date of the letter.

The licensee shall indicate in writing at least 15 days prior to the letter's intended issuance date whether he or she agrees to the issuance of the letter. The board, at its option, may extend the time within which the licensee may respond to its notification. If the licensee does not agree to the issuance of the letter, the board shall not issue the letter and may proceed to file the accusation. The board may use a public letter of reprimand only for minor violations, as defined by the board, committed by the licensee. A public letter of reprimand issued pursuant to this section shall be disclosed by the board to an inquiring member of the public and shall be posted on the ~~boards~~ *board's* Internet Web site.

SEC. 11. Section 3041 of the Business and Professions Code is amended to read:

3041. (a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and is the doing of any or all of the following:

(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.

(2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.

(3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses that may be classified as drugs or devices by any law of the United States or of this state.

(5) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.

(b) (1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its *or their* appendages, for all of the following conditions:

(A) Through medical treatment, infections of the anterior segment and adnexa, excluding the lacrimal gland, the lacrimal drainage system, and the sclera in patients under 12 years of age.

(B) Ocular allergies of the anterior segment and adnexa.

(C) Ocular inflammation, nonsurgical in cause except when comanaged with the treating physician and surgeon, limited to inflammation resulting from traumatic iritis, peripheral corneal inflammatory keratitis, episcleritis, and unilateral nonrecurrent nongranulomatous idiopathic iritis in patients over 18 years of age. Unilateral nongranulomatous idiopathic iritis recurring within one year of the initial occurrence shall be referred to an ophthalmologist. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of episcleritis within one year of the initial occurrence. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.

(D) Traumatic or recurrent conjunctival or corneal abrasions and erosions.

(E) Corneal surface disease and dry eyes.

(F) Ocular pain, nonsurgical in cause except when comanaged with the treating physician and surgeon, associated with conditions optometrists are authorized to treat.

(G) Pursuant to subdivision (f), glaucoma in patients over 18 years of age, as described in subdivision (j).

(2) For purposes of this section, “treat” means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision (e).

(c) In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may use all of the following therapeutic pharmaceutical agents:

(1) Pharmaceutical agents as described in paragraph (5) of subdivision (a), as well as topical miotics.

(2) Topical lubricants.

(3) Antiallergy agents. In using topical steroid medication for the treatment of ocular allergies, an optometrist shall consult with an ophthalmologist if the patient’s condition worsens 21 days after diagnosis.

(4) Topical and oral antiinflammatories. In using steroid medication for:

(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis or episcleritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after the diagnosis, or if the patient's condition has not resolved three weeks after diagnosis. If the patient is still receiving medication for these conditions six weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist or appropriate physician and surgeon.

(B) Peripheral corneal inflammatory keratitis, excluding Moorens and Terriens diseases, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis.

(C) Traumatic iritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis and shall refer the patient to an ophthalmologist or appropriate physician and surgeon if the patient's condition has not resolved one week after diagnosis.

(5) Topical antibiotic agents.

(6) Topical hyperosmotics.

(7) Topical and oral antiglaucoma agents pursuant to the certification process defined in subdivision (f).

(A) The optometrist shall refer the patient to an ophthalmologist if requested by the patient or if angle closure glaucoma develops.

(B) If the glaucoma patient also has diabetes, the optometrist shall consult with the physician treating the patient's diabetes in developing the glaucoma treatment plan and shall inform the physician in writing of any changes in the patient's glaucoma medication.

(8) Nonprescription medications used for the rational treatment of an ocular disorder.

(9) Oral antihistamines.

(10) Prescription oral nonsteroidal antiinflammatory agents.

(11) Oral antibiotics for medical treatment of ocular disease.

(A) If the patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with preseptal cellulitis or dacryocystitis and the condition has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(12) Topical and oral antiviral medication for the medical treatment of the following: herpes simplex viral keratitis, herpes simplex viral conjunctivitis, and periocular herpes simplex viral dermatitis; and varicella zoster viral keratitis, varicella zoster viral conjunctivitis, and periocular varicella zoster viral dermatitis.

(A) If the patient has been diagnosed with herpes simplex keratitis or varicella zoster viral keratitis and the patient's condition has not improved seven days after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with herpes simplex viral conjunctivitis, herpes simplex viral dermatitis, varicella zoster viral conjunctivitis, or varicella zoster viral dermatitis, and if the patient's condition worsens seven days after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(13) Oral analgesics that are not controlled substances.

(14) Codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act ~~(Section 11000~~ *(Division 10 (commencing with Section 11000)* of the Health and Safety ~~Code et seq.)~~ *Code)* and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be limited to three days, with a referral to an ophthalmologist if the pain persists.

(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response, and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

(1) Corneal scraping with cultures.
(2) Debridement of corneal epithelia.
(3) Mechanical epilation.
(4) Venipuncture for testing patients suspected of having diabetes.
(5) Suture removal, with prior consultation with the treating physician and surgeon.
(6) Treatment or removal of sebaceous cysts by expression.
(7) Administration of oral fluorescein to patients suspected as having diabetic retinopathy.
(8) Use of an auto-injector to counter anaphylaxis.
(9) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, urinalysis, and X-rays necessary for the diagnosis of conditions or diseases of the eye or adnexa. An optometrist may order other types of images subject to prior consultation with an ophthalmologist or appropriate physician and surgeon.
(10) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.
(11) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.
(12) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a scalpel or needle. Corneal foreign bodies shall be nonperforating, be no deeper than the midstroma, and require no surgical repair upon removal.
(13) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion of 10 procedures under the supervision of an ophthalmologist as confirmed by the ophthalmologist. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement contained in this paragraph.
(f) The board shall grant a certificate to an optometrist certified pursuant to Section 3041.3 for the treatment of glaucoma, as

described in subdivision (j), in patients over 18 years of age after the optometrist meets the following applicable requirements:

(1) For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.

(2) For licensees who were certified to treat glaucoma under this section prior to January 1, 2009, submission of proof of completion of that certification program.

(3) For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. "Substantially completed" means both of the following:

(A) Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma.

(B) Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009.

(4) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board pursuant to Section ~~3014.10~~ *3041.10*.

(5) For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and not described in paragraph (2), (3), or (4), submission of proof of satisfactory completion of the requirements for certification established by the board pursuant to Section ~~3014.10~~ *3041.10*.

(g) Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

(h) The practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means. "Surgery" does not include those procedures specified in subdivision (e). Nothing in this section shall limit an optometrist's authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.

(i) An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telemedicine.

(j) For purposes of this chapter, "glaucoma" means either of the following:

(1) All primary open-angle glaucoma.

(2) Exfoliation and pigmentary glaucoma.

(k) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

SEC. 12. Section 4060 of the Business and Professions Code is amended to read:

4060. No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

~~Nothing in this~~ *This* section ~~authorizes~~ *does not authorize* a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor~~,~~ to order his or her own stock of dangerous drugs and devices.

SEC. 13. Section 4200 of the Business and Professions Code is amended to read:

4200. (a) The board may license as a pharmacist an applicant who meets all the following requirements:

(1) Is at least 18 years of age.

(2) (A) Has graduated from a college of pharmacy or department of pharmacy of a university recognized by the board; or

(B) If the applicant graduated from a foreign pharmacy school, the foreign-educated applicant has been certified by the Foreign Pharmacy Graduate Examination Committee.

(3) Has completed at least 150 semester units of collegiate study in the United States, or the equivalent thereof in a foreign country. No less than 90 of those semester units shall have been completed while in resident attendance at a school or college of pharmacy.

(4) Has earned at least a baccalaureate degree in a course of study devoted to the practice of pharmacy.

(5) Has completed 1,500 hours of pharmacy practice experience or the equivalent in accordance with Section 4209.

(6) Has passed a written and practical examination given by the board prior to December 31, 2003, or has passed the North American Pharmacist Licensure Examination and the California Practice Standards and Jurisprudence Examination for Pharmacists on or after January 1, 2004.

(b) Proof of the qualifications of an applicant for licensure as a pharmacist~~,~~ shall be made to the satisfaction of the board and shall be substantiated by affidavits or other evidence as may be required by the board.

(c) Each person, upon application for licensure as a pharmacist under this chapter, shall pay to the executive officer of the board~~,~~ the fees provided by this chapter. The fees shall be compensation to the board for investigation or examination of the applicant.

SEC. 14. Section 4301 of the Business and Professions Code is amended to read:

4301. The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the

furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself~~,~~ of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering, or offering to sell, furnish, give away, or administer, any controlled substance to an addict.

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(*l*) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of ~~Chapter 13 (commencing with~~ Section ~~801)~~ *801 and following* of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the

commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(m) The cash compromise of a charge of violation of ~~Chapter 13 (commencing with~~ Section ~~801)~~ *801 and following* of Title 21 of the United States Code regulating controlled substances or of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code relating to the Medi-Cal program. The record of the compromise is conclusive evidence of unprofessional conduct.

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

(p) Actions or conduct that would have warranted denial of a license.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

(r) The selling, trading, transferring, or furnishing of drugs obtained pursuant to Section 256b of Title 42 of the United States Code to any person a licensee knows or reasonably should have known, not to be a patient of a covered entity, as defined in paragraph (4) of subsection (a) of Section 256b of Title 42 of the United States Code.

(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term *health* care facilities. Factors to be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term *health* care facilities, the previous ordering pattern of the pharmacy, and the general patient population to whom the pharmacy distributes the dangerous drugs. That a wholesaler has established, and employs, a tracking system that complies with the requirements of subdivision (b) of Section 4164 shall be considered in determining whether there has been a violation of this subdivision. This provision shall not be interpreted to require a wholesaler to obtain personal medical information or be authorized to permit a wholesaler to have access to personal medical information except as otherwise authorized by ~~Section 56 and following~~ *Part 2.6 (commencing with Section 56) of Division 1* of the Civil Code.

(t) This section shall become operative on January 1, 2006.

SEC. 15. Section 4989.54 of the Business and Professions Code is amended to read:

4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions, and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.

(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.

(4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.

(b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license.

(d) Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in subdivision (c) or any combination thereof.

(e) Advertising in a manner that is false, misleading, or deceptive.

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage and family therapist.

(j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(k) Gross negligence or incompetence in the practice of educational psychology.

(*l*) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

(s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or

other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(y) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 16. Section 7403 of the Business and Professions Code is amended to read:

7403. (a) Notwithstanding any other provision of law, the board may revoke, suspend, or deny at any time any license required by this chapter on any of the grounds for disciplinary action provided in this article. The proceedings under this article

shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) The board may deny a license to an applicant on any of the grounds specified in Section 480.

(c) In addition to the requirements provided in Sections 485 and 486, upon denying a license to an applicant, the board shall provide a statement of reasons for the denial that does the following:

(1) Evaluates evidence of rehabilitation submitted by the applicant, if any.

(2) Provides the board's criteria relating to rehabilitation, formulated pursuant to Section 482, that takes into account the age and severity of the offense, and the evidence relating to participation in treatment or other rehabilitation programs.

(3) If the board's decision was based on the applicant's prior criminal conviction, justifies the board's denial of a license and conveys the reasons why the prior criminal conviction is substantially related to the qualifications, functions, or duties of a barber or cosmetologist.

(d) Commencing July 1, 2009, all of the following shall apply:

(1) If the denial of a license is due at least in part to the applicant's state or federal criminal history record, the board shall, in addition to the information provided pursuant to paragraph (3) of subdivision (c), provide to the applicant a copy of his or her criminal history record if the applicant makes a written request to the board for a copy, specifying an address to which it is to be sent.

(A) The state or federal criminal history record shall not be modified or altered from its form or content as provided by the Department of Justice.

(B) The criminal history record shall be provided in such a manner as to protect the confidentiality and privacy of the applicant's criminal history record and the criminal history record shall not be made available by the board to any employer.

(C) The board shall retain a copy of the applicant's written request and a copy of the response sent to the applicant, which shall include the date and the address to which the response was sent.

(2) The board shall make this information available upon request by the Department of Justice or the Federal Bureau of Investigation.

(e) Notwithstanding Section 487, the board shall conduct a hearing of a license denial within 90 days of receiving an applicant's request for a hearing. For all other hearing requests, the board shall determine when the hearing shall be conducted.

(f) In any case in which the administrative law judge recommends that the board revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee to pay the board the reasonable costs of the investigation and adjudication of the case. For purposes of this section, "costs" include charges by the board for investigating the case, charges incurred by the office of the Attorney General for investigating and presenting the case, and charges incurred by the Office of Administrative Hearings for hearing the case and issuing a proposed decision.

(g) The costs to be assessed shall be fixed by the administrative law judge and shall not, in any event, be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

(h) The board may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(i) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(j) Notwithstanding any other provision of law, all costs recovered under this section shall be deposited in the board's contingent fund as a scheduled reimbursement in the fiscal year in which the costs are actually recovered.

SEC. 17. Section 7847 of the Business and Professions Code is amended to read:

7847. The board, upon application therefor, on its prescribed form, and upon the payment of the application and registration fees fixed by this chapter, which fees shall be retained by the board, may issue a certificate of registration as a geologist or as a geophysicist to a person holding an equivalent certificate of

registration as a geologist or as a geophysicist, issued to him *or her* by any state or country when the applicant's qualifications meet the other requirements of this chapter and the rules established by the board.

SEC. 18. Section 8027 of the Business and Professions Code is amended to read:

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

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

(c) Any school intending to offer a program in court reporting shall notify the board within 30 days of the date on which it provides notice to, or seeks approval from, the ~~California~~ *State* Department of Education, the Bureau for Private Postsecondary and Vocational Education, the ~~Chancellor's~~ 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 ~~may~~ *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)~~ *(w)*.

(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~~ *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)*.

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

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

(y) The pass rate of first-time ~~exam~~ *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~~ *above-described* standard on the two ~~exams~~ *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.

~~(bb)~~

(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 tape, or other assigned material, a minimum of one hour per day after school hours as a homework assignment and provide the notes from this tape to their instructor the following day for review.

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

(6) Define qualifier ~~exam~~ *examination* as follows: the qualifier ~~exam~~ *examination* shall consist of 4-voice testimony of 10-minute duration at 200 ~~wpm~~ *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 which they can document at least quarterly.

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

~~(cc)~~

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

~~(dd)~~

(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~~ *Chapter 616 of the Statutes of 2001* pursuant to its fee authority in Section 8031.

SEC. 19. Section 17533.6 of the Business and Professions Code is amended to read:

17533.6. (a) It is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to solicit information, or to solicit the purchase of or payment for a product or service, or to solicit the contribution of funds or membership fees, by means of a mailing, electronic message, or Internet Web site that contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any state or local government connection, approval, or endorsement, unless the requirements of paragraph (1) or (2) have been met, as follows:

(1) The nongovernmental entity has an expressed connection with, or the approval or endorsement of, a state or local government entity, if permitted by other provisions of law.

(2) The solicitation meets both of the following requirements:

(A) The solicitation bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other type on its face, the following notice:

"THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY ~~GOVERNMENT~~ *GOVERNMENTAL* AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT."

(B) In the case of a mailed solicitation, the envelope or outside cover or wrapper in which the matter is mailed bears on its face in capital letters and in conspicuous and legible type, the following notice:

"THIS IS NOT A GOVERNMENT DOCUMENT."

(b) Except as provided in subdivision (c), any business that solicits the purchase of, or payment for, a service by means of an unsolicited mailing that offers to assist the recipient in dealing with a state or local governmental agency shall do both of the following:

(1) State on the envelope and in the mailing that the business is not a governmental agency and is not associated with the governmental agency referenced.

(2) Include in the mailing the contact information for the governmental agency referenced.

(c) Subdivision (b) shall not apply if either of the following requirements has been met:

(1) The business has an expressed connection with, or the approval or endorsement of, a state or local ~~government~~ *governmental* entity, if permitted by other provisions of law.

(2) The business has an "established business relationship," as defined in Section 1798.83 of the Civil Code, with the recipient.

SEC. 20. Section 17537.12 of the Business and Professions Code is amended to read:

17537.12. (a) This section shall be known and may be cited as the Truth in Music Advertising Act.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(2) "Person" means the performing group or its promoter, manager, or agent. "Person" does not include the performance venue or its owners, managers, or operators, unless the performance venue owns or produces the performing group, or knew or should have known that the performing group does not have a legal right to perform.

(3) "Recording group" means a vocal or instrumental group, at least one of whose members has previously released a commercial sound recording under that group's name and in which the member

or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(4) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phonorecord, in which the sounds are embodied.

(c) No person shall advertise or conduct a live musical performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group unless any of the following apply:

(1) The performing group is the authorized registrant and owner of a federal service mark for the group registered in the United States Patent and Trademark Office.

(2) At least one member of the performing group was previously a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation of the group.

(3) The live musical performance or production is identified in all advertising and promotion as a salute or tribute, and the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.

(4) The advertising does not relate to a live musical performance or production taking place in this state.

(5) The performance or production is expressly authorized by the recording group.

(d) (1) Any person who violates any of the provisions of this section shall be subject to a civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation, as provided in subdivision (a) of Section 17206. An action for a civil penalty *shall* be brought by a public prosecutor as provided in subdivision (a) of Section 17206 and shall be enforceable as a civil judgment.

(2) Any person who violates any of the provisions of this section shall be subject to the equitable remedies described in Chapter 5 (commencing with Section 17200) of Part 2.

(3) Nothing in this section shall preclude prosecution of a violation of this section under any other provision of law.

SEC. 21. Section 21606.5 of the Business and Professions Code is amended to read:

21606.5. *(a)* Every junk dealer or recycler shall, during normal business hours, allow periodic inspection of any premises maintained and any junk thereon for the purpose of determining compliance with the recordkeeping requirements of this article, and shall during those hours produce his or her records of sales and purchases, except as provided in subparagraph (A) of paragraph (3) of subdivision (a) of Section 21608.5, and all property purchased incident to those transactions which is in the possession of the junk dealer or recycler for inspection by any of the following persons:

~~(a)~~

(1) An officer holding a warrant authorizing him or her to search for personal property.

~~(b)~~

(2) A person appointed by the sheriff of a county or appointed by the head of the police department of a city.

~~(c)~~

(3) An officer holding a court order directing him or her to examine the records or property.

~~(d)~~

(b) The amendments to this section made by ~~the act adding this subdivision~~ *Chapter 731 of the Statutes of 2008* shall become operative on December 1, 2008.

SEC. 22. Section 23356.2 of the Business and Professions Code is amended to read:

23356.2. (a) No license or permit shall be required for the manufacture of beer for personal or family use, and not for sale, by a person over the age of 21 years. The aggregate amount of beer with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household, or (2) 100 gallons per calendar year if there is only one adult in the household.

(b) No license or permit shall be required for the manufacture of wine for personal or family use, and not for sale, by a person over the age of 21 years. The aggregate amount of wine with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household or

(2) 100 gallons per calendar year if there is only one adult in the household.

(c) Any beer manufactured pursuant to this section may be removed from the premises where manufactured for use in competition at organized affairs, exhibitions, or competitions, including homemakers' contests, tastings, or judgings.

(d) Any wine made pursuant to this section may be removed from the premises where made for personal or family use, including use at organized affairs, exhibitions, or competitions, such as ~~homemaker's~~ *homemakers'* contests, tastings, or judging. Wine used under this section shall not be sold or offered for sale.

(e) Except as provided herein, nothing in this section authorizes any activity in violation of Section 23300, 23355, or 23399.1.

SEC. 23. Section 24045.4 of the Business and Professions Code is amended to read:

24045.4. (a) The department may issue a special temporary off-sale general license to any nonprofit corporation which is exempt from payment of income taxes under the provisions of Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code ~~of 1954~~ of the United States. An applicant for this license shall accompany the application with a fee of one hundred dollars ($100).

(b) This license shall only entitle the licensee to sell at auction alcoholic beverages donated to it. Notwithstanding any other provision of this division, a licensee may donate alcoholic beverages to a corporation licensed under this section, provided that donations are not made in connection with a sale of an alcoholic beverage.

(c) This license shall be for a period not exceeding 30 days. Only three licenses authorized by this section shall be issued to any corporation in a calendar year.

SEC. 24. Section 24045.6 of the Business and Professions Code is amended to read:

24045.6. (a) The department may issue a special temporary on-sale or off-sale wine license to any nonprofit corporation that is exempt from payment of income taxes under Section 23701d or 23701e of the Revenue and Taxation Code and Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code ~~of 1986~~. An applicant for this license shall accompany the application with a fee of one hundred dollars ($100).

(b) This special license shall only entitle the licensee to sell wine bought by, or donated to, the licensee to a consumer and to any person holding a license authorizing the sale of wine. Notwithstanding any other provision of this division, a licensee may donate or sell wine to a nonprofit corporation that obtains a special temporary on-sale or off-sale license under this section, provided *that* the donation is not made in connection with a sale of an alcoholic beverage.

(c) This special license shall be for a period not exceeding 15 days. In the event the license under this section is issued for a period exceeding two days, it shall be used solely for retail sales in conjunction with an identifiable fundraising event sponsored or conducted by the licensee and all bottles of wine sold under this license shall bear a label prominently identifying the event. Only three special licenses authorized by this section shall be issued to any corporation in a calendar year.

SEC. 25. Section 1675 of the Civil Code, as amended by Section 1 of Chapter 665 of the Statutes of 2008, is amended to read:

1675. (a) As used in this section, "residential property" means real property primarily consisting of a dwelling that meets both of the following requirements:

(1) The dwelling contains not more than four residential units.

(2) At the time the contract to purchase and sell the property is made, the buyer intends to occupy the dwelling or one of its units as his or her residence.

(b) A provision in a contract to purchase and sell residential property that provides that all or any part of a payment made by the buyer shall constitute liquidated damages to the seller upon the buyer's failure to complete the purchase of the property is valid to the extent that payment in the form of cash or check, including a postdated check, is actually made if the provision satisfies the requirements of Sections 1677 and 1678 and either subdivision (c) or (d) of this section.

(c) If the amount actually paid pursuant to the liquidated damages provision does not exceed 3 percent of the purchase price, the provision is valid to the extent that payment is actually made unless the buyer establishes that the amount is unreasonable as liquidated damages.

(d) If the amount actually paid pursuant to the liquidated damages provision exceeds 3 percent of the purchase price, the provision is invalid unless the party seeking to uphold the provision establishes that the amount actually paid is reasonable as liquidated damages.

(e) For the purposes of subdivisions (c) and (d), the reasonableness of an amount actually paid as liquidated damages shall be determined by taking into account both of the following:

(1) The circumstances existing at the time the contract was made.

(2) The price and other terms and circumstances of any subsequent sale or contract to sell and purchase the same property if the sale or contract is made within six months of the buyer's default.

(f) (1) Notwithstanding either subdivision (c) or (d), for the initial sale of newly constructed attached condominium units, as defined pursuant to Section 783, that involves the sale of an attached residential condominium unit located within a structure of 10 or more residential condominium units and the amount actually paid to the seller pursuant to the liquidated damages provision exceeds 3 percent of the purchase price of the residential unit in the transaction, both of the following shall occur in the event of a buyer's default:

(A) The seller shall perform an accounting of its costs and revenues related to and fairly allocable to the construction and sale of the residential unit within 60 calendar days after the final close of escrow of the sale of the unit within the structure.

(B) The accounting shall include any and all costs and revenues related to the construction and sale of the residential property and any delay caused by the buyer's default. The seller shall make reasonable efforts to mitigate any damages arising from the default. The seller shall refund to the buyer any amounts previously retained as liquidated damages in excess of the greater of either 3 percent of the originally agreed-upon purchase price of the residential property or the amount of the seller's losses resulting from the buyer's default, as calculated by the accounting.

(2) The refund shall be sent to the buyer's last known address within 90 days after the final close of escrow of the sale or lease of all the residential condominium units within the structure.

(3) If the amount retained by the seller after the accounting does not exceed 3 percent of the purchase price, the amount is valid unless the buyer establishes that the amount is unreasonable as liquidated damages pursuant to subdivision (e).

(4) Subdivision (d) shall not apply to any dispute regarding the reasonableness of any amount retained as liquidated damages pursuant to this subdivision.

(5) Notwithstanding the time periods regarding the performance of the accounting set forth in paragraph (1), if a new qualified buyer has entered into a contract to purchase the residential property in question, the seller shall perform the accounting within 60 calendar days after a new qualified buyer has entered into a contract to purchase.

(6) As used in this subdivision, "structure" means either of the following:

(A) Improvements constructed on a common foundation.

(B) Improvements constructed by the same owner that must be constructed concurrently due to the design characteristics of the improvements or physical characteristics of the property on which the improvements are located.

(7) As used in this subdivision, "new qualified buyer" means a buyer who either:

(A) Has been issued a loan commitment, which satisfies the purchase agreement loan contingency requirement, by an institutional lender to obtain a loan for an amount equal to the purchase price less any downpayment possessed by the buyer.

(B) Has contracted to pay a purchase price that is greater than or equal to the purchase price to be paid by the original buyer.

(g) (1) (A) Notwithstanding subdivision (c), (d), or (f), for the initial sale of newly constructed attached condominium units, as defined pursuant to Section 783, that involves the sale of an attached residential condominium unit described in subparagraph (B), and the amount actually paid to the seller pursuant to the liquidated damages provision exceeds 6 percent of the purchase price of the residential unit in the transaction, ~~then~~ both of the following shall occur in the event of a buyer's default:

(i) The seller shall perform an accounting of its costs and revenues related to and fairly allocable to the construction and sale of the residential unit within 60 calendar days after the final close of escrow of the sale of the unit within the structure.

(ii) The accounting shall include any and all costs and revenues related to the construction and sale of the residential property and any delay caused by the buyer's default. The seller shall make reasonable efforts to mitigate any damages arising from the default. The seller shall refund to the buyer any amounts previously retained as liquidated damages in excess of the greater of either 6 percent of the originally agreed-upon purchase price of the residential property or the amount of the seller's losses resulting from the buyer's default, as calculated by the accounting.

(B) This subdivision applies to an attached residential condominium unit for which both of the following are true:

(i) The unit is located within a structure of 20 or more residential condominium units, standing over eight stories high, that is high-density infill development, as defined in paragraph (10) of subdivision (a) of Section 21159.24 of the Public Resources Code, and that is located in a city, county, or city and county with a population density of 1,900 residents per square mile or greater, as evidenced by the 2000 United States census.

(ii) The purchase price of the unit was more than one million dollars ($1,000,000).

(2) The refund shall be sent to the buyer's last known address within 90 days after the final close of escrow of the sale or lease of all the residential condominium units within the structure.

(3) If the amount retained by the seller after the accounting does not exceed 6 percent of the purchase price, the amount is valid unless the buyer establishes that the amount is unreasonable as liquidated damages pursuant to subdivision (e).

(4) Subdivision (d) shall not apply to any dispute regarding the reasonableness of any amount retained as liquidated damages pursuant to this subdivision.

(5) Notwithstanding the time periods regarding the performance of the accounting set forth in paragraph (1), if a new qualified buyer has entered into a contract to purchase the residential property in question, the seller shall perform the accounting within 60 calendar days after a new qualified buyer has entered into a contract to purchase.

(6) As used in this subdivision, "structure" means either of the following:

(A) Improvements constructed on a common foundation.

(B) Improvements constructed by the same owner that must be constructed concurrently due to the design characteristics of the improvements or physical characteristics of the property on which the improvements are located.

(7) As used in this subdivision, "new qualified buyer" means a buyer who either:

(A) Has been issued a loan commitment, which satisfies the purchase agreement loan contingency requirement, by an institutional lender to obtain a loan for an amount equal to the purchase price less any downpayment possessed by the buyer.

(B) Has contracted to pay a purchase price that is greater than or equal to the purchase price to be paid by the original buyer.

(8) Commencing on July 1, 2010, and annually on each July 1 thereafter, the dollar amount of the minimum purchase price specified in paragraph (1) shall be adjusted. The Real Estate Commissioner shall determine the amount of the adjustment based on the change in the median price of a single family home in California, as determined by the most recent data available from the Federal Housing Finance Board. Upon determining the amount of the adjustment, the Real Estate Commissioner shall publish the current dollar amount of the minimum purchase price on the Internet Web site of the Department of Real Estate.

(9) Prior to the execution of a contract for sale of a residential condominium unit subject to this subdivision, the seller shall provide to the buyer the following notice, in at least 12-point type:

"Important Notice Regarding Your Deposit: Under California law, in a contract for the initial sale of a newly constructed attached condominium unit in a building over eight stories tall, containing 20 or more residential units, and located in a high-density infill development in a city, county, or city and county with 1,900 residents or more per square mile, where the price is more than one million dollars ($1,000,000), as adjusted by the Department of Real Estate, liquidated damages of 6 percent of the purchase price are presumed valid if the buyer defaults, unless the buyer establishes that the amount is unreasonable."

If the seller fails to provide this notice to the buyer prior to the execution of the contract, the amount of any liquidated damages shall be subject to subdivisions (c) and (d).

(h) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute,

that becomes operative on or before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 26. Section 1770 of the Civil Code is amended to read:

1770. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(1) Passing off goods or services as those of another.

(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(3) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

(6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact.

(9) Advertising goods or services with intent not to sell them as advertised.

(10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(11) Advertising furniture without clearly indicating that it is unassembled if that is the case.

(12) Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller.

(13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

(14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

(15) Representing that a part, replacement, or repair service is needed when it is not.

(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

(17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.

(19) Inserting an unconscionable provision in the contract.

(20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (A) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (B) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product. This subdivision shall not apply to in-store advertising by businesses which are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code where more than 50 percent of purchases are made at the specific price set forth in the advertisement.

(21) Selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title 1.7.

(22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

(B) This subdivision does not apply to a message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making

the call, to a call for the purpose of collecting an existing obligation, or to any call generated at the request of the recipient.

(23) The home solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of either subsection (h) or (i) of Section 1639 of Title 15 of the United States Code or subsection (e) of Section 226.32 of Title 12 of the Code of Federal Regulations.

A third party shall not be liable under this subdivision unless (A) there was an agency relationship between the party who engaged in home solicitation and the third party or (B) the third party had actual knowledge of, or participated in, the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under this subdivision.

(24) (A) Charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of public social services.

(B) For purposes of this paragraph, the following definitions shall apply:

(i) "Public social services" means those activities and functions of state and local government administered or supervised by the State Department of Health Care Services, the State Department of Public Health, or the State Department of Social Services, and involved in providing aid or services, or both, including health care services and medical assistance, to those persons who, because of their economic circumstances or social condition, are in need of that aid or those services and may benefit from them.

(ii) "Unreasonable fee" means a fee that is exorbitant and disproportionate to the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, all of the following:

(I) The time and effort required.

(II) The novelty and difficulty of the services.

(III) The skill required to perform the services.

(IV) The nature and length of the professional relationship.

(V) The experience, reputation, and ability of the person providing the services.

(C) ~~Paragraph (24)~~ *This paragraph* shall not apply to attorneys licensed to practice law in California, who are subject to the California Rules of Professional Conduct and to the mandatory fee arbitration provisions of Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and which is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, "mortgage broker or lender" includes a finance lender licensed pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).

(2) This section shall not be construed to either authorize or prohibit a home improvement contractor from referring a consumer to a mortgage broker or lender by this subdivision. However, a home improvement contractor may refer a consumer to a mortgage lender or broker if that referral does not violate Section 7157 of the Business and Professions Code or any other provision of law. A mortgage lender or broker may purchase an executed home improvement contract if that purchase does not violate Section 7157 of the Business and Professions Code or any other provision of law. Nothing in this paragraph shall have any effect on the application of Chapter 1 (commencing with Section 1801) of Title 2 to a home improvement transaction or the financing thereof.

SEC. 27. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against that person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars ($1,000).

(2) An order enjoining the methods, acts, or practices.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief that the court deems proper.

(b) (1) Any consumer who is a senior citizen or a disabled person, as defined in subdivisions (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedies specified therein, up to five thousand dollars ($5,000) where the trier of fact does all of the following:

(A) Finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(B) Makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345.

(C) Finds that an additional award is appropriate.

(2) Judgment in a class action by senior citizens or disabled persons under Section 1781 may award each class member that additional award if the trier of fact has made the foregoing findings.

(c) Whenever it is proven by a preponderance of the evidence that a defendant has engaged in conduct in violation of paragraph (24) of subdivision (a) of Section 1770, in addition to all other remedies otherwise provided in this section, the court shall award treble actual damages to the plaintiff. ~~Subdivision (c)~~ *This subdivision* shall not apply to attorneys licensed to practice law in California, who are subject to the California Rules of Professional Conduct and to the mandatory fee arbitration provisions of Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(d) An action under subdivision (a) or (b) may be commenced in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

In any action subject to ~~the provisions of~~ this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice.

(e) The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

SEC. 28. Section 1936 of the Civil Code is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) "Rental company" means a person or entity in the business of renting passenger vehicles to the public.

(2) "Renter" means any person in a manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) "Authorized driver" means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if he or she is engaged in business activity with the renter, is a licensed driver, and satisfies the rental company's minimum age requirement, and (D) a person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) (A) "Customer facility charge" means a fee required by an airport to be collected by a rental company from a renter for either of the following purposes:

(i) To finance, design, and construct consolidated airport car rental facilities.

(ii) To finance, design, construct, and provide ~~common use~~ *common-use* transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary, the Assembly Committee on Transportation, and the Senate Committee on Transportation and Housing. In the case of a transportation system, the audit also shall consider the reasonable costs of providing the transit system or busing network. At the Burbank Airport, and at all other airports, the fees designated as a customer facility charge shall not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) Except as provided in subparagraph (D), the authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(D) If a bond or other form of indebtedness is not used for financing, or the bond or other form of indebtedness used for financing has been paid, the Oakland International Airport may require the collection of a customer facility charge for a period of up to 10 years from the imposition of the charge for the purposes allowed by, and subject to the conditions imposed by, this section.

(5) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(6) "Electronic surveillance technology" means a technological method or system used to observe, monitor, or collect information, including telematics, Global Positioning System (GPS), wireless technology, or location-based technologies. "Electronic surveillance technology" does not include event data recorders (EDR), sensing and diagnostic modules (SDM), or other systems that are used either:

(A) For the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle.

(B) As part of the vehicle's airbag sensing and diagnostic system in order to capture safety systems-related data for retrieval after a crash has occurred or in the event that the collision sensors are

activated to prepare the decisionmaking computer to make the determination to deploy or not to deploy the airbag.

(7) "Estimated time for replacement" means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as "crash books."

(8) "Estimated time for repair" means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(9) "Membership program" means a service offered by a rental company that permits customers to bypass the rental counter and go directly to the car previously reserved. A membership program shall meet all of the following requirements:

(A) The renter initiates enrollment by completing an application on which the renter can specify a preference for type of vehicle and acceptance or declination of optional services.

(B) The rental company fully discloses, prior to the enrollee's first rental as a participant in the program, all terms and conditions of the rental agreement as well as all required disclosures.

(C) The renter may terminate enrollment at any time.

(D) The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of optional services, may be changed by the renter at any time for the next and future rentals.

(E) An employee designated to receive the form specified in subparagraph (C) of paragraph (1) of subdivision (t) is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(10) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that

vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle. However, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge, which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts, which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts, which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). An administrative charge shall not be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and shall not assert or collect a claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company shall not recover from the renter or other authorized driver for an item described in subdivision (b) to the extent the rental company obtains recovery from another person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of another person.

(e) (1) Except as provided in subdivision (f), a damage waiver shall provide or, if not expressly stated in writing, shall be deemed

to provide that the renter has no liability for a damage, loss, loss of use, or a cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to a damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside the United States.

(3) An authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company that offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract, and, for renters who are enrolled in the rental company's membership program, in a sign that shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved car: (A) the nature of the renter's liability, ~~e.g.,~~ *such as* liability for all collision damage regardless of cause, (B) the extent of the renter's liability, ~~e.g.,~~ *such as* liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential

liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides a damage waiver shall orally disclose to all renters, except those who are participants in the rental company's membership program, that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's receipt of the oral disclosure shall be demonstrated through the renter's acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her acceptance or declination of the damage waiver. Adjacent to that same part, the contract also shall state that the damage waiver is optional. Further, the contract for these renters shall include a clear and conspicuous written disclosure that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

~~NOTICE~~ "*NOTICE* ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list ~~exceptions).~~ *exceptions).*"

(A) When the above notice is printed in the rental contract or holder in which the contract is placed, the following shall be printed immediately following the notice:

"The cost of an optional damage waiver is $____ for every (day or week)."

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

"The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented."

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an "economy car," "subcompact car," "compact car," or another term having similar meaning when offered for rental, or another vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate shall not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that are also either vehicles of next year's model, or not older than the previous year's model, the rate shall not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model-year, the rate shall not exceed nine dollars ($9).

(i) The manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, "Consumer Price Index" means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company that disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for a damage waiver and a statement that a damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or another optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase the damage waiver, optional insurance, or another optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase the damage waiver, optional insurance, or another optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company shall not seek to recover any portion of a claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing a debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, a special district, or the San Diego County Regional Airport Authority formed pursuant to Division 17 (commencing with Section 170000) of the Public Utilities Code.

(B) The fee is calculated on a per-contract basis.

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract.

(E) If the fee imposed by the airport is for both a consolidated rental car facility and a common-use transportation system, the

fee collected from customers of on-airport rental car companies shall be ten dollars ($10), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided *that* the airport requires off-airport customers to use the common-use transportation system.

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, constructing, or operating the facility or transportation services and shall not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to airports the fees of which are governed by Section 50474.1 of the Government Code or Section 57.5 of the San Diego Unified Port District Act.

(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or another law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, are not subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, that a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle, including, but not limited to, required fuel or airport surcharges other than customer facility charges, nor a fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the

charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge a fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall disclose clearly in that advertisement or quotation the terms of mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall disclose clearly the existence and amount of the customer facility charge. For purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If a person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer

facility charge is imposed, that person or entity shall, provided that he, she, or it is provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company is not responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A rental company shall not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

(1) (A) When the equipment is used by the rental company only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

(i) The renter or law enforcement has informed the rental company that the vehicle *is missing or* has been stolen~~,~~ *or* abandoned~~, or missing~~.

(ii) The rental vehicle has not been returned following one week after the contracted return date, or by one week following the end of an extension of that return date.

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law enforcement has already informed the rental company that the vehicle *is missing or* has been stolen~~,~~ *or* abandoned~~, or is missing~~.

(B) If electronic surveillance technology is activated pursuant to subparagraph (A), a rental company shall maintain a record, in

either electronic or written form, of information relevant to the activation of that technology. That information shall include the rental agreement, including the return date, and the date and time the electronic surveillance technology was activated. The record shall also include, if relevant, a record of written or other communication with the renter, including communications regarding extensions of the rental, police reports, or other written communication with law enforcement officials. The record shall be maintained for a period of at least 12 months from the time the record is created and shall be made available upon the renter's request. The rental company shall maintain and furnish explanatory codes necessary to read the record. A rental company shall not be required to maintain a record if electronic surveillance technology is activated to recover a rental vehicle that is stolen or missing at a time other than during a rental period.

(2) In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

(3) This subdivision does not prohibit a rental company from equipping rental vehicles with GPS-based technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to lock or unlock the vehicle.

(5) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire, or fuel services, at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) This subdivision does not prohibit a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

(p) A rental company shall not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

(q) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(r) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or, if the renter is not a resident of this state, in the jurisdiction in which the renter resides.

(s) A waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(t) (1) A rental company's disclosure requirements shall be satisfied for renters who are enrolled in the rental company's membership program if all of the following conditions are met:

(A) Prior to the enrollee's first rental as a participant in the program, the renter receives, in writing, the following:

(i) All of the disclosures required by paragraph (1) of subdivision (g), including the terms and conditions of the rental agreement then in effect.

(ii) An Internet Web site address, as well as a contact number or address, where the enrollee can learn of changes to the rental agreement or to the laws of this state governing rental agreements since the effective date of the rental company's most recent restatement of the rental agreement and distribution of that restatement to its members.

(B) At the commencement of each rental period, the renter is provided, on the rental record or the folder in which it is inserted, with a printed notice stating that he or she had either previously selected or declined an optional damage waiver and that the renter has the right to change preferences.

(C) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger on which a statement is printed, in a box, in at least 12-point boldface type, notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. If it is not feasible to hang the statement from the rearview mirror, it shall be hung from the steering wheel.

The hanger shall provide the renter a box to initial if he or she (not his or her employer) has previously accepted or declined the collision damage waiver and that he or she now wishes to change his or her decision to accept or decline the collision damage waiver, as follows:

"□ If I previously accepted the collision damage waiver, I now decline it.

□ If I previously declined the collision damage waiver, I now accept it."

The hanger shall also provide a box for the enrollee to indicate whether this change applies to this rental transaction only or to all future rental transactions. The hanger shall also notify the renter that he or she may make that change, prior to leaving the lot, by returning the form to an employee designated to receive the form who is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(2) (A) This subdivision is not effective unless the employee designated pursuant to subparagraph (E) of paragraph (8) of subdivision (a) is actually present at the required location.

(B) This subdivision does not relieve the rental company from the disclosures required to be made within the text of a contract or holder in which the contract is placed; in or on an advertisement containing a rental rate; or in a telephonic, in-person, or computer-transmitted quotation or reservation.

(u) The amendments made to this section during the 2001–02 Regular Session of the Legislature do not affect litigation pending on or before January 1, 2003, alleging a violation of Section 22325 of the Business and Professions Code as it read at the time the action was commenced.

SEC. 29. Section 1993 of the Civil Code is amended to read:

1993. This chapter shall only apply to commercial real property. As used in this chapter, *the following terms have the following meanings*:

(a) "Commercial real property" has the meaning specified in subdivision (d) of Section 1954.26~~. For purposes of this chapter, commercial real property~~ *and* shall not include self-storage units.

(b) "Landlord" means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for hire, or his or her agent or successor in interest.

(c) "Owner" means any person other than the landlord who has any right, title, or interest in property.

(d) "Premises" includes any common areas associated ~~therewith~~ *with the commercial real property*.

(e) "Reasonable belief" means the actual knowledge or belief a prudent person would have without making an investigation, including ~~any~~ *an* investigation of public records, except that, if the landlord has specific information indicating that an investigation would more probably than not reveal pertinent information and the cost of an investigation would be reasonable in relation to the probable value of the property involved, "reasonable belief" ~~includes~~ *means* the actual knowledge or belief a prudent person would have if an investigation were made.

(f) "Tenant" includes any lessee or sublessee of any commercial real property and its premises for hire.

SEC. 30. Section 1993.02 of the Civil Code is amended to read:

1993.02. (a) This chapter provides an optional procedure for the disposition of property that remains on the premises after a tenancy of commercial real property has terminated and the premises have been vacated by the tenant.

(b) This chapter does not apply if Section 1862.5, 2080.8, *or* 2080.9, or ~~2081 to 2081.6, inclusive~~ *Article 2 (commencing with Section 2081) of Chapter 4 of Title 6*, apply. This chapter does not apply to property that exists for the purpose of providing utility services and is owned by a public utility, whether or not that property is actually in operation to provide those utility services.

(c) This chapter does not apply to ~~any~~ *a* manufactured home, as defined in Section 18007 of the Health and Safety Code, ~~any~~ *a* mobilehome, as defined in Section 18008 of the Health and Safety Code, or ~~to any~~ *a* commercial coach, as defined in Section 18001.8

of the Health and Safety Code, including *any* attachments ~~thereto~~ or contents ~~thereof~~, whether or not the manufactured home, mobilehome, or commercial coach is subject to registration under the Health and Safety Code.

(d) This chapter does not apply to the disposition of animals *subject* to ~~which~~ Chapter 7 (commencing with Section 17001) of Part 1 of Division 9 of the Food and Agricultural Code ~~applies, and those animals shall be disposed of in accordance with those provisions~~.

(e) This chapter does not apply to residential property or self-storage units.

(f) If the requirements of this chapter are not satisfied, nothing in this chapter affects the rights and liabilities of the landlord, former tenant, or any other person.

SEC. 31. Section 1993.03 of the Civil Code is amended to read:

1993.03. (a) If property remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant, the landlord shall give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property.

(b) The notice shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by Section 1993.08 ~~does~~ *shall* not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, safe, vault, or other container that is locked, fastened, or tied in a manner that deters immediate access to its contents may be described as such without describing its contents. The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned, where the property may be claimed, and the date before which the claim must be made. The date specified in the notice shall be a date not less than 15 days after the notice is personally delivered or, if mailed, not less than 18 days after the notice is deposited in the mail.

(c) The notice shall be personally delivered to the person to be notified or sent by first-class mail, postage prepaid, to the person to be notified at his or her last known address and, if there is reason to believe that the notice sent to that address will not be received

by that person, also to any other address known to the landlord where the person may reasonably be expected to receive the notice. If the notice is sent by mail to the former tenant, one copy shall be sent to the premises vacated by the tenant.

SEC. 32. Section 1993.04 of the Civil Code is amended to read:

1993.04. (a) A notice given to the former tenant that is in substantially the following form satisfies the requirements of Section 1993.03:

Notice of Right to Reclaim Abandoned Property

To: _____

(Name of ~~Former~~ *former* tenant)

_____

(Address of former tenant)

When you vacated the premises at_____

_____,

(Address of premises, including room, if any)

the following personal property remained:

_____

(Insert description of the personal property)

You may claim this property at_____

_____.

(Address where property may be claimed)

Unless you pay the reasonable cost of storage for all *of* the above-described property, and take possession of the property which you claim, not later than _____ (insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail) this property may be disposed of pursuant to ~~Civil Code~~ Section 1993.07 *of the Civil Code*.

(Insert here the statement required by subdivision (b) of this section)

Dated:_____ _____

(Signature of landlord)

_____

(Type or print name of landlord)

_____

(Telephone number *of landlord*)

_____

(Address *of landlord*)

(b) The notice set forth in subdivision (a) shall also contain one of the following statements:

(1) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within one year after the county receives the money."

(2) "Because you were a commercial tenant and this property is believed to be worth less than the lesser of ~~$750~~ *seven hundred fifty dollars ($750)*, or one dollar ($1) per square foot of the premises you occupied, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above."

SEC. 33. Section 1993.05 of the Civil Code is amended to read:

1993.05. A notice in substantially the following form given to a person (other than the former tenant) the landlord reasonably believes to be the owner of personal property satisfies the requirements of Section 1993.03:

Notice of Right to Reclaim Abandoned Property

To: _____

(Name *of owner*)

_____

(Address *of owner*)

When _____ vacated the premises at

(Name of former tenant)

_____,

(Address of premises, including room, if any)

the following personal property remained:

_____

(Insert description of the personal property)

You may claim this property at_____

_____.

(Address where property may be claimed)

Unless you pay the reasonable cost of storage for all *of* the above-described property, and take possession of the property that you claim, not later than _____ (insert date not less than 15 days after notice is personally delivered

or, if mailed, not less than 18 days after notice is deposited in the mail) this property may be disposed of pursuant to ~~Civil Code~~ Section 1993.07 *of the Civil Code*.

(Insert here the statement required by subdivision (b) of this section)

Dated:_____ _____

(Signature of landlord)

_____

(Type or print name of landlord)

_____

(Telephone number *of landlord*)

_____

(Address *of landlord*)

SEC. 34. Section 1993.07 of the Civil Code is amended to read:

1993.07. (a) (1) ~~If the~~ *The* property described in the notice *that* is not released pursuant to Section 1987~~, it~~ shall be sold at public sale by competitive bidding~~. However,~~ *except that*, if the landlord reasonably believes that the total resale value of the property ~~not released~~ is less than the threshold amount, the landlord may retain the property for his or her own use or dispose of it in any manner. ~~Nothing in this section shall be construed to preclude the landlord or tenant from bidding on the property at the public sale.~~

(2) For the purposes of this section, "threshold amount" means the lesser of seven hundred fifty dollars ($750) or one dollar ($1) per square foot of the premises occupied by the tenant.

(b) *(1)* Notice of the time and place of the public sale shall be given by publication pursuant to Section 6066 of the Government Code in a newspaper of general circulation published in the county where the sale is to be held. ~~The~~

(2) The last publication shall be not less than five days before the sale is to be held. ~~The~~

(3) The notice of the sale shall not be published before the last of the dates specified for taking possession of the property in any notice given pursuant to Section 1993.03. ~~The~~

(4) The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it. ~~The~~

(5) The notice may describe all or a portion of the property, but the limitation of liability provided by Section 1993.08 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, safe, vault, or other container that is locked, fastened, or tied in a manner that deters immediate access to its contents may be described as such without describing its contents.

(c) *(1)* After deduction of the costs of storage, advertising, and sale, any balance of the proceeds of the sale that is not claimed by the former tenant or an owner other than the tenant shall be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale. ~~The~~

(2) The former tenant or other owner may claim the balance within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county. ~~If~~

(3) If the county pays the balance or any part thereof to a claimant, neither the county nor any officer or employee thereof ~~is~~ *shall be* liable to any other claimant as to the amount paid.

(d) Nothing in this section precludes a landlord or tenant from bidding on the property at the public sale.

SEC. 35. Section 1993.08 of the Civil Code is amended to read:

1993.08. (a) Notwithstanding subdivision (c) of Section 1993.02, if the landlord releases to the former tenant property that remains on the premises after a tenancy is terminated, the landlord ~~is~~ *shall* not *be* liable with respect to that property to any person.

(b) If the landlord releases property pursuant to Section 1987 to a person, other than the former tenant, who is reasonably believed by the landlord to be the owner of the property, the landlord ~~is~~ *shall* not *be* liable with respect to that property to any of the following persons:

(1) A person to whom notice was given pursuant to Section 1993.03.

(2) A person to whom notice was not given pursuant to Section 1993.03, unless the person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that the person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of the person.

(c) If property is disposed of pursuant to Section 1993.07, the landlord ~~is~~ *shall* not *be* liable with respect to that property to any of the following persons:

(1) A person to whom notice was given pursuant to Section 1993.03.

(2) A person to whom notice was not given pursuant to Section 1993.03, unless the person proves that, prior to disposing of the property pursuant to Section 1993.07, the landlord believed or reasonably should have believed that the person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of the person.

SEC. 36. Section 1993.09 of the Civil Code is amended to read:

1993.09. If a notice of belief of abandonment is given to a lessee pursuant to Section 1951.3, the notice to the former tenant given pursuant to Section 1993.03 may~~, but need not,~~ be given at the same time as the notice of belief of abandonment, even though the tenancy is not terminated until the end of the period specified in the notice of belief of abandonment. ~~If the notices are so given, the~~ *The* notices may~~, but need not,~~ be combined in one notice that contains all the information required by the sections under which the notices are given.

SEC. 37. Section 2782.96 of the Civil Code is amended to read:

2782.96. If an owner, builder, or general contractor obtains a wrap-up insurance policy or other consolidated insurance program for a public work as defined in Section 1720 of the Labor Code or any other project other than residential construction, as that term is used in Title 7 (commencing with Section 895) of Part 2 of Division 2, that is put out for bid after January 1, 2009, the following shall apply:

(a) The total amount or method of calculation of any credit or compensation for premium required from ~~the~~ *a* subcontractor or other participant for that policy shall be clearly delineated in the bid documents.

(b) The named insured, to the extent known, shall disclose to the subcontractor or other participant in the contract documents the policy limits, known exclusions, and the length of time the policy is intended to remain in effect. In addition, upon written request, once available, the named insured shall provide copies of

insurance policies to all those who are covered by the policy. Until such time as the policies are available, the named insured may also satisfy the disclosure requirements of this subdivision by providing the subcontractor or other participant with a copy of the insurance binder or declaration of coverage. Any party receiving a copy of the policy, binder, or declaration shall not disclose it to third parties other than the participant's insurance broker or attorney unless required to do so by law. The participant's insurance broker or attorney may not disclose the policy, binder, or declaration to any third party unless required to do so by law.

(c) The disclosure requirements in subdivisions (a) and (b) do not apply to an insurance policy purchased by an owner, builder, or general contractor that provides additional coverage beyond what was contained in the original wrap-up policy or other consolidated insurance program if no credit or compensation for premium is required of the subcontractor for the additional insurance policy.

SEC. 38. Section 416.80 of the Code of Civil Procedure is amended to read:

416.80. When authorized by Section ~~11~~ *12* of the Elections Code, a summons may be served as provided by that section.

SEC. 39. Section 697.350 of the Code of Civil Procedure is amended to read:

697.350. (a) Except as otherwise provided by statute, a judgment lien on real property is a lien for the amount required to satisfy the money judgment.

(b) A judgment lien on real property created under a money judgment payable in installments pursuant to Section ~~117~~ *116.620* or 582.5 of this code or Section 16380 of the Vehicle Code or under a similar judgment is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

(c) A judgment lien created pursuant to Section 697.320 is a lien for the amount of the installments as they mature under the terms of the judgment, plus accrued interest and the costs as they are added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1, and less the amount of any partial satisfactions, but does not become a lien for any installment until it becomes due and payable under the terms of the judgment.

SEC. 40. Section 8210 of the Corporations Code is amended to read:

8210. (a) Every corporation shall, within 90 days after the filing of its original articles and biennially thereafter during the applicable filing period, file, on a form prescribed by the Secretary of State, a statement containing: (1) the names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer~~;~~, (2) the street address of its principal office in this state, if any~~;~~, *and* (3) the mailing address of the corporation, if different from the street address of its principal executive office or if the corporation has no principal office address in this state.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or any domestic or foreign or foreign business corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence street address. If a corporate agent is designated, no address for it shall be set forth.

(c) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall mail a notice for compliance with this section to each corporation approximately three months prior to the close of the applicable filing period. The notice shall state the due date for compliance and shall be mailed to the last address of the corporation according to the records of the Secretary of State. Neither the failure of the Secretary of State to mail the notice nor the failure of the corporation to receive it is an excuse for failure to comply with this section.

(d) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the

articles as to the agent for service of process and the address of the agent.

(e) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(f) This section shall not be construed to place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.

SEC. 41. Section 31155 of the Corporations Code is amended to read:

31155. Every applicant for registration of an offer to sell franchises under this law, by other than a California corporation, California limited partnership, or California limited liability company, shall file with the commissioner, in such form as he or she by rule prescribed, an irrevocable consent appointing the commissioner or his or her successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or her or his or her successor, executor or administrator, which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration under this law need not file another. Service may be made by leaving a copy of the process in the office of the commissioner but it is not effective unless (a) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him *or her*, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his *or her* last address on file with the commissioner, and (b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

SEC. 42. Section 219 of the Education Code is amended and renumbered to read:

~~219.~~

210.2. ~~Disability,~~ *"Disability,* gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic contained in the definition of hate crimes set forth in Section 422.55 of the Penal ~~Code~~ *Code"* includes a perception that the person has

any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

SEC. 43. Section 8300 of the Education Code is amended to read:

8300. (a) The Early Learning Quality Improvement System Advisory Committee is hereby established in the state government. The advisory committee shall consist of 13 members as follows:

(1) The Superintendent of Public Instruction or his or her designee.

(2) The Secretary ~~of~~ *for* Education or his or her designee.

(3) The President pro Tempore of the Senate or his or her designee.

(4) The Speaker of the Assembly or his or her designee.

(5) The Director of ~~the Department of~~ Finance or his or her designee.

(6) The Director of ~~the Department of~~ Social Services or his or her designee.

(7) The Governor shall appoint two representatives.

(8) The Chairperson of the California Children and Families Commission or his or her designee.

(9) The Senate Committee on Rules shall appoint two representatives from the early care and education community, one who is a program administrator of a child development program funded by the department, and another who is a caregiver for infants and toddlers.

(10) The Speaker of the Assembly shall appoint two representatives, one from the early care and education community who has experience with English learners, and one who is a local educational agency teacher who teaches kindergarten.

(b) The Superintendent and the Secretary for Education or their designees shall be cochairpersons of the committee.

(c) The advisory committee shall seek input through the establishment of subcommittees or other methods from persons with expertise in the following areas: early learning quality improvement systems in use nationwide; early care and education, including representatives from the higher education segments, the Commission on Teacher Credentialing, and administrators, caregivers, and teachers from both the public and private sectors; K–12 public school teachers; English language development,

including primary and secondary language acquisition; education and care of children with exceptional needs and disabilities; infant and toddler care; consumer education; parent and guardian engagement; workforce development; facilities development; technical assistance; and program accreditation.

SEC. 44. Section 8447 of the Education Code is amended to read:

8447. (a) The Legislature hereby finds and declares that greater efficiencies may be achieved in the execution of state subsidized child care and development program contracts with public and private agencies by the timely approval of contract provisions by the Department of Finance, the Department of General Services, and the State Department of Education and by authorizing the State Department of Education to establish a multiyear application, contract expenditure, and service review as may be necessary to provide timely service while preserving audit and oversight functions to protect the public welfare.

(b) (1) The Department of Finance and the Department of General Services shall approve or disapprove annual contract funding terms and conditions, including both family fee schedules and regional market rate schedules that are required to be adhered to by contract, and contract face sheets submitted by the State Department of Education not more than 30 working days from the date of submission, unless unresolved conflicts remain between the Department of Finance, the State Department of Education, and the Department of General Services. The State Department of Education shall resolve conflicts within an additional ~~30 working day~~ *30-working-day* time period. Contracts and funding terms and conditions shall be issued to child care contractors no later than June 1. Applications for new child care funding shall be issued not more than 45 working days after the effective date of authorized new allocations of child care moneys.

(2) Notwithstanding paragraph (1), for the 2008–09 fiscal year, the State Department of Education shall implement the regional market rate schedules based upon the county aggregates, as determined by the Regional Market ~~survey~~ *Survey* conducted in 2007.

(3) Notwithstanding paragraph (1), for the 2006–07 fiscal year, the State Department of Education shall update the family fee schedules by family size, based on the 2005 state median income

survey data for a family of four. The family fee schedule used during the 2005–06 fiscal year shall remain in effect. However, the department shall adjust the family fee schedule for families that are newly eligible to receive or will continue to receive services under the new income eligibility limits. The family fees shall not exceed 10 percent of the family's monthly income.

(4) It is the intent of the Legislature to fully fund the third stage of child care for former CalWORKs recipients.

(c) With respect to subdivision (b), it is the intent of the Legislature that the Department of Finance annually review contract funding terms and conditions for the primary purpose of ensuring consistency between child care contracts and the child care budget. This review~~,~~ shall include evaluating any proposed changes to contract language or other fiscal documents to which the contractor is required to adhere, including those changes to terms or conditions that authorize higher reimbursement rates, ~~that~~ modify related adjustment factors, ~~that~~ modify administrative or other service allowances, or ~~that~~ diminish fee revenues otherwise available for services, to determine if the change is necessary or has the potential effect of reducing the number of full-time equivalent children that may be served.

(d) Alternative payment child care systems, as set forth in Article 3 (commencing with Section 8220), shall be subject to the rates established in the Regional Market Rate Survey of California Child Care Providers for provider payments. The State Department of Education shall contract to conduct and complete a Regional Market Rate Survey no more frequently than once every two years, consistent with federal regulations, with a goal of completion by March 1.

(e) By March 1 of each year, the Department of Finance shall provide to the State Department of Education the ~~State Median Income~~ *state median income* amount for a four-person household in California based on the best available data. The State Department of Education shall adjust its fee schedule for child care providers to reflect this updated state median income.

(f) Notwithstanding the June 1 date specified in subdivision (b), changes to the regional market rate schedules and fee schedules may be made at any other time to reflect the availability of accurate data necessary for their completion, provided *that* these documents receive the approval of the Department of Finance. The Department

of Finance shall review the changes within 30 working days of submission and the State Department of Education shall resolve conflicts within an additional ~~30 working day~~ *30-working-day* period. Contractors shall be given adequate notice prior to the effective date of the approved schedules. It is the intent of the Legislature that contracts for services not be delayed by the timing of the availability of accurate data needed to update these schedules.

(g) Notwithstanding any other provision of law, no family receiving CalWORKs cash aid may be charged a family fee.

SEC. 45. Section 8483.7 of the Education Code is amended to read:

8483.7. (a) (1) (A) Each school that establishes a program pursuant to this article is eligible to receive a three-year direct grant, that shall be awarded in three one-year increments and is subject to semiannual attendance reporting and requirements as described in Section 8482.3 once every three years.

(i) The department shall provide technical support for development of a program improvement plan for grantees under the following conditions:

(I) If actual pupil attendance falls below 75 percent of the target attendance level in any year of the grant.

(II) If the grantee fails, in any year of the grant, to demonstrate measurable outcomes pursuant to Section 8484.

(ii) The department shall adjust the grant level of any school within the program that is under its targeted attendance level by more than 15 percent in each of two consecutive years.

(iii) In any year after the initial grant year, if the actual attendance level of a school within the program falls below 75 percent of the target attendance level, the department shall perform a review of the program and adjust the grant level as the department deems appropriate.

(iv) The department shall create a process to allow a grantee to voluntarily lower its annual grant amount if one or more sites are unable to meet the proposed pupil attendance levels by the end of the second year of the grant.

(v) A grantee who has had its grant amount reduced may subsequently request an increase in funding up to the maximum grant amounts provided under this subdivision.

(vi) The department may terminate the grant of any site or program that does not comply with fiscal reporting, attendance reporting, or outcomes reporting requirements established by the department and pursuant to Section 8484. The department may withhold the grant allocation for a program or site if the prior grant year's fiscal or attendance reporting ~~remain~~ *remains* outstanding, until the reports have been filed with the department.

(vii) Notwithstanding any other provision of this subdivision or any other provision of law, after the technical assistance required under clause (i) has been provided, the department may at any time terminate the grant of any school in a program that fails for three consecutive years to meet either of the following requirements:

(I) Demonstrate measurable program outcomes pursuant to Section 8484.

(II) Attain 75 percent of its proposed attendance level after having had its program reviewed and grant level adjusted by the department.

(B) Direct grants may be awarded to applicants that have demonstrated readiness to begin operation of a program or to expand existing programs.

(C) The maximum total direct grant amount awarded annually pursuant to this paragraph shall be one hundred twelve thousand five hundred dollars ($112,500) for each regular school year for each elementary school and one hundred fifty thousand dollars ($150,000) for each regular school year for each middle or junior high school. The ~~superintendent~~ *Superintendent* shall determine the total annual direct grant amount for which a site is eligible based on a formula of seven dollars and fifty cents ($7.50) per pupil per day of pupil attendance that the program plans to serve, with a maximum total grant of thirty-seven dollars and fifty cents ($37.50) per projected pupil per week, and a formula of seven dollars and fifty cents ($7.50) per projected pupil per day of staff development, with a maximum of three staff development days per year. A program may provide the three days of staff development during regular program hours using funds from the total grant award.

(2) For large schools, the maximum total grant amounts described in paragraph (1) may be increased based on the following formulas, up to a maximum amount of twice the respective limits specified in paragraph (1):

(A) For elementary schools, multiply one hundred thirteen dollars ($113) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 600.

(B) For middle schools, multiply one hundred thirteen dollars ($113) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 900.

(3) The maximum total grant amounts set forth in subparagraph (C) of paragraph (1) may be increased from any funds made available for this purpose in the annual Budget Act for participating schools that have pupils on waiting lists for the program. Grants may be increased by the lesser of an amount that is either 25 percent of the current maximum total grant amount or equal to the proportion of pupils unserved by the program as measured by documented waiting lists as of January 1 of the previous grant year, compared to the actual after school enrollment on the same date. The amount of the required cash or in-kind matching funds shall be increased accordingly. First priority for an increased maximum grant pursuant to this paragraph shall be given to schools that qualify for funding pursuant to subdivision (b) of Section 8482.55. Second priority shall be given to schools that receive funding priority pursuant to subdivision (f) of Section 8482.55.

(4) A school that establishes a program pursuant to this section is eligible to receive a supplemental grant to operate the program in excess of 180 regular schooldays or during any combination of summer, intersession, or vacation periods for a maximum of the lesser of the following amounts:

(A) Seven dollars and fifty cents ($7.50) per day per pupil.

(B) Thirty percent of the total grant amount awarded to the school per school year pursuant to subparagraph (C) of paragraph (1).

(5) Each program shall provide an amount of cash or in-kind local funds equal to not less than one-third of the total grant from the school district, governmental agencies, community organizations, or the private sector. Facilities or space usage may fulfill not more than 25 percent of the required local contribution.

(6) (A) A grantee may allocate, with departmental approval, up to 125 percent of the maximum total grant amount for an individual school, so long as the maximum total grant amount for all school programs administered by the program grantee is not exceeded.

(B) A program grantee that transfers funds for purposes of administering a program pursuant to subparagraph (A) shall have an established waiting list for enrollment, and may transfer only from another school program that has met a minimum of 70 percent of its attendance goal.

(b) The administrator of a program established pursuant to this article may supplement, but not supplant, existing funding for after school programs with grant funds awarded pursuant to this article. State categorical funds for remedial education activities shall not be used to make the required contribution of local funds for those after school programs.

(c) Up to 15 percent of the initial year's grant amount for each grant recipient may be utilized for startup costs. Under no circumstance shall funding for startup costs result in an increase in the grant recipient's total funding above the approved grant amount.

(d) For each year of the grant, the department shall award the total grant amount for that year not later than 30 days after the date the grantee accepts the grant.

(e) The department may adjust the amount of a direct grant, awarded to a new applicant pursuant to this section, on the basis of the program start date, as determined by the department.

SEC. 46. Section 10802 of the Education Code is amended to read:

10802. ~~(a)~~ The department shall establish a process by which local educational agencies issue, maintain, and report information using the unique statewide pupil identifiers specified in paragraph (3) of subdivision (e) of Section 60900 for state and federally funded center-based child care and development programs under their purview. The department shall not require these center-based child care and development programs to implement or maintain unique pupil identifiers specified in paragraph (3) of subdivision (e) of Section 60900 until an appropriation for this purpose is provided in the annual Budget Act or another statute.

SEC. 47. Section 17078.57 of the Education Code is amended to read:

17078.57. (a) The authority, in consultation with the board, shall adopt regulations establishing uniform terms and conditions that shall apply equally to all projects for funding in accordance

with Section 17078.58, including, but not limited to, all of the following:

(1) The process for determining the manner in which the applicant will pay its local matching share, including the method for determining lease payments to be made in lieu of the local matching share. The regulations shall comply with all of the following criteria:

(A) The payment process set forth in Section 17199.4 may be used.

(B) The payment process shall permit lump-sum local matching payments and shall permit establishment of a schedule for lease payments to be made in lieu of the local matching share.

(C) The lease payment schedule shall be calculated by amortizing one-half of the total approved project costs, minus lump-sum payments, over the entire payment period as set forth in Section 17078.58.

(D) The payment schedule for payments in lieu of the local matching funds pursuant to this section shall be based upon payment, within a reasonable period of time not to exceed a 30-year period, of one-half of the total eligible project costs, and shall be calculated in a manner that is designed to result in full payment of that portion, together with interest thereon at a rate set by the authority. The interest rate shall be set using the lower of the following:

(i) The rate paid on moneys in the Pooled Money Investment Account as of the date of disbursement of the funding.

(ii) A rate equal to 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds, and the interest rate shall be computed according to the true interest cost method.

(E) Notwithstanding subparagraph (D), the authority shall not set the interest rate on a loan at a rate lower than 2 percent. Program participants that have locked in an interest rate before January 1, 2009, may reset their payment schedule based on the interest rate set pursuant to subparagraph (D) as of January 1, 2009. Program participants executing an agreement on and after January 1, 2009, shall have their interest rate set at the time the funding agreement is executed and shall not renegotiate interest rates without prior approval of the authority.

(2) The method for determining whether a charter school is financially sound. In the case of a charter school chartered by a school district that is located outside of the school district that chartered it, the method developed by the authority shall include, but shall not be limited to, a site visit to the school facility currently being used by the charter school during hours when pupils are present and instruction is being provided.

(3) (A) Security provisions, including, but not limited to, the requirement that title to project facilities be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system.

(B) The authority shall adopt a mechanism whereby a person or entity ~~who~~ *that* provides a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of as set forth in paragraph (5) of subdivision (b) of Section 17078.62.

(4) The method for integrating funding pursuant to this article with the general procedures of the authority pursuant to subdivision (i) of Section 17180 for otherwise funding projects eligible for funding under this chapter, if appropriate.

(b) The authority may adopt, amend, or repeal rules and regulations pursuant to this chapter as emergency regulations. The adoption, amendment, or repeal of these regulations is conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Section 11346.1 of the Government Code.

SEC. 48. Section 17282.5 of the Education Code is amended to read:

17282.5. (a) On or before January 1, 2010, the Division of the State Architect within the Department of General Services shall develop uniform criteria for precheck approval processes for solar design plans, including structural plans and calculations, for a school facility that comply with rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations. The criteria shall include provisions to ensure fire and life safety.

(b) The Department of General Services shall complete *the* review of *a* solar design plan ~~applications~~ *application* submitted

by a school district that ~~conform~~ *conforms* with the criteria established pursuant to subdivision (a) within 45 calendar days of the receipt of a complete application. If the Department of General Services requests an applicant to submit a corrected application, the Department of General Services shall act on the corrected application within 10 calendar days of the date the applicant submits the corrected complete application to that department for approval.

SEC. 49. Section 35400 of the Education Code is amended to read:

35400. (a) The Los Angeles Unified School ~~District Board of Education may appoint an inspector general and shall make employment decisions related to the inspector general, except to the extent that a decision violates the terms of the employment contract under which the inspector general is employed as of January 1, 2007. The inspector general may not be dismissed by the Los Angeles Unified School District Board of Education, except for good cause. The inspector general shall be appointed to serve for a term of three years.~~

~~(b) The~~ *District's* Inspector General of the ~~Los Angeles Unified School District~~ *Office of the Inspector General* is authorized to conduct audits and investigations. The inspector general may subpoena witnesses, administer oaths or affirmations, take testimony, and compel the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence deemed material and relevant and that reasonably relate to the inquiry or investigation undertaken by the inspector general when he or she has a reasonable suspicion that a law, regulation, rule, or district policy has been violated or is being violated. For purposes of this section, "reasonable suspicion" means that the circumstances known or apparent to the inspector general include specific and articulable facts causing him or her to suspect that a material violation of law, regulation, rule, or district policy has occurred or is occurring, and that the facts would cause a reasonable officer in a like position to suspect that a material violation of a law, regulation, rule, or district ~~policy~~ *bulletin* has occurred or is occurring.

~~(c)~~

(b) Subpoenas shall be served in the manner provided by law for service of summons. Any subpoena issued pursuant to this

section may be subject to challenge pursuant to Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure.

~~(d)~~

(c) For purposes of this section, Sections 11184, 11185, 11186, 11187, 11188, 11189, 11190, and 11191 of the Government Code shall apply to the subpoenaing of witnesses and documents, reports, answers, records, accounts, papers, and other data and documentary evidence as if the investigation was being conducted by a state department head, except that the applicable court for resolving motions to compel or motions to quash shall be the Superior Court for the County of Los Angeles.

~~(e)~~

(d) Notwithstanding any other provision of the law, any person who, after the administration of an oath or affirmation pursuant to this section, states or affirms as true any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months or by a fine not to exceed five thousand dollars ($5,000), or by both that fine and imprisonment for the first offense. Any subsequent violation shall be punishable by imprisonment in a county jail not to exceed one year or by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

~~(f) The inspector general shall have access to all contracts and contracting processes conducted pursuant to Section 35912 to enable review for violations of law or conflicts of interest. The inspector general shall report quarterly to the Los Angeles Unified School District Board of Education regarding any findings arising from the review of contracts and contracting processes. These reports shall also be provided to the council of mayors established pursuant to Section 35920 and are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).~~

~~(g)~~

(e) The inspector general shall submit an interim report to the Legislature by July 1, 2000, annual interim reports by July 1 of each succeeding year, and a final cumulative report by December 1, 2014, on all of the following:

(1) The use and effectiveness of the subpoena power authorized by this section in the successful completion of the inspector general's duties.

(2) Any use of the subpoena power in which the issued subpoena was quashed, including the basis for the court's order.

(3) Any referral to the *local* district attorney or the Attorney General ~~if~~ *where* the district attorney or Attorney General declined to investigate the matter further or declined to prosecute.

~~(h)~~

(f) This article shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 50. Chapter 5 (commencing with Section 35900) of Part 21 of Division 3 of Title 2 of the Education Code is repealed.

SEC. 51. Section 41003.3 of the Education Code is amended to read:

41003.3. (a) Consistent with the provisions of Article 4 (commencing with Section 17455) of Chapter 4 of Part 10.5 of Division 1 of Title 1, from July 1, 2008, to June 30, 2010, inclusive, the Dixon Unified School District may sell surplus real property previously used as the school farm on Sievers Road, located five miles outside of the city and which is not feasible for future school construction, together with any personal property located thereon, purchased entirely with local funds. The proceeds of the sale shall be deposited into the general fund of the school district in order to reestablish a 3-percent reserve. The remainder of the proceeds from the sale of the property that are not utilized to reestablish the 3-percent reserve shall be deposited into the capital outlay fund of the school district.

(b) In order to expend funds pursuant to subdivision (a), the district shall meet all of the following conditions:

(1) The district shall not be eligible for new construction funding for 10 years from the date that funds are deposited into the general fund of the school district pursuant to subdivision (a), except that the district may apply for new construction funds if both of the following conditions are met:

(A) At least five years have elapsed since the date upon which the sale was executed pursuant to subdivision (a).

(B) The State Allocation Board determines that the district has demonstrated enrollment growth or a need for additional sites or

building construction that the district could not have easily anticipated at the time the sale was executed pursuant to subdivision (a).

(2) The ~~district~~ governing board *of the district* shall complete a governance training program focusing on fiscal management provided by the County Office Fiscal Crisis and Management Assistance Team (FCMAT).

(3) Any remaining funds from the sale of the property shall be exhausted for capital outlay purposes prior to any request for modernization funding.

(4) Notwithstanding any other provision of law, the Dixon Unified School District, from July 1, 2008, to June 30, 2010, inclusive, shall not be eligible to receive financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10) of Chapter 12.5 of Part 10 of Division 1 of Title 1.

(5) The district shall not be eligible to receive hardship funding from the State School Deferred Maintenance Fund pursuant to Section 17587 until all remaining funds from the sale of the property identified in, and pursuant to, subdivision (a) are exhausted for deferred maintenance or capital outlay purposes.

(6) The governing board of the district shall certify all of the following to the State Allocation Board:

(A) The district has no major deferred maintenance requirements that cannot be completed with existing capital outlay resources.

(B) The sale of the real property pursuant to this section does not violate any provisions of a local general obligation bond act.

(C) The real property sold pursuant to this section is not suitable to meet any projected school construction need for the next 10 years.

(7) Before exercising the authority granted by this section, the governing board of the district, at a regularly scheduled meeting of that board, shall present a plan for expending one-time resources pursuant to this section. The plan shall identify the source and use of the funds, and describe how the proposed use of funds, in combination with budget reductions, will address the district's deficit spending and restore the ongoing fiscal solvency of the district.

(8) No later than 10 years after the date of the sale of surplus property pursuant to subdivision (a), the district shall deposit into its capital outlay fund an amount equal to the amount of the

proceeds from the sale of the property that is deposited into the district's general fund as needed to establish the 3-percent reserve in accordance with subdivision (a).

(c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 52. Section 42133.5 of the Education Code is amended to read:

42133.5. Regardless of the certification of the budgetary status of a school district or county office of education under subdivision (*l*) of Section 1240 or Section 42131, the proceeds obtained by a school district from the sources listed in subdivisions (a) to ~~(f)~~ *(d)*, inclusive, shall not be used for general operating purposes of the school district.

(a) The sale of a saleback or leaseback agreement, or interests in the agreement.

(b) A debt instrument payable from payments under a saleback or leaseback agreement.

(c) Certificates of participation.

(d) Other debt instruments that meet both of the following criteria:

(A) They are secured by real property.

(B) They do not require the approval of the voters of the school district.

SEC. 53. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for a fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1995–96 fiscal year, the equalization adjustment specified in Section 42238.4.

(3) For the 1996–97 fiscal year, the equalization adjustments specified in Sections 42238.41, 42238.42, and 42238.43.

(4) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(5) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(6) For the 2004–05 fiscal year, the equalization adjustment specified in Section 42238.44.

(7) For the 2006–07 fiscal year, the equalization adjustment specified in Section 42238.48.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) (1) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(A) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(B) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(C) Add the amounts in subparagraphs (A) and (B).

(2) This subdivision shall become inoperative on July 1, 1998.

(e) For districts electing to compute units of average daily attendance pursuant to paragraph (2) of subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(f) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those

contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

(g) The reduction required by subdivision (f) shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 was in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 was in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for either of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent.

(h) The Superintendent shall apportion to each school district the amount determined in this section less the sum of *all of the following*:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section ~~75)~~ *70)* and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of the Government Code.

(4) Prior years' taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount, if any, received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, *and* except for any amount received pursuant to Section 33492.15 *of*, paragraph (4) of subdivision (a) of Section 33607.5 *of*, or Section 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(7) For a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606, the amount of statewide average general-purpose funding per unit of average daily attendance received by school districts for each of four grade level ranges, as computed by the department pursuant to Section 47633, multiplied by the average daily attendance, in corresponding grade level ranges, of any pupils who attend charter schools funded pursuant to Chapter 6 (commencing with Section 47630) of Part 26.8 *of Division 4* for which the district is the sponsoring local educational agency, as defined in Section 47632, and who reside in and would otherwise have been eligible to attend a noncharter school of the district.

(i) A transfer of seventh and eighth grade pupils between an elementary school district and a high school district shall not result in the receiving district receiving a revenue limit apportionment for those pupils that exceeds 105 percent of the statewide average revenue limit for the type and size of the receiving school district.

SEC. 54. Section 48646 of the Education Code is amended to read:

48646. (a) The Legislature encourages each county superintendent of schools or *governing board of a* school district,

as determined by the county board of education pursuant to subdivision (b) of Section 48645.2, and *the* county chief probation officer to enter into a memorandum of understanding or equivalent mutual agreement to support a collaborative process for meeting the needs of wards of the court who are receiving their education in juvenile court schools. The memorandum of understanding or equivalent mutual agreement may include, but is not limited to, a process for communication, decisionmaking, mutually established goals, and conflict resolution. The purpose of this memorandum of understanding or equivalent mutual agreement is to develop a collaborative model that will foster an educational and residential environment that nurtures the whole child and consistently supports services that will meet the educational needs of the pupils.

(b) A memorandum of understanding or equivalent mutual agreement on providing educational and related services for juvenile court school pupils developed in accordance with this section may include, but is not limited to, the following provisions:

(1) Mutually developed goals and objectives that are reviewed annually, including, but not limited to, the following:

(A) Building resiliency and strengthening life skills.

(B) Fostering prosocial attitudes and behaviors.

(C) Assigning pupils to appropriate classrooms based on their educational needs.

(D) Ensuring regular classroom attendance.

(E) Providing clean, safe, and appropriate educational facilities.

(F) Improving academic achievement and vocational preparation.

(2) Clear delineation of responsibilities among the educational and residential or custodial service providers.

(3) A process for communicating, collaborating, and resolving conflicts. Whenever possible, resolution of issues shall be reached by consensus through a collaborative process that would promote decisionmaking at the site where services are delivered. A working group charged with this responsibility may be appointed by the county superintendent of schools, or the superintendent of the school district with responsibility for providing juvenile court school services, and the county chief probation officer, or their designees. The working group is responsible for establishing and maintaining open communication, collaboration, and resolution of issues that arise.

(4) A clearly identified mechanism for resolving conflicts.

(5) A joint process for performing an intake evaluation for each ward to determine educational needs and ability to participate in all educational settings once the ward enters the local juvenile facility. The process shall recognize the limitations on academic evaluation and planning that can result from short-term placements. The evaluation team shall include staff from the responsible educational agency and the county probation department, and may include other participants as appropriate, and as mutually agreed upon by the education and probation members of the team. The evaluation process specified in the memorandum of understanding or equivalent mutual agreement may:

(A) Include a timeline for evaluation once a ward is assigned to a local facility.

(B) Result in an educational plan for a ward while assigned to a local juvenile facility that is integrated with other rehabilitative and behavioral management programs, and that supports the educational needs of the pupil.

It is the intent that this shared information about each ward placed in a juvenile court school shall assist both the county superintendent of schools and the county chief probation officer in meeting the needs of wards in their care and promoting a system of comprehensive services.

(c) The memorandum of understanding or equivalent mutual agreement shall not cede responsibility or authority prescribed by statute or regulation from one party to another party unless mutually agreed upon by both parties.

SEC. 55. Section 51241 of the Education Code, as amended by Section 3 of Chapter 720 of the Statutes of 2007, is amended to read:

51241. (a) The governing board of a school district or the office of the county superintendent of schools of a county may grant a temporary exemption to a pupil from courses in physical education, if the pupil is one of the following:

(1) Ill or injured and a modified program to meet the needs of the pupil cannot be provided.

(2) Enrolled for one-half, or less, of the work normally required of full-time pupils.

(b) (1) The governing board of a school district or the office of the county superintendent of schools of a county, with the

consent of a pupil, may grant a pupil an exemption from courses in physical education for two years ~~any time~~ *anytime* during grades 10 to 12, inclusive, if the pupil has met satisfactorily any five of the six standards of the physical performance test administered in grade 9 pursuant to Section 60800.

(2) Pursuant to Sections 51210, 51220, and 51222, physical education is required to be offered to all pupils, and, therefore, schools are required to provide adequate facilities and instructional resources for that instruction. In this regard, paragraph (1) shall be implemented in a manner that does not create a new program or impose a higher level of service on a local educational agency. Paragraph (1) does not mandate any overall increase in staffing or instructional time because, pursuant to subdivision (d), pupils are not permitted to attend fewer total hours of class if they do not enroll in physical education. Paragraph (1) does not mandate any new costs because any additional physical education instruction that a local educational agency provides may be accomplished during the existing instructional day, with existing facilities. Paragraph (1) does not prevent a local educational agency from implementing any other temporary or permanent exemption authorized by this section.

(c) The governing board of a school district or the office of the county superintendent of a county may grant permanent exemption from courses in physical education if the pupil complies with any one of the following:

(1) Is 16 years of age or older and has been enrolled in ~~the 10th~~ grade *10* for one academic year or longer.

(2) Is enrolled as a postgraduate pupil.

(3) Is enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are scheduled for recreation and exercise pursuant to the requirements of ~~Section 4346 of Title 15 of the California Code of Regulations~~ *Article 24 (commencing with Section 880) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code*.

(d) A pupil exempted under paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c) shall not attend fewer total hours of courses and classes if he or she elects not to enroll in a physical education course than he or she would have attended if he or she had elected to enroll in a physical education course.

(e) Notwithstanding any other law, the governing board of a school district also may administer to pupils in grades 10 to 12, inclusive, the physical performance test required in grade 9 pursuant to Section 60800. A pupil who meets satisfactorily any five of the six standards of this physical performance test in any of grades 10 to 12, inclusive, is eligible for an exemption pursuant to subdivision (b).

SEC. 56. Section 51241 of the Education Code, as amended by Section 1 of Chapter 32 of the Statutes of 2008, is amended to read:

51241. (a) The governing board of a school district or the office of the county superintendent of schools of a county may grant a temporary exemption to a pupil from courses in physical education, if the pupil is one of the following:

(1) Ill or injured and a modified program to meet the needs of the pupil cannot be provided.

(2) Enrolled for one-half, or less, of the work normally required of full-time pupils.

(b) (1) The governing board of a school district or the office of the county superintendent of schools of a county, with the consent of a pupil, may grant a pupil an exemption from courses in physical education for two years ~~any time~~ *anytime* during grades 10 to 12, inclusive, if the pupil has met satisfactorily at least five of the six standards of the physical performance test administered in grade 9 pursuant to Section 60800.

(2) Pursuant to Sections 51210, 51220, and 51222, physical education is required to be offered to all pupils, and, therefore, schools are required to provide adequate facilities and instructional resources for that instruction. In this regard, paragraph (1) shall be implemented in a manner that does not create a new program or impose a higher level of service on a local educational agency. Paragraph (1) does not mandate any overall increase in staffing or instructional time because, pursuant to subdivision (d), pupils are not permitted to attend fewer total hours of class if they do not enroll in physical education. Paragraph (1) does not mandate any new costs because any additional physical education instruction that a local educational agency provides may be accomplished during the existing instructional day, with existing facilities. Paragraph (1) does not prevent a local educational agency from

implementing any other temporary or permanent exemption authorized by this section.

(c) The governing board of a school district or the office of the county superintendent of a county may grant permanent exemption from courses in physical education if the pupil complies with any one of the following:

(1) Is 16 years of age or older and has been enrolled in ~~the~~ grade 10 for one academic year or longer.

(2) Is enrolled as a postgraduate pupil.

(3) Is enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are scheduled for recreation and exercise pursuant to the requirements of ~~Section 4346 of Title 15 of the California Code of Regulations~~ *Article 24 (commencing with Section 880) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code*.

(d) A pupil exempted under paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c) shall not attend fewer total hours of courses and classes if he or she elects not to enroll in a physical education course than he or she would have attended if he or she had elected to enroll in a physical education course.

(e) Notwithstanding any other law, the governing board of a school district also may administer to pupils in grades 10 to 12, inclusive, the physical performance test required in grade 9 pursuant to Section 60800. A pupil who meets satisfactorily at least five of the six standards of this physical performance test in any of grades 10 to 12, inclusive, is eligible for an exemption pursuant to subdivision (b).

SEC. 57. Section 52055.650 of the Education Code is amended to read:

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

(b) Twenty-four months after receipt of funding for implementation of the action plan pursuant to Sections 52054.5 and 52055.600, a school that has not met its growth targets each year shall be subject to review by the state board. This review shall include an examination of the school's progress relative to the components and reports made pursuant to Section 52055.640. The Superintendent, with the approval of the state board, may direct that the governing board of a school *district* take appropriate action and adopt appropriate strategies to provide corrective assistance

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

(c) Thirty-six months after receipt of funding to implement a school action plan, a school that has met or exceeded its growth target each year shall receive a monetary or nonmonetary award, under the Governor's Performance Award Program, as set forth in Section 52057. Funds received pursuant to that section may be used at the school's discretion.

(d) Notwithstanding subdivisions (e) and (f), 36 months after the receipt of funding to implement a school action plan, all schools that are not subject to state monitoring are eligible for a fourth year of the funding specified in Section 52055.600.

(e) (1) Thirty-six months after receipt of funding pursuant to Section 52053 or 52055.600, and anytime thereafter, a school for which the most recent base Academic Performance Index (API) places the school in decile 6, 7, 8, 9, or 10 shall exit the grant program.

(2) Thirty-six months after receipt of implementation funding for the federal Comprehensive School Reform Program (20 U.S.C. Sec. 6511 et seq.), and anytime thereafter, a school receiving funding pursuant to Section 52053 or 52055.600 in the 2005–06 fiscal year for which the most recent base API places the school in decile 6, 7, 8, 9, or 10 shall exit the grant program.

(f) (1) A school that achieves positive growth in each year of the last three years of program implementation and achieves growth targets in two of those years shall exit the grant program.

(2) A school that receives implementation funding for the federal program beginning in the 2004–05 fiscal year and subsequently receives funding pursuant to subdivision (c) of Section 52055.600 in the 2006–07 fiscal year shall exit the grant program if it achieves positive growth in each year of the last three years of program implementation and achieves growth targets in two of those years.

(g) For schools receiving implementation funding pursuant to Section 52055.600, 36 months after receipt of initial funding for either the federal program or the grant program, a school that has not met its growth targets but has shown significant growth as determined by the state board, shall continue to be monitored by the Superintendent until it exits the grant program pursuant to subdivision (e) or (f) or is deemed state monitored pursuant to subdivision (h).

(h) Thirty-six months after receipt of initial implementation funding for the grant program or the federal program, a school that receives funding pursuant to Section 52055.600, does not meet its growth targets within the periods described in subdivision (c), and has failed to show significant growth, as determined by the state board, shall be deemed a state-monitored school, and, notwithstanding any other law, the Superintendent, with the approval of the state board, shall follow the course of action prescribed by paragraph (1) or (2) with respect to that school.

(1) Notwithstanding any other law, the Superintendent, with the approval of the state board, shall require the district to enter into a contract with a school assistance and intervention team no later than 30 days after the public release of the school's growth in API results or the next regularly scheduled meeting of the state board following the expiration of the 30 days, if meeting the 30-day time limit would not provide the state board with sufficient time to comply with the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Division 3 of Title 2 of the Government Code). With the approval of the state board, the governing board of the school district may retain its legal rights, duties, and responsibilities with respect to that school.

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

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

provide support and assistance to enhance the work of the team at the targeted schoolsites.

(C) (i) Not later than 60 days after the assignment of the school assistance and intervention team, the team shall complete an initial report. The report shall include recommendations for corrective actions chosen from a range of interventions, including the reallocation of school district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the school's growth target.

(ii) Not later than 90 days after the assignment of the school assistance and intervention team, the governing board of the school district shall adopt the team's recommendations at a regularly scheduled meeting of the governing board. Any subsequent recommendations proposed by the school assistance and intervention team shall be submitted to the governing board and shall be adopted by the governing board within 30 days of the submission. The governing board may not place the adoption on the consent calendar.

(iii) The report shall be submitted to the Superintendent and the state board.

(D) Following the governing board's adoption of the recommendations, the governing board may submit an appeal to the Superintendent for relief from one or more of the recommendations. The Superintendent, with approval of the state board, may grant relief from compliance with any of the school assistance and intervention team recommendations.

(E) If a school assistance and intervention team does not fulfill its legal obligations under this section or Section 52055.51, the governing board of the school district may seek permission from the Superintendent, with the approval of the state board, to contract with a different school assistance and intervention team. Upon finding that the school assistance and intervention team has not fulfilled its legal obligations under this section, the Superintendent, with the approval of the state board, may remove the school assistance and intervention team from the state list of eligible providers.

(F) A school assistance and intervention team assigned to a school pursuant to Section 52055.51 or this section may seek

permission from the Superintendent, with the approval of the state board, to terminate its contract with a state-monitored school if the school is failing to implement the recommendations listed in the report of findings and corrective actions. The Superintendent, with approval of the state board, may grant permission to the school assistance and intervention team to terminate its contract with the state-monitored school if the Superintendent determines that the school is not implementing the identified corrective actions.

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

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

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

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

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

(C) Under the supervision of the Superintendent, assign the management of the school to a college, university, county office

of education, or other appropriate educational institution. The entity chosen to assume management of the school shall possess the qualifications specified in subparagraph (A) of paragraph (1). The involvement of the school district during the sanctions process shall be established by contract. The costs of the entity to manage the school shall be established by contract and shall be paid by the school district. However, the Superintendent may not assume the management of the school.

(D) Reassign other certificated employees of the school.

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

(F) Reorganize the school.

(G) Close the school.

(H) Place a trustee at the school, for a period not to exceed three years, who shall monitor and review the operation of the school. The trustee shall possess the qualifications specified in subparagraph (A) of paragraph (1), shall compile an initial report in accordance with the requirements of subparagraph (C) of paragraph (1), and shall receive reports from the school district and schoolsite no less than three times during the year on the progress towards meeting the goals established in the initial report. During the period of his or her service, the trustee may stay or rescind those actions of the governing board of the school district or schoolsite principal that, in the judgment of the trustee, may detrimentally affect the conditions of the state-monitored school to which the trustee is assigned. The salary and benefits of the trustee shall be established by the Superintendent, in consultation with the state board, and shall be paid by the school district.

(I) For the purposes of this section, in order to facilitate the appointment of the trustee and the employment of any necessary staff, the Superintendent is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contract Code.

(J) Notwithstanding any other provision of law, if the Superintendent appoints an employee of the department to act as trustee pursuant to this section, the salary and benefits of that employee shall be established by the Superintendent and paid by the school district. During the time of appointment, the employee is an employee of the school district, but shall remain in the same

retirement system and under the same plan as if the employee had remained in the department. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the department. The time served in the appointment shall be counted for all purposes as if the employee had served that time in his or her former position with the department.

(i) When a school is deemed to be a state-monitored school, the governing board of the school district, at a regularly scheduled public meeting, shall inform the parents and guardians of pupils enrolled at the schoolsite that the school is a state-monitored school and that as a result of this determination the corrective actions set forth in subdivision (h) may occur.

(j) In addition to the actions taken pursuant to subdivision (h), the governing board of the school district and the district superintendent shall be included in discussions regarding the governance of the state-monitored schoolsite and the actions that shall be taken in order for the schoolsite to succeed. During the discussions, the participants shall delineate clearly the role that the governing board of the school district and the district superintendent will play during the sanctions period and shall report this delineation to the Superintendent. The role to be played by the governing board of the school district and the district superintendent as delineated during the discussions regarding the governance of the state-monitored schoolsite shall be in addition to those actions set forth in subdivision (h).

(k) After a school is deemed to be a state-monitored school pursuant to subdivision (h), the governing board of the school district shall do all of the following:

(1) Make the same fiscal, human, and educational resources, at a minimum, available to the schoolsite as were available before the action taken pursuant to subdivision (h), excluding state or federal funding provided pursuant to Sections 52054.5 and 52055.600. If the total amount of resources available to the school district differs from one year to another, it shall make the same proportion of resources available to the schoolsite as was available before the action taken pursuant to subdivision (h).

(A) The entity selected to manage a school pursuant to subparagraph (C) of paragraph (2) of subdivision (h) shall review

the resources allocated to the schoolsite and determine if additional resources should be made available from district funds to reasonably support the schoolsite without detriment to the other schools and pupils of the district.

(B) If the school does not have a management team pursuant to subparagraph (C) of paragraph (2) of subdivision (h), the Superintendent, in consultation with the state board, shall designate an entity to review the resources allocated to the schoolsite and determine if additional resources should be made available from district funds to reasonably support the schoolsite without detriment to the other schools and pupils of the district.

(C) If the entity selected to manage a school pursuant to subparagraph (C) or (H) of paragraph (2) of subdivision (h) or the entity chosen by the Superintendent pursuant to paragraph (1) of subdivision (h) is unable to obtain the information necessary to make this determination, the entity may request that the Superintendent and state board intervene to obtain the necessary documents.

(D) Any dispute between the entity selected to manage a school pursuant to subparagraph (C) or (H) of paragraph (2) of subdivision (h) or the entity chosen by the Superintendent pursuant to paragraph (1) of subdivision (h) and the school district over resource allocations shall be resolved by the Superintendent, in consultation with the state board.

(2) Continue its current ownership status with respect to the schoolsite.

(3) Continue to provide the same insurance coverage as before the action taken pursuant to subdivision (b) with respect to property, liability, errors and omissions, and other regularly provided policies.

(4) Name the Superintendent and the department as additional insureds upon transfer of legal rights, duties, and responsibilities to the Superintendent.

(5) Continue to provide facilities support, including maintenance, if appropriate to the management arrangement, and full schoolsite participation in bond financing.

(6) Remain involved with the school throughout the sanctions period.

(*l*) If the state board approves, the governing board of the school district may retain its legal rights, duties, and responsibilities with respect to that school.

(m) A school deemed state monitored pursuant to subdivision (h) that achieves significant growth, as determined by the state board, after it has undergone state monitoring for two consecutive API reporting cycles shall exit state monitoring, as defined in subdivision (g). A school shall exit the program if it meets the requirements specified in subdivision (e) or (f).

(n) Thirty-six months after the Superintendent assigns a management team, trustee, or a school assistance and intervention team to a schoolsite, if the management team, trustee, or school assistance and intervention team fails to assist the school in making significant growth on the API, as determined by the state board, the Superintendent shall remove the management team, trustee, or school assistance and intervention team from providing services at the schoolsite. Additionally, the Superintendent shall do at least one of the following:

(1) Require the school district to ensure, using available federal funds, that 100 percent of the teachers at the schoolsite are highly qualified, as defined by the state for the purposes of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(2) (A) Require the school district to contract, using available federal, state, and local funds, with an outside entity to provide supplemental instruction to high-priority pupils and assign a management team, trustee, or school assistance and intervention team that has demonstrated success with other state-monitored schools. During the period of his or her service, the trustee may stay or rescind those actions of the governing board of the school district or principal that, in the judgment of the trustee, detrimentally may affect the conditions of the state-monitored school to which the trustee is assigned.

(B) For the purposes of this section, in order to facilitate the appointment of the trustee and the employment of any necessary staff, the Superintendent is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contract Code.

(C) Notwithstanding any other provision of law, if the Superintendent appoints an employee of the department to act as

trustee pursuant to this section, the salary and benefits of that employee shall be established by the Superintendent and paid by the school district. During the time of appointment, the employee is an employee of the school district, but shall remain in the same retirement system and under the same plan as if the employee had remained in the department. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the department. The time served in the appointment shall be counted for all purposes as if the employee had served that time in his or her former position with the department.

(D) Following the assignment of a management team, trustee, or school assistance and intervention team pursuant to this subdivision, if the school makes significant growth on the API, as determined by the state board, in two API reporting cycles, the school shall exit the Immediate Intervention/Underperforming Schools Program and is no longer subject to the requirements of the program.

(3) Allow parents of pupils enrolled at the school to apply directly to the state board to establish a charter school at the existing schoolsite.

(4) Close the school.

(o) If a school assistance and intervention team does not fulfill its legal obligations under this section, the governing board of the school district may seek permission from the Superintendent, with the approval of the state board, to contract with a different school assistance and intervention team. Upon a finding that the school assistance and intervention team has not fulfilled its legal obligations under this section, the Superintendent, with the approval of the state board, may remove the school assistance and intervention team from the state list of eligible providers.

(p) In addition to the actions listed in subdivision (h), the Superintendent, in consultation with the state board, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to a school that does not meet its growth targets within the periods described in subdivision (c),

and has failed to show significant growth, as determined by the state board.

(q) Before the Superintendent may take any action against a principal pursuant to subdivision (h), the Superintendent or a designee of the Superintendent, which may be a panel consisting of the county superintendent of schools of the county in which the school is located or an adjoining county, one principal with experience in a similar type of school, and the superintendent of the school district in which the state-monitored school is located, shall do the following:

(1) Hold an informal hearing to determine whether there are sufficient issues to proceed to a formal hearing. The informal hearing shall be held in a closed session. The principal, and his or her representative, and a school district representative may be present at the informal hearing. The decision on whether to proceed to a formal hearing shall be posted and presented at a regularly scheduled public meeting of the governing board of the school district. If the decision is not to proceed to a formal hearing, the posting and presentation shall explain the rationale for this decision. This item may not be a consent item on the agenda.

(2) Hold a formal hearing on the matter in the school district. Evidence to support the findings made at the formal hearing shall be presented and discussed in a closed session. The principal, or his or her representative, and a school district representative may be present in the closed session. The findings shall be posted and presented at a regularly scheduled public meeting of the governing board of the school district. This item may not be a consent item on the agenda. The governing board shall give adequate time for public input and response to findings. The purpose of the hearing shall be to make both of the following findings:

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

(B) Whether the principal failed to take specific enumerated actions pursuant to subparagraph (A).

(r) An action taken pursuant to subdivision (h), (i), (j), or (k) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(s) An action taken pursuant to subdivision (h), (i), (j), or (k) shall be accompanied by specific findings by the Superintendent

and the state board that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

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

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

(3) Notwithstanding subdivision (a), a school participating in the grant program that received a planning grant pursuant to subdivision (*l*) of Section 52053 in the 2001–02 fiscal year is eligible to receive funding pursuant to Section 52055.600 in only the 2002–03, 2003–04, and 2004–05 fiscal years.

(u) Notwithstanding the growth target timelines set forth in subdivisions (b), (c), (e), and (f), a school that receives funds pursuant to Section 52055.600 during the 2002–03 or 2003–04 fiscal year shall meet the growth target specified in subdivision (b) no later than December 31, 2004, and the growth target specified in subdivisions (c), (e), and (f) no later than December 31, 2005.

(v) Notwithstanding the growth target timelines set forth in subdivisions (b), (c), (e), and (f), a school that receives funds pursuant to Section 52055.600 during the 2005–06 or 2006–07 fiscal year shall meet the growth target specified in subdivision (b) no later than December 31, 2009, and the growth target specified in subdivisions (c), (e), and (f) no later than December 31, 2010.

(w) Thirty-six months after allocating funding under subdivision (d) of Section 52055.600, the Superintendent shall provide the state board and the Legislature with recommendations regarding necessary modifications of the Education Code and procedures specific to the programs funded under subdivision (d) of Section 52055.600.

SEC. 58. Section 54712 of the Education Code is amended to read:

54712. The Superintendent shall perform the following responsibilities:

(a) Identify schools as College Opportunity Zones.

(b) Develop the "Save Me a Spot in College" pledge, which shall include the commitments made by the pupil and the major postsecondary and financial aid opportunities provided by the state. The pledge shall contain all of the following assurances:

(1) A pupil who signs the pledge and enrolls in the Early Commitment to College program, in the same manner as all other pupils, shall be eligible to continue his or her postsecondary education at a campus of the California Community Colleges to pursue career technical education or an associate degree, or to prepare for transfer to a four-year college or university, or, if he or she meets the admission requirements and applies for admission, at the University of California or the California State University.

(2) A pupil who signs the pledge and meets all the eligibility requirements of the Cal Grant Program (Article 3 (commencing with Section 69530) of Chapter 2 of Part 42 of Division 5 of Title 3) at the time of application shall be eligible to receive a Cal Grant award.

(3) In a manner that is consistent with Article 1 (commencing with Section 76300) of Chapter 2 of Part 47 of Division 7 of Title 3, a pupil who signs the pledge shall receive, upon enrollment at a community college, a fee waiver under the fee waiver program of the Board of Governors of the California Community Colleges for two or more years of enrollment at a campus of the California Community Colleges, as long as the student is a California resident and continues to show financial need on a completed Free Application for Federal Student Aid.

(c) Consult with the California Community Colleges, the University of California, the California State University, the Student Aid Commission, and independent colleges and universities in developing the pledge, letter, and supporting materials, including a method for participating school districts to notify colleges and universities in their service area that the school district is participating in the program and seeking partnerships with colleges, universities, and others to plan and conduct activities to implement the program.

(d) Determine the form of recognition for pupils who have been certified by his or her school district as having fulfilled the

requirements of the pledge pursuant to subdivision (b) of Section 54711.

(e) Develop a method by which participating schools shall record and report participation in, and outcome data of, the Early Commitment to College program to the Superintendent pursuant to subdivision (b) of Section 54711.

(f) (1) Develop a letter addressed to pupils enrolled in grades 6 to 9, inclusive, and their parents or guardians, and signed by the Superintendent and the superintendent of the school district that describes the major steps to prepare for college, including postsecondary career technical education, and the major postsecondary and financial aid opportunities available to students in California.

(2) Develop a second letter signed by the Superintendent and the superintendent of the school district, to be directed to pupils eligible to sign the pledge pursuant to Section 54711, and their parents or guardians, that details the Early Commitment to College ~~Program~~ *program*, including the pledge, in addition to the information in the letter directed to all ~~students~~ *pupils* in grades 6 to 9, inclusive. ~~Make~~

(3) Make both letters and information on the Early Commitment to College program available on the *Internet* Web site of the department and request all school districts to distribute the letters as appropriate through existing means to all pupils and their parents.

SEC. 59. Section 60200.1 of the Education Code is amended to read:

60200.1. (a) (1) The instructional materials described in paragraph (1) of subdivision (a) of Section 60200 shall be submitted to the state board for adoption in 2008.

(2) The instructional materials for foreign ~~language~~ *languages* shall be submitted to the state board for adoption in 2012.

(3) The instructional materials for health shall be submitted to the state board for adoption in 2013.

(b) Notwithstanding any other *provision of* law, the requirement in paragraph (6) of subdivision (c) of Section 60200 that other criteria be approved at least 30 months before the date that the materials are to be approved for adoption shall not apply if all of the following conditions are met:

(1) The criteria adopted are consistent with the content standards adopted by the state board in each of the four core content areas for which standards are adopted.

(2) The schedule for the adoption of instructional materials requires instructional materials for history-social science to be adopted in November 2011, and instructional materials for science to be adopted by November 2012.

(3) The state board approves criteria for the adoption of instructional materials in history-social science at least 18 months before the state board adopts instructional materials in history-social science.

(4) The state board approves the criteria for the adoption of instructional materials for science at least 24 months before the state board adopts instructional materials in science.

SEC. 60. Section 66269 of the Education Code is amended and renumbered to read:

~~66269.~~

66260.6. ~~Disability,~~ *"Disability,* gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic contained in the definition of hate crimes set forth in Section 422.55 of the Penal ~~Code~~ *Code"* includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

SEC. 61. Section 69613 of the Education Code is amended to read:

69613. (a) Program participants shall meet all of the following eligibility criteria prior to selection in the program and shall continue to meet these criteria, as appropriate, during the payment periods:

(1) The applicant has completed at least 60 semester units, or the equivalent, and is enrolled in an academic program leading to a baccalaureate degree at an eligible institution, has agreed to participate in a teacher internship program, or has been admitted to a program of professional preparation that has been approved by the Commission on Teacher Credentialing.

(2) The applicant is currently enrolled in, or has been admitted to, a program in which he or she will be enrolled on at least a half-time basis, as determined by the participating institution. The applicant shall agree to maintain satisfactory academic progress

and a minimum of half-time enrollment, as defined by the participating eligible institution.

(A) Except as provided in subparagraphs (B) and (C), if a person participating in the program fails to maintain at least half-time enrollment, as required by this article, under the terms of the agreement pursuant to paragraph (2), the loan assumption agreement shall be invalidated and the participant shall assume full liability for all student loan obligations. This subparagraph shall not apply if the participant is in his or her final semester or quarter in school and has no additional coursework required to obtain his or her teaching credential.

(B) Notwithstanding subparagraph (A), if a program participant is unable to maintain at least half-time enrollment due to serious illness, pregnancy, or other natural causes, or is called to active military duty status, the participant is not required to assume full liability for the student loan obligation for a period not to exceed one calendar year, unless approved by the commission for a longer period.

(C) If a natural disaster prevents a program participant from maintaining at least half-time enrollment due to the interruption of instruction at the eligible institution, the term of the loan assumption agreement shall be extended for a period not to exceed one ~~calender~~ *calendar* year, unless approved by the commission for a longer period.

(3) The applicant has been judged by his or her postsecondary institution, school district, or county office of education to have outstanding ability on the basis of criteria that may include, but need not be limited to, any of the following:

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(4) The applicant has received, or is approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (20 U.S.C. Sec. 1071 et seq.).

(B) Any educational loan program approved by the Student Aid Commission.

(5) The applicant has agreed to teach full time for at least four consecutive academic years, or on a part-time basis for the equivalent of four full-time academic years, after obtaining a teaching credential in a public elementary or secondary school in this state, in a subject area that is designated as a current or projected shortage area by the Superintendent of Public Instruction, or, on the date the teacher is hired, at an eligible school.

(b) An agreement shall remain valid even if the subject area under which an applicant becomes eligible to enter into an agreement ceases to be a designated shortage field by the time the applicant becomes a teacher.

(c) For the purposes of calculating eligible years of teaching for the redemption of an award, the designation by the Superintendent of Public Instruction of a newly opened school pursuant to Section 52056 shall apply retroactively from the date the school first opened.

(d) A person participating in the program pursuant to this section shall not enter into more than one agreement.

(e) A person participating in the program pursuant to this section shall not owe a refund on any state or federal educational grant or defaulted on any student loan.

(f) Notwithstanding any other provision of this section, a credentialed teacher teaching in a public school ranked in the lowest two deciles on the Academic Performance Index pursuant to Section 52052~~,~~ *who* possesses a clear multiple subject or single subject teaching credential or level II education specialist credential and who has not otherwise participated in the program established by this article~~,~~ is eligible to enter into an agreement for loan assumption pursuant to this article. The number of loan assumption agreements provided pursuant to this subdivision shall not exceed 400 per year. The commission shall develop and adopt regulations for the implementation of this subdivision by January 1, 2010.

SEC. 62. Section 69662 of the Education Code is amended to read:

69662. (a) Any person enrolled in an eligible institution~~,~~ may be eligible to enter into an agreement for loan assumption~~,~~ to be redeemed pursuant to Section 69665 upon becoming employed as a licensed physician assistant.

(b) In order to be eligible to enter into an agreement for loan assumption, an applicant shall satisfy all of the following conditions:

(1) The applicant is enrolled in or admitted to a physician assistant program at an eligible institution.

(2) The applicant is currently enrolled in a program, or has been admitted to a program in which he or she will be enrolled, on at least a half-time basis, as determined by the eligible institution. The applicant shall agree to maintain satisfactory academic progress and a minimum of half-time enrollment, as defined by the participating eligible institution.

(A) Except as provided in subparagraph (B), if a program participant fails to maintain half-time enrollment as required by this article and, under the terms of the agreement pursuant to *this* paragraph ~~(2) of subdivision (b) of Section 69662~~, the loan assumption agreement shall be deemed invalid. The participant is excused from the half-time enrollment requirement if he or she is in his or her final term in school and has no additional coursework required to become a physician assistant.

(B) Notwithstanding subparagraph (A), a program participant shall be excused from the half-time enrollment requirement for a period not to exceed one calendar year, unless approved by the commission for a longer period, if a program participant becomes unable to maintain half-time enrollment due to any of the following:

(i) Serious illness, pregnancy, or other natural causes.

(ii) The participant is called to military active duty status.

(iii) A natural disaster prevents a program participant from maintaining half-time enrollment due to the interruption of instruction at the eligible institution.

(3) The person has submitted an application to participate in the program and has been recommended by his or her postsecondary institution to have outstanding ability on the basis of criteria that may include, but need not be limited to, any of the following:

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(4) The applicant has received, or is approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (20 U.S.C. Sec. 1071 et seq.).

(B) Any educational loan program approved by the Student Aid Commission.

(5) The applicant has agreed to work full time for at least four consecutive years, or on a part-time basis for the equivalent of four full-time years, as a physician assistant in this state and in a designated medically underserved area.

(c) The agreements entered into each year pursuant to subdivision (b) shall be with applicants who need to complete training or coursework in order to become a licensed physician assistant and agree to practice at a site located in an area of the state where unmet priority needs exist for primary care family physicians, as determined by the California Healthcare Workforce Policy Commission. An agreement shall remain valid even if the primary medical care facilities at which the applicant is employed ceases to be listed as a medically underserved area after the applicant is employed there.

(d) A person participating in the program pursuant to this article shall not enter into more than one agreement under this article.

SEC. 63. The heading of Article 14 (commencing with Section 69785) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code is amended to read:

Article 14. Military and Veterans ~~Office~~ *Offices*

SEC. 64. Section 9604 of the Elections Code is amended to read:

9604. (a) Notwithstanding any other provision of law, any person may engage in good faith bargaining between competing interests to secure legislative approval of matters embraced in a ~~state~~ *statewide* or local initiative or referendum measure, and the proponents may, as a result of these negotiations, withdraw the measure at any time before filing the petition with the appropriate elections official.

(b) Withdrawal of ~~state~~ *a statewide* initiative or referendum ~~measures~~ *measure* shall be effective upon receipt by the Secretary

of State of a written notice of withdrawal, signed by all proponents of the measure.

(c) Withdrawal of *a* local initiative or referendum ~~measures~~ *measure* shall be effective upon receipt by the appropriate local elections official of a written notice of withdrawal, signed by all proponents of the measure.

SEC. 65. Section 10704 of the Elections Code is amended to read:

10704. (a) Except as provided in subdivision (b), a special primary election shall be held in the district in which the vacancy occurred on the eighth Tuesday or, if the eighth Tuesday is the day of or the day following a state holiday, the ninth Tuesday preceding the day of the special general election at which the vacancy is to be filled. Candidates at the primary election shall be nominated in the manner set forth in Chapter 1 (commencing with Section 8000) of Part 1 of Division 8, except that nomination papers shall not be circulated more than 63 days before the primary election, shall be left with the county elections official for examination not less than 43 days before the primary election, and shall be filed with the Secretary of State not less than 39 days before the primary election.

(b) A special primary election shall be held in the district in which the vacancy occurred on the ninth Tuesday preceding the day of the special general election at which the vacancy is to be filled if both of the following conditions apply:

(1) The ninth Tuesday preceding the day of the special general election is an established election date pursuant to Section 1000.

(2) A statewide or local election occurring wholly or partially within the same territory in which the vacancy exists is scheduled for the ninth Tuesday preceding the day of the special general election.

(c) Notwithstanding Section 3001, applications for ~~absent~~ *vote by mail* voter ballots may be submitted not more than 25 days before the primary election, except that Section 3001 shall apply if the special election or special primary election is consolidated with a statewide election. Applications received by the elections official prior to the 25th day shall not be returned to the sender, but shall be held by the elections official and processed by him or her following the 25th day prior to the election in the same manner as if received at that time.

SEC. 66. Section 3041.5 of the Family Code is amended to read:

3041.5. (a) In any custody or visitation proceeding brought under this part, as described in Section 3021, or any guardianship proceeding brought under the Probate Code, the court may order any person who is seeking custody of, or visitation with, a child who is the subject of the proceeding to undergo testing for the illegal use of controlled substances and the use of alcohol if there is a judicial determination based upon a preponderance of evidence that there is the habitual, frequent, or continual illegal use of controlled substances or the habitual or continual abuse of alcohol by the parent, legal custodian, person seeking guardianship, or person seeking visitation in a guardianship. This evidence may include, but may not be limited to, a conviction within the last five years for the illegal use or possession of a controlled substance. The court shall order the least intrusive method of testing for the illegal use of controlled substances or the habitual or continual abuse of alcohol by either or both parents, the legal custodian, person seeking guardianship, or person seeking visitation in a guardianship. If substance abuse testing is ordered by the court, the testing shall be performed in conformance with procedures and standards established by the United States Department of Health and Human Services for drug testing of federal employees. The parent, legal custodian, person seeking guardianship, or person seeking visitation in a guardianship who has undergone drug testing shall have the right to a hearing, if requested, to challenge a positive test result. A positive test result, even if challenged and upheld, shall not, by itself, constitute grounds for an adverse custody or guardianship decision. Determining the best interests of the child requires weighing all relevant factors. The court shall also consider any reports provided to the court pursuant to the Probate Code. The results of this testing shall be confidential, shall be maintained as a sealed record in the court file, and may not be released to any person except the court, the parties, their attorneys, the Judicial Council ~~(until~~, *until* completion of its authorized study of the testing ~~process)~~ *process,* and any person to whom the court expressly grants access by written order made with prior notice to all parties. Any person who has access to the test results may not disseminate copies or disclose information about the test results to any person other than a person who is authorized to receive the

test results pursuant to this section. Any breach of the confidentiality of the test results shall be punishable by civil sanctions not to exceed two thousand five hundred dollars ($2,500). The results of the testing may not be used for any purpose, including any criminal, civil, or administrative proceeding, except to assist the court in determining, for purposes of the proceeding, the best interest of the child pursuant to Section 3011~~,~~ and the content of the order or judgment determining custody or visitation. The court may order either party, or both parties, to pay the costs of the drug or alcohol testing ordered pursuant to this section. As used in this section, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act~~,~~ ~~Division~~ *(Division* 10 (commencing with Section 11000) of the Health and Safety ~~Code~~ *Code)*.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 67. Section 17706 of the Family Code is amended to read:

17706. (a) It is the intent of the Legislature to encourage counties to elevate the visibility and significance of the child support enforcement program in the county. To advance this goal, effective July 1, 2000, the counties with the 10 best performance standards pursuant to clause (ii) of subparagraph (B) of paragraph (2) of subdivision (b) of Section 17704 shall receive an additional 5 percent of the state's share of those counties' collections that are used to reduce or repay aid that is paid pursuant to Article 6 (commencing with Section 11450) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. The counties shall use the increased recoupment for child support-related activities that may not be eligible for federal child support funding under Part D of Title IV of the Social Security Act, including, but not limited to, providing services to parents to help them better support their children financially, medically, and emotionally.

(b) The operation of subdivision (a) shall be suspended for the 2002–03, 2003–04, 2004–05, 2005–06, ~~2006–07,2007–08~~ *2006–07, 2007–08*, 2008–09, 2009–10, 2010–11, and 2011–12 fiscal years.

SEC. 68. Section 287 of the Financial Code is amended to read:

287. Every licensee shall notify the commissioner of any change in the following officers of the licensee, to the extent that

those officers exist within the licensee: chairperson, chief executive officer, president, general manager, managing officer, chief financial officer, ~~and~~ *or* chief credit officer.

SEC. 69. The heading of Chapter 4.5 (commencing with Section 550) of Division 1 of the Financial Code is amended to read:

CHAPTER 4.5. AUTHORIZATIONS ~~FOR~~ *FOR* BANKS

SEC. 70. Section 550 of the Financial Code is amended to read:

550. (a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, a bank or any affiliate thereof, licensed under the laws of any state or of the United States, or any officer or employee thereof, may deliver fingerprints taken of a director, an officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the person fingerprinted relating to convictions, and to any arrest for which that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the bank or affiliate responsible for the final decision regarding employment of the person fingerprinted, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the bank or affiliate, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the bank or affiliate determines that employment of the person fingerprinted would constitute an unreasonable risk to that bank or affiliate or its customers, the person may be denied employment.

(c) Banks and their affiliates shall submit to the Department of Justice fingerprint images and related information required by the

Department of Justice of all directors, officers, employees, or an applicant for employment for the purpose of obtaining information regarding the existence and content of a record of state and federal convictions and also information regarding the existence and content of a record of state and federal arrests for which the Department of Justice establishes that the person is free on bail, or on his or her *own* recognizance, pending trial or appeal.

(d) When the Department of Justice receives a request under this section for federal summary criminal history information, it shall forward the request to the Federal Bureau of Investigation. Once the information is received from the Federal Bureau of Investigation, the Department of Justice shall review, compile, and disseminate the information to the federally chartered bank or affiliate pursuant to paragraph (1) of subdivision (o) of Section 11105 of the Penal Code.

(e) When the Department of Justice receives a request for federal summary criminal history information from a nonchartered bank, it shall forward the request to the Federal Bureau of Investigation. Once the information is received from the Federal Bureau of Investigation, the Department of Justice shall review and provide a fitness determination on an applicant for employment based on criminal convictions or on arrests for which the person is released on bail or on his or her *own* recognizance pending trial for the commission or attempted commission of crimes specified in subdivision (a).

(f) A bank or affiliate may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a).

(g) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(i) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a bank, whether directly, indirectly, or through one or more intermediaries.

SEC. 71. Section 767 of the Financial Code is amended to read:

767. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker,

who receives any deposits, knowing that the bank, ~~or~~ association, or banker is insolvent, is guilty of a misdemeanor.

SEC. 72. Section 17409 of the Financial Code is amended to read:

17409. (a) All moneys deposited in escrow to be delivered upon the close of the escrow or upon any other contingency shall be deposited and maintained in a noninterest-bearing demand or checking account in a bank, a state or federal savings bank, or a state or federal savings association or in a noninterest-bearing account subject to immediate withdrawal in an industrial loan company insured by the Federal Deposit Insurance Corporation and approved to receive those moneys by the commissioner. Thereafter, these moneys may be deposited in an interest-bearing account in a bank, a state or federal savings bank, a state or federal savings association, an industrial loan company approved to receive those moneys by the commissioner, or a state or federal credit union, if the depositor is qualified for membership under the bylaws of that credit union, and the moneys are maintained separate, distinct, and apart from funds belonging to the escrow agent. Those funds, when deposited, are to be designated as "trust funds," "escrow accounts," or under some other appropriate name indicating that the funds are not the funds of the escrow agent.

Upon request of the commissioner, a licensee shall furnish to the commissioner an authorization for examination of financial records of any trust funds or escrow accounts, maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(b) A licensee engaged in the business of receiving escrows for deposit or delivery of the types specified in subdivision (c) of Section 17312 and of the types not specified therein shall maintain separate escrow trust accounts, for both types of escrow business in the same manner as provided in subdivision (a) of this section and Sections 17409.1, 17410, 17411, and 17411.1.

(c) Any agreement with a financial institution to establish a trust account pursuant to this section shall be accompanied by a letter from the licensee authorizing and requesting that the financial institution immediately notify the commissioner and Fidelity Corporation, in either electronic or paper form, when it becomes aware of either of the following:

(1) The closure of any account subject to this section, other than to transfer the funds to another designated trust account at the same financial institution in the name of the escrow agent or the remittance of the funds to the Controller's office for escheat purposes.

(2) The occurrence of any overdraft balance in an account subject to this section.

~~Nothing in this~~ *This* subdivision ~~imposes~~ *does not impose* any duty or obligation on a financial institution to Fidelity Corporation, members of Fidelity Corporation, or the commissioner.

SEC. 73. Section 2302 of the Fish and Game Code is amended to read:

2302. (a) Any person, or federal, state, or local agency, district, or authority that owns or manages a reservoir, as defined in Section 6004.5 of the Water Code, where recreational, boating, or fishing activities are permitted, except a privately owned reservoir that is not open to the public, shall do both of the following:

(1) Assess the vulnerability of the reservoir for the introduction of nonnative dreissenid mussel species.

(2) Develop and implement a program designed to prevent the introduction of nonnative dreissenid mussel species.

(b) The program shall include, at a minimum, all of the following:

(1) Public education.

(2) Monitoring.

(3) Management of those recreational, boating, or fishing activities that are permitted.

(c) Any person, or federal, state, or local agency, district, or authority, that owns or manages a reservoir, as defined in Section 6004.5 of the Water Code, where ~~recreation~~ *recreational*, boating, or fishing activities of any kind are not permitted, except a privately owned reservoir that is not open to the public, shall, based on its available resources and staffing, include visual monitoring for the presence of mussels as part of its routine field activities.

(d) Any entity that owns or manages a reservoir, as defined in Section 6004.5 of the Water Code, except a privately owned reservoir that is not open to the public for recreational, boating, or fishing activities, may refuse the planting of fish in that reservoir by the department unless the department can demonstrate that the

fish are not known to be infected with nonnative dreissenid mussels.

(e) Except as specifically set forth in this section, this section applies both to reservoirs that are owned or managed by governmental entities and reservoirs that are owned or managed by private persons or entities.

(f) Violation of this section is not subject to the sanctions set forth in Section 12000. In lieu of any other penalty provided by law, a person who violates this section shall, instead, be subject to a civil penalty, in an amount not to exceed one thousand dollars ($1,000) per violation, that is imposed administratively by the department. To the extent that sufficient funds and personnel are available to do so, the department may adopt regulations establishing procedures to implement this subdivision and enforce this section.

(g) This section shall not apply to a reservoir in which nonnative dreissenid mussels have been detected.

SEC. 74. Section 5655 of the Fish and Game Code is amended to read:

5655. (a) In addition to the responsibilities imposed pursuant to Section 5651, the department may clean up or abate, or cause to be cleaned up or abated, the effects of any petroleum or petroleum product deposited or discharged in the waters of this state or deposited or discharged in any location onshore or offshore where the petroleum or petroleum product is likely to enter the waters of this state, order any person responsible for the deposit or discharge to clean up the petroleum or petroleum product or abate the effects of the deposit or discharge, and recover any costs incurred as a result of the cleanup or abatement from the responsible party.

(b) An order shall not be issued pursuant to this section for the cleanup or abatement of petroleum products in any sump, pond, pit, or lagoon used in conjunction with crude oil production that is in compliance with all applicable state and federal laws and regulations.

(c) The department may issue an order pursuant to this section only if there is an imminent and substantial endangerment to human health or the environment and the order shall remain in effect only until any cleanup and abatement order is issued pursuant to Section 13304 of the Water Code. A regional water quality control board

shall incorporate the department's order into the cleanup and abatement order issued pursuant to Section 13304 of the Water Code, unless the department's order is inconsistent with any more stringent requirement established in the cleanup and abatement order. Any action taken in compliance with the department's order is not a violation of any subsequent regional water quality control board cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) The Administrator of the Office of Spill Prevention and Response has the primary authority to serve as a state incident commander and direct removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any placement of petroleum or a petroleum product in the waters of the state, except as otherwise provided by law. This authority may be delegated.

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

(1) "Petroleum product" means oil ~~in~~ *of* any kind or form, including, but not limited to, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredged spoil. "Petroleum product" does not include any pesticide that has been applied for agricultural, commercial, or industrial purposes or has been applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, that has not been discharged accidentally or for purposes of disposal, and ~~whose~~ *the* application *of which* was in compliance with all applicable state and federal laws and regulations.

(2) "State incident commander" means a person with the overall authority for managing and conducting incident operations during an oil spill response, who shall manage an incident consistent with the standardized emergency management system required by Section 8607 of the Government Code. Incident management generally includes the development of objectives, strategies, and tactics, ordering and release of resources, and ~~coordination~~ *coordinating* with other appropriate response agencies to ensure that all appropriate resources are properly utilized and that this coordinating function is performed in a manner ~~designated~~ *designed* to minimize risk to other persons and to the environment.

SEC. 75. Section 35783.1 of the Food and Agricultural Code is amended to read:

35783.1. A recording thermometer shall be installed in each dairy farm milk storage tank used to cool or store market milk

during the milking process. If a farm pickup tanker is used in lieu of a dairy farm tank, ~~then~~ the recording thermometer shall be installed in the pipeline following an effective cooling device that cools the milk to 45 degrees Fahrenheit (7 degrees Celsius) or less. Nothing in this section shall be construed as meaning that a recording thermometer must be attached when milk tankers are moved over the road. The ~~director~~ *secretary* shall issue regulations providing standards for ~~such thermometer~~ *these thermometers* including installation and operation.

SEC. 76. Section 47000 of the Food and Agricultural Code is amended to read:

47000. The Legislature finds and declares all of the following with regard to the direct marketing of agricultural products:

(a) Direct marketing of agricultural products benefits the agricultural community and the consumer by, among other things, providing an alternative method for growers to sell their products while benefiting the consumer by supplying quality produce at reasonable prices.

(b) Direct marketing is a good public relations tool for the agricultural industry that brings the farmer face-to-face with consumers.

(c) The marketing potential of a wide variety of California-produced agricultural products should be maximized.

(d) Farm stands allow farmers to sell fresh produce and eggs grown on their farm as well as other food products made with ingredients produced on or near the farm, thus enhancing their income and the local economy.

(e) The department should maintain a direct marketing program and the industry should continue to encourage the sale of California-grown fresh produce.

(f) It is the intent of the state to promote the consumption of California-grown produce and to promote access to California-produced agricultural products. Restaurants and nonprofit organizations can provide assistance in bringing California-grown products to all Californians.

(g) A regulatory scheme should be developed that provides the flexibility that will make direct marketing a viable marketing system.

(h) The department should assist producers in organizing certified farmers' markets, field retail stands, ~~farms~~ *farm* stands,

and other forms of direct marketing by providing technical advice on marketing methods and in complying with the regulations that affect direct marketing programs.

(i) The department is encouraged to establish an ad hoc advisory committee to assist the department in establishing regulations affecting direct marketing of products and to advise the secretary in all matters pertaining to direct marketing.

SEC. 77. Section 52891.1 of the Food and Agricultural Code is amended to read:

52891.1. (a) The board may, by resolution, take actions that are in the best interest of the cotton industry in the district, which shall include, but not be limited to, the growing of cottons other than Acala and Pima. The resolution may contain provisions to protect the quality and integrity of approved fiber and seed grown within the district.

(b) The resolution shall be subject to a referendum conducted by the secretary, upon the request of the board, using information supplied by the board and other information as determined by the secretary, or a referendum shall be conducted by the secretary if a petition signed by not less than 5 percent of the qualified cotton growers in the district is presented to the board. The costs of any referendum conducted pursuant to this chapter shall be paid from funds collected pursuant to this chapter.

(c) The secretary shall find the resolution approved if either of the following conditions ~~are~~ *is* met:

(1) Not less than 65 percent of the cotton growers certified by the secretary who voted in the referendum, voted in favor, and that those cotton growers so voting represent at least a majority of the cotton producing acreage of all cotton growers who voted in the referendum.

(2) At least a majority of those cotton growers who voted in the referendum voted in favor and that those cotton growers so voting represent not less than 65 percent of the cotton producing acreage of all cotton growers who voted in the referendum. The secretary shall then so certify to the board, which shall then make the approved resolution effective as an order of the board within 10 days after the certification by the secretary.

SEC. 78. Section 52892 of the Food and Agricultural Code is amended to read:

52892. Upon implementation of Article 9.5 (commencing with Section 52951) ~~of this chapter~~, the powers and duties of the board shall also include, but not be limited to, all of the following:

(a) To adopt, and from time to time alter, rescind, modify, and amend, all proper and necessary rules, regulations, and orders for carrying out the provisions of this chapter and for exercising its powers and the performance of its duties, including rules for regulation of appeals from any rule, regulation, or order of the board.

(b) To administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to or in connection with or deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter.

(c) To employ a manager to serve, at the pleasure of the board, as president and chief executive officer of the board and other personnel, including legal counsel, that ~~is~~ *are* necessary to carry out the provisions of this chapter.

(d) To establish offices and incur expense, and to enter into any and all contracts and agreements, and to create such liabilities and borrow such funds in advance of receipt of assessments as may be necessary, in the opinion of the board, for the proper administration and enforcement of this chapter and the performance of its duties.

(e) To promote the sale of cotton by advertising and other promotional means for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for cotton.

(f) To enter into cost-sharing advertising with other products considered, by the board, to be fair and equitable to both parties.

(g) In the discretion of the board, to make, in the name of the board, contracts to render service in formulating and conducting plans and programs, and other contracts or agreements deemed necessary for the promotion of the sale of cotton.

(h) In the discretion of the board, to conduct, and contract with others to conduct, scientific research, including the study, analysis, dissemination, and accumulation of information obtained from that research or elsewhere regarding the marketing and production of cotton. In connection with that research, the board shall have the power to accept contributions of, or to match, private, state, or federal funds that may be available for those purposes, and to

employ or make contributions of funds to other persons or state or federal agencies conducting that research.

(i) In the discretion of the board, to publish and distribute, without charge, a bulletin or other communication for dissemination of information relating to the cotton industry to growers and other industry members.

SEC. 79. Section 52931 of the Food and Agricultural Code is amended to read:

52931. A referendum of all cotton growers within the district shall be conducted if a petition, signed by not less than 5 percent of the cotton growers in the district, is submitted to the secretary, which calls for a referendum pertaining to the operation of this chapter.

SEC. 80. Section 52932 of the Food and Agricultural Code is amended to read:

52932. This chapter shall remain operative if either of the following conditions ~~are~~ *is* met:

(a) Not less than 65 percent of the cotton growers certified by the secretary who voted in the referendum, voted in favor of this chapter, and those cotton growers so voting represent at least a majority of the cotton producing acreage of all cotton growers who voted in the referendum.

(b) At least a majority of those cotton growers who voted in the referendum voted in favor of this chapter and those cotton growers so voting represent not less than 65 percent of the cotton producing acreage of all cotton growers who voted in the referendum.

SEC. 81. Section 8206 of the Government Code is amended to read:

8206. (a) (1) A notary public shall keep one active sequential journal at a time, of all official acts performed as a notary public. The journal shall be kept in a locked and secured area, under the direct and exclusive control of the notary. Failure to secure the journal shall be cause for the Secretary of State to take administrative action against the commission held by the notary public pursuant to Section 8214.1.

(2) The journal shall be in addition to, and apart from, any copies of notarized documents that may be in the possession of the notary public and shall include all of the following:

(A) Date, time, and type of each official act.

(B) Character of every instrument sworn to, affirmed, acknowledged, or proved before the notary.

(C) The signature of each person whose signature is being notarized.

(D) A statement as to whether the identity of a person making an acknowledgment or taking an oath or affirmation was based on satisfactory evidence. If identity was established by satisfactory evidence pursuant to Section 1185 of the Civil Code, ~~then~~ the journal shall contain the signature of the credible witness swearing or affirming to the identity of the individual or the type of identifying document, the governmental agency issuing the document, the serial or identifying number of the document, and the date of issue or expiration of the document.

(E) If the identity of the person making the acknowledgment or taking the oath or affirmation was established by the oaths or affirmations of two credible witnesses whose identities are proven to the notary public by presentation of any document satisfying the requirements of paragraph (3) or (4) of subdivision (b) of Section 1185 of the Civil Code, the notary public shall record in the journal the type of documents identifying the witnesses, the identifying numbers on the documents identifying the witnesses, and the dates of issuance or expiration of the documents identifying the witnesses.

(F) The fee charged for the notarial service.

(G) If the document to be notarized is a deed, quitclaim deed, deed of trust affecting real property, or a power of attorney document, the notary public shall require the party signing the document to place his or her right thumbprint in the journal. If the right thumbprint is not available, then the notary shall have the party use his or her left thumb, or any available finger and shall so indicate in the journal. If the party signing the document is physically unable to provide a thumbprint or fingerprint, the notary shall so indicate in the journal and shall also provide an explanation of that physical condition. This paragraph shall not apply to a trustee's deed resulting from a decree of foreclosure or a nonjudicial foreclosure pursuant to Section 2924 of the Civil Code, nor to a deed of reconveyance.

(b) If a sequential journal of official acts performed by a notary public is stolen, lost, misplaced, destroyed, damaged, or otherwise rendered unusable as a record of notarial acts and information, the

notary public shall immediately notify the Secretary of State by certified or registered mail. The notification shall include the period of the journal entries, the notary public commission number, and the expiration date of the commission, and when applicable, a photocopy of any police report that specifies the theft of the sequential journal of official acts.

(c) Upon written request of any member of the public, which request shall include the name of the parties, the type of document, and the month and year in which notarized, the notary shall supply a photostatic copy of the line item representing the requested transaction at a cost of not more than thirty cents ($0.30) per page.

(d) The journal of notarial acts of a notary public is the exclusive property of that notary public, and shall not be surrendered to an employer upon termination of employment, whether or not the employer paid for the journal, or at any other time. The notary public shall not surrender the journal to any other person, except the county clerk, pursuant to Section 8209, or immediately, or if the journal is not present then as soon as possible, upon request to a peace officer investigating a criminal offense who has reasonable suspicion to believe the journal contains evidence of a criminal offense, as defined in Sections 830.1, 830.2, and 830.3 of the Penal Code, acting in his or her official capacity and within his or her authority. If the peace officer seizes the notary journal, he or she must have probable cause as required by the laws of this state and the United States. A peace officer or law enforcement agency that seizes a notary journal shall notify the Secretary of State by facsimile within 24 hours, or as soon *as* possible thereafter, of the name of the notary public whose journal has been seized. The notary public shall obtain a receipt for the journal, and shall notify the Secretary of State by certified mail within 10 days that the journal was relinquished to a peace officer. The notification shall include the period of the journal entries, the commission number of the notary public, the expiration date of the commission, and a photocopy of the receipt. The notary public shall obtain a new sequential journal. If the journal relinquished to a peace officer is returned to the notary public and a new journal has been obtained, the notary public shall make no new entries in the returned journal. A notary public who is an employee shall permit inspection and copying of journal transactions by a duly designated auditor or agent of the notary public's employer, provided that the inspection

and copying is done in the presence of the notary public and the transactions are directly associated with the business purposes of the employer. The notary public, upon the request of the employer, shall regularly provide copies of all transactions that are directly associated with the business purposes of the employer, but shall not be required to provide copies of any transaction that is unrelated to the employer's business. Confidentiality and safekeeping of any copies of the journal provided to the employer shall be the responsibility of that employer.

(e) The notary public shall provide the journal for examination and copying in the presence of the notary public upon receipt of a subpoena duces tecum or a court order, and shall certify those copies if requested.

(f) Any applicable requirements of, or exceptions to, state and federal law shall apply to a peace officer engaged in the search or seizure of a sequential journal.

SEC. 82. Section 8299.01 of the Government Code is amended to read:

8299.01. (a) There shall be established in the state government, on or before May 1, 2009, the California Commission on Disability Access. The commission shall consist of 11 public members, and six ex officio nonvoting members, appointed as follows:

(1) Two public members appointed by the Senate Committee on Rules, with one appointee from the business community and one appointee from the disability community. The Senate Committee on Rules shall request and consider nominations from the business community and the disability community for these appointments.

(2) Two public members appointed by the Speaker of the Assembly, with one appointee from the business community and one appointee from the disability community. The Speaker of the Assembly shall request and consider nominations from the business community and the disability community for these appointments.

(3) Seven public members appointed by the Governor, with the consent of the Senate. Four of the Governor's appointees shall be from the disability community. Three appointees shall be from the business community, including an appointee representative from the California Business Properties Association. The Governor shall request and consider nominations from the business community and the disability community for these appointments.

(4) The State Architect, or his or her representative, as a nonvoting ex officio member.

(5) The Attorney General, or his or her representative, as a nonvoting ex officio member.

(6) Two members of the Senate, appointed by the Senate Committee on Rules as nonvoting ex officio members. One member shall be from the majority party, and one member shall be from the minority party.

(7) Two members of the Assembly, appointed by the Speaker of the Assembly, as nonvoting ex officio members. One member shall be from the majority party, and one member shall be from the minority party.

(b) It is the intent of this section that the commission shall be broadly representative of the ethnic, gender, and racial diversity of the population of California. It is further the intent of this section that both of the following apply:

(1) The appointees from the disability community shall be persons with a disability relating to, but not limited to, vision, hearing, mobility, breathing, speech, cognitive, cardiac, emotional, developmental, learning, psychological, or immunological disabilities.

(2) The commission recruitment and appointment process *shall* engage in identifying qualified disability community representatives who should possess elements of the following qualifications:

(A) Identify as people with disabilities, activity limitations, or both.

(B) Have personal experience with disability and disability advocacy and the ability to speak broadly on disability access issues.

(C) Are knowledgeable about cross-disability access issues, including, but not limited to, hearing, vision, mobility, speech, and cognitive limitations.

(D) Are knowledgeable about a variety of physical, communication, and program access issues.

(E) Are involved with segments of national, state, or local constituencies of the disability community, such as active involvement in broad-based disability organizations.

(F) Have in place and use communication networks to facilitate communication with the segments of the disability community

they are representing, including, but not limited to, segments of diverse ethnic, cultural, sex, sexual orientation, age, and linguistic communities that are representative of the diverse population of Californians with disabilities.

(c) Public members shall be appointed for three-year terms, except that, with respect to the initial appointees, the Governor shall appoint three members for a one-year term, two members for a two-year term, and two members for a three-year term. The Senate Committee on Rules and the Speaker of the Assembly shall each initially appoint one member for a two-year term and one member for a three-year term. Public members may be reappointed for additional terms.

(d) Vacancies shall be filled by the appointing authority for the unexpired portion of the terms.

SEC. 83. Section 8879.73 of the Government Code is amended to read:

8879.73. (a) To distribute funds from the Uniform Developer Fees Subaccount to eligible applicants, as defined in paragraph (2) of subdivision (a) of Section 8879.71, the commission shall administer a competitive grant application program pursuant to this section.

(b) Under this section, each fiscal year in which funds are appropriated for the program shall constitute a funding cycle. To ensure that as many eligible applicants as possible may benefit from the competitive portion of the program, no single project shall receive more than one million dollars ($1,000,000) in a single funding cycle in which program funds are allocated by the commission.

(c) Each eligible applicant desiring to participate in the program in any funding cycle under this section shall submit to the commission all of the following:

(1) A description of the eligible project nominated for funding, including a description of the project's cost, scope, and specific improvements and benefits it is anticipated to achieve.

(2) A description of the project's current status, including the phase of delivery the project is in at the time it is nominated for funding and a schedule for the project's completion.

(3) A description of ~~how~~ *the ways in which* the project would support transportation and land use planning goals within the region.

(4) The amount of eligible local matching funds the applicant is committing to the project.

(5) The amount of program funds the applicant seeks from the program for the project.

(d) The commission shall review nominated projects under this section and their accompanying documentation to ensure that each nominated project meets the requirements of this article and to confirm that each project has a commitment of the requisite amount of eligible local matching funds as required in this article. Upon conducting the review of the requirements and determining the proposed projects to be in compliance with this article, the projects shall be deemed eligible.

(e) The commission shall adopt a program of projects under this section that is geographically balanced and provides cost-effective and multimodal~~,~~ safety, reliability, and environmental benefits. In allocating funds to specific projects, the commission shall give priority to projects that *can* do any of the following:

(1) ~~Can commence~~ *Commence* construction or implementation of the project in a manner to provide the public benefit at the earliest possible date.

(2) ~~Can enhance~~ *Enhance* the leveragability of bond funds~~,~~ by utilizing a higher proportion of nonbond funds toward a project's total cost than is otherwise required by this article.

(3) ~~Can demonstrate~~ *Demonstrate* quantifiable air quality improvements, including, but not limited to, a demonstration that the project can result in a significant reduction in vehicle-miles traveled.

SEC. 84. Section 8880.321 of the Government Code is amended to read:

8880.321. The commission shall promulgate regulations to establish a system of verifying the validity of prizes and to effect payment of the prizes, provided that:

(a) For convenience of the public, lottery game retailers may be authorized by the commission to pay winners of up to six hundred dollars ($600) after performing validation procedures on their premises appropriate to the lottery game involved.

(b) No prize may be paid arising from tickets or shares that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the lottery by applicable deadlines, lacking in captions that confirm and agree

with the lottery play symbols required by the lottery game involved, purchased by a minor, or not in compliance with additional specific rules and regulations and confidential validation and security tests appropriate to the particular lottery game. The lottery may pay a prize even though the actual winning ticket is not received by the lottery if the lottery validates the claim for the prize based upon substantial proof. "Substantial proof" means any evidence that would permit the lottery to use established validation procedures, as specified in lottery regulations, to validate the claim.

The commission may require that any form relating to a claim for a prize shall be signed under penalty of perjury. This declaration shall meet the requirements of Section 2015.5 of the Code of Civil Procedure.

(c) No particular prize in any lottery game shall be paid more than once.

(d) The commission may specify that winners of less than twenty-five dollars ($25) claim the prizes from either the same lottery game retailer from whom the ticket or share was purchased or from the lottery itself.

(e) Players shall have the right to claim prize money for 180 days after the drawing or the end of the lottery game or play in which the prize was won. The commission may define shorter time periods for eligibility for participation in, and entry into, drawings involving entries or finalists. If a valid claim is not made for a prize directly payable by the commission or for any ~~on-line~~ *online* game prize within the period applicable for that prize, the unclaimed prize money shall be treated as set forth in subdivision ~~(c)~~ *(a)* of Section 8880.4 or, commencing with the 2009–10 fiscal year, be treated as total revenues as set forth in Section 8880.4.5.

(f) After the expiration of the claim period for prizes for each lottery game, the commission shall make available a detailed tabulation of the total number of tickets or shares actually sold in a lottery game and the total number of prizes of each prize denomination that were actually claimed and paid directly by the commission.

(g) A ticket or share shall not be purchased by, and a prize shall not be paid to, a member of the commission, any officer or employee of the commission, any officer or employee of the Controller who is designated in writing by the Controller as having possible access to confidential lottery information, programs, or

systems, or any spouse, child, brother, sister, or parent of that person who resides within the same household of the person. Any person who knowingly sells or purchases a ticket or share in violation of this section, or who knowingly claims or attempts to claim a prize with a ticket or share that was purchased or sold in violation of this section, is guilty of a misdemeanor.

(h) No prize shall be paid to any person under the age of 18 years. Any person who knowingly claims or attempts to claim a prize with a ticket or share purchased by a person under the age of 18 years is guilty of a misdemeanor.

SEC. 85. Section 11011.1 of the Government Code is amended to read:

11011.1. (a) Notwithstanding any other provision of law, except Article 8.5 (commencing with Section 54235) of Chapter 5 of Part 1 of Division 2 of Title 5, the disposal of surplus state real property by the Department of General Services shall be subject to the requirements of this section. For purposes of this section, "surplus state real property" means real property declared surplus by the Legislature and directed to be disposed of by the Department of General Services, including any real property previously declared surplus by the Legislature but not yet disposed of by the Department of General Services prior to the enactment of this section.

(b) (1) The department may dispose of surplus state real property by sale, lease, exchange, a sale combined with an exchange, or other manner of disposition of property, as authorized by the Legislature, upon any terms and conditions and subject to any reservations and exceptions the department deems to be in the best interests of the state.

(2) (A) The Legislature finds and declares that the provision of decent housing for all Californians is a state goal of the highest priority. The disposal of surplus state real property is a direct and substantial public purpose of statewide concern and will serve an important public purpose, including mitigating the environmental effects of state activities. Therefore, it is the intent of the Legislature that priority be given, as specified in this section, to the disposal of surplus state real property to housing for persons and families of low or moderate income, where land is suitable for housing and there is a need for housing in the community.

(B) Surplus state real property that has been determined by the department not to be needed by any state agency shall be offered to any local agency, as defined in subdivision (a) of Section 54221, and then to nonprofit affordable housing sponsors, prior to being offered for sale to private entities or individuals. As used in this subdivision, "nonprofit affordable housing sponsor" means any of the following:

(i) A nonprofit corporation incorporated pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(ii) A cooperative housing corporation which is a stock cooperative, as defined by Section 11003.2 of the Business and Professions Code.

(iii) A limited-dividend housing corporation.

(C) The department, subject to this section, shall maintain a list of surplus state real property in a conspicuous place on its Internet Web site. The department shall provide local agencies and, upon request, members of the public, with electronic notification of updates to the list of properties.

(D) To be considered as a potential priority buyer of the surplus state real property, a local agency or nonprofit affordable housing sponsor shall notify the department of its interest in the surplus state real property within 90 days of the department posting on its Internet Web site the notice of the availability of the surplus state real property ~~on the department's Internet Web site~~. The local agency or nonprofit affordable housing sponsor shall demonstrate, to the satisfaction of the department, that the surplus state real property, or portion of that surplus state real property, is to be used by the local agency or nonprofit affordable housing sponsor for open space, public parks, affordable housing projects, or development of local government-owned facilities. When more than one local agency expresses an interest in the surplus state real property, ~~then~~ priority shall be given to the local agency that intends to use the surplus state real property for affordable housing. If no agreement or transfer of title occurs, ~~then~~ the priority shall next be given to the local agency that intends to use the surplus state real property for open space, public parks, or development of local government-owned facilities. The sales agreement shall be executed by the local agency or nonprofit affordable housing sponsor within 60 days after the director determines the local

agency or nonprofit affordable housing sponsor is to receive the surplus state real property. The sale of the surplus state real property to a local agency or nonprofit affordable housing sponsor pursuant to this section shall be completed, and title transferred, within 60 days of the date the department executes the sales agreement, or, if required by law, no later than 60 days after the State Public Works Board has authorized the sale. If the sale of a surplus state real property to a local agency or nonprofit affordable housing sponsor is not completed within the timeframe specified in this subparagraph, then the department shall proceed with the process for disposal to other private entities or individuals.

(c) (1) If more than one local agency desires the surplus state real property for use as an open space, a public park, or the development of a local government-owned facility, ~~then~~ the department shall transfer the surplus state real property to the local agency offering the highest price above fair market value. If more than one local agency desires the surplus state real property for use as an affordable housing project, ~~then~~ the department shall transfer the surplus state real property to the local agency offering the greatest number of affordable housing units. If more than one nonprofit affordable housing sponsor desires the surplus state real property for use as an affordable housing project, ~~then~~ the department shall transfer the surplus state real property to the nonprofit affordable housing sponsor offering the greatest number of affordable housing units.

(2) If no local agency or nonprofit affordable housing sponsor is interested, or an agreement, as provided above, is not reached, then the disposal of the surplus state real property to private entities or individuals shall be pursuant to a public bidding process designed to obtain the highest most certain return for the state from a responsible bidder, and any transaction based on such a bidding process shall be deemed to be the fair market value for the purposes of the reporting requirements pursuant to subdivision (d).

(3) Notwithstanding any other provision of law, the department may sell surplus state real property, or a portion of surplus state real property, to a local agency, or to a nonprofit affordable housing sponsor if no local agency is interested in the surplus state real property, for affordable housing projects at a sales price less than fair market value if the department determines that such a discount will enable the provision of housing for persons and families of

low or moderate income. Nothing shall preclude a local agency that purchases the surplus state real property for affordable housing from reconveying the surplus state real property to a nonprofit affordable housing sponsor for development of affordable housing. Transfer of title to the surplus state real property or lease of the surplus state real property for affordable housing shall be conditioned upon continued use of the surplus state real property as housing for persons and families of low and moderate income for at least 40 years and the department shall record a regulatory agreement that imposes affordability covenants, conditions, and restrictions on the surplus state real property. The regulatory agreement shall be a first priority lien on the surplus state real property and last for a period of at least 40 years, and if another state agency is lending funds for a project, ~~then~~ a combined regulatory agreement shall be utilized. Notwithstanding any other provision of law, the regulatory agreement shall not be subordinated to any other lien or encumbrance except for any federal loan program whose statutes or regulations require a first lien priority for that federal loan.

(4) Notwithstanding any other provision of law, the Director of General Services may transfer surplus state real property to a local agency for less than fair market value if the local agency uses the surplus state real property for parks or open-space purposes. The deed or other instrument of transfer shall provide that the surplus state real property would revert to the state if the use changed to a use other than parks or open-space purposes during the period of 25 years after the transfer date. For the purpose of this paragraph, "open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(d) Thirty days prior to executing a transaction for a sale, lease, exchange, a sale combined with an exchange, or other manner of disposition of the surplus state real property for less than fair market value or for affordable housing, or as authorized by the Legislature, the Director of General Services shall report to the ~~chairs~~ *chairpersons* of the fiscal committees of the Legislature all of the following:

(1) The financial terms of the transaction.

(2) A comparison of fair market value for the surplus state real property and the terms listed in paragraph (1).

(3) The basis for agreeing to terms and conditions other than fair market value.

(e) As to surplus state real property sold and or exchanged pursuant to this section, the director shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. If, however, the director determines that there is little or no potential for mineral deposits, the reservation may be without surface right of entry above a depth of 500 feet, or the rights to prospect for, mine, and remove the deposits shall be limited to those areas of the surplus state real property conveyed that the director determines to be reasonably necessary for the removal of the deposits.

(f) The failure to comply with this section, except for subdivision (d), shall not invalidate the transfer or conveyance of surplus state real property to a purchaser for value.

(g) For purposes of this section, fair market value is established by an appraisal and economic evaluation conducted by the department or approved by the department.

SEC. 86. Section 14679 of the Government Code is amended to read:

14679. (a) A parking facility under the jurisdiction or control of a state agency, that is available to private persons who desire to conduct business with the state agency, shall reserve for the exclusive use of any vehicle that displays either a special identification license plate issued pursuant to Section 5007 *of the Vehicle Code,* or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59 *of the Vehicle Code,* a minimum of one parking space for up to 25 spaces, and additional parking spaces pursuant to Section 1129B of Part 2 of Title 24 of the California Code of Regulations.

(1) (A) The space or spaces shall be reserved by posting immediately adjacent to and visible from such space or spaces a sign consisting of a profile view of a wheelchair with occupant in white on a blue background.

(B) The sign shall also clearly and conspicuously state the following: “Minimum Fine $250,” pursuant to Section 42001.13 of the Vehicle Code, imposed upon a person parking or leaving standing a vehicle in a stall or space designated for the use of disabled persons and disabled veterans, unless a special license

plate issued pursuant to Section 5007 of the Vehicle Code or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59 of the Vehicle Code is displayed on the vehicle. This subparagraph applies only to signs for parking spaces constructed on or after July 1, 2008, and signs that are replaced on or after July 1, 2008, or as the State Architect deems necessary when renovations, structural repair, alterations, and additions occur to existing buildings and facilities on or after July 1, 2008.

(2) The loading and unloading area of the pavement adjacent to a parking stall or space designated for disabled persons or disabled veterans shall be marked by a border and hatched lines. The border shall be painted blue and the hatched lines shall be painted a suitable contrasting color to the parking space. Blue or white paint is preferred. In addition, within the border the words "No Parking" shall be painted in white letters no less than 12 inches high. This paragraph applies only to parking spaces constructed on or after July 1, 2008, and painting that is done on or after July 1, 2008, or as the State Architect deems necessary when renovations, structural repair, alterations, and additions occur to existing buildings and facilities on or after July 1, 2008.

(b) If no parking facility under the jurisdiction and control of a state agency is available to private persons who desire to conduct business with the state agency, the state agency shall request the local authority having jurisdiction over streets immediately adjacent to the property of the state agency to provide parking spaces for the use of disabled persons and disabled veterans pursuant to Section 22511.7 of the Vehicle Code.

(c) The Department of General Services under the Division of the State Architect shall develop pursuant to Section 4450, as appropriate, conforming regulations to ensure compliance with subparagraph (B) of paragraph (1) of subdivision (a) and paragraph (2) of subdivision (a). Initial regulations to implement these provisions shall be adopted as emergency regulations. The adoption of these regulations shall be considered by the Department of General Services to be an emergency necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 87. Section 31485.14 of the Government Code is amended to read:

31485.14. All distributions of benefits ~~provide~~ *provided* under this chapter shall comply with the requirements of Section 401(a)(9) of Title 26 of the United States Code that are applicable to public employee plans, including, but not limited to, requirements relating to the following:

(a) The time that benefit payments begin, including benefit payments paid after the death of a member.

(b) The form of distribution of benefits.

(c) Incidental death benefits.

SEC. 88. Section 53075.9 of the Government Code is amended to read:

53075.9. (a) Every taxicab transportation service shall include the number of its certificate, license, or permit in every written or oral advertisement of the services it offers.

(b) For purposes of this subdivision, "advertisement" includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing the placement of any sign or marking on or in any building or structure, or in any media form, including newspaper, magazine, radiowave, satellite signal, or any electronic transmission, or in any directory soliciting taxicab transportation services subject to this chapter.

(c) Whenever the local agency, after a hearing, finds that any person or corporation is operating as a taxicab transportation service without a valid certificate, license, or permit or fails to include in any written or oral advertisement the number required by subdivision (a) ~~of Section 50739~~, the local agency may impose a fine of not more than five thousand dollars ($5,000) for each violation. The local agency may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the local agency. The local agency may assess interest on any fine or assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in a fund established for the purpose of enforcing ~~the provisions of~~ this section.

(d) For purposes of this section, "local agency" has the same meaning as specified in subdivision (b) of Section 53075.7.

SEC. 89. Section 65080 of the Government Code is amended to read:

65080. (a) Each transportation planning agency designated under Section 29532 or 29532.1 shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall be an internally consistent document and shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element. The policy element of transportation planning agencies with populations that exceed 200,000 persons may quantify a set of indicators including, but not limited to, all of the following:

(A) Measures of mobility and traffic congestion, including, but not limited to, daily vehicle hours of delay per capita and vehicle miles traveled per capita.

(B) Measures of road and bridge maintenance and rehabilitation needs, including, but not limited to, roadway pavement and bridge conditions.

(C) Measures of means of travel, including, but not limited to, percentage share of all trips (work and nonwork) made by all of the following:

(i) Single occupant vehicle.

(ii) Multiple occupant vehicle or carpool.

(iii) Public transit including commuter rail and intercity rail.

(iv) Walking.

(v) Bicycling.

(D) Measures of safety and security, including, but not limited to, total injuries and fatalities assigned to each of the modes set forth in subparagraph (C).

(E) Measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket.

(F) The requirements of this section may be met utilizing existing sources of information. No additional traffic counts, household surveys, or other sources of data shall be required.

(2) A sustainable communities strategy prepared by each metropolitan planning organization as follows:

(A) No later than September 30, 2010, the State Air Resources Board shall provide each affected region with greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 2035, respectively.

(i) No later than January 31, 2009, the state board shall appoint a Regional Targets Advisory Committee to recommend factors to be considered and methodologies to be used for setting greenhouse gas emission reduction targets for the affected regions. The committee shall be composed of representatives of the metropolitan planning organizations, affected air districts, the League of California Cities, the California State Association of Counties, local transportation agencies, and members of the public, including homebuilders, environmental organizations, planning organizations, environmental justice organizations, affordable housing organizations, and others. The advisory committee shall transmit a report with its recommendations to the state board no later than September 30, 2009. In recommending factors to be considered and methodologies to be used, the advisory committee may consider any relevant issues, including, but not limited to, data needs, modeling techniques, growth forecasts, the impacts of regional jobs-housing balance on interregional travel and greenhouse gas emissions, economic and demographic trends, the magnitude of greenhouse gas reduction benefits from a variety of land use and transportation strategies, and appropriate methods to describe regional targets and to monitor performance in attaining those targets. The state board shall consider the report prior to setting the targets.

(ii) Prior to setting the targets for a region, the state board shall exchange technical information with the metropolitan planning organization and the affected air district. The metropolitan planning organization may recommend a target for the region. The metropolitan planning organization shall hold at least one public workshop within the region after receipt of the report from the advisory committee. The state board shall release draft targets for each region no later than June 30, 2010.

(iii) In establishing these targets, the state board shall take into account greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel composition, and other measures it has approved that will reduce greenhouse gas emissions in the affected regions, and prospective measures the state board plans to adopt to reduce greenhouse gas emissions from other greenhouse gas emission sources as that term is defined in subdivision (i) of Section 38505 of the Health and Safety Code and consistent with the regulations promulgated pursuant to the California Global Warming Solutions Act of 2006 (Division 12.5 (commencing with Section 38500) of the Health and Safety Code).

(iv) The state board shall update the regional greenhouse gas emission reduction targets every eight years consistent with each metropolitan planning organization's timeframe for updating its regional transportation plan under federal law until 2050. The state board may revise the targets every four years based on changes in the factors considered under clause (iii) above. The state board shall exchange technical information with the Department of Transportation, metropolitan planning organizations, local governments, and affected air districts and engage in a consultative process with public and private stakeholders prior to updating these targets.

(v) The greenhouse gas emission reduction targets may be expressed in gross tons, tons per capita, tons per household, or in any other metric deemed appropriate by the state board.

(B) Each metropolitan planning organization shall prepare a sustainable communities strategy, subject to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to utilize the most recent planning assumptions considering local general plans and other factors. The sustainable communities strategy shall (i)

identify the general location of uses, residential densities, and building intensities within the region~~;~~, (ii) identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan taking into account net migration into the region, population growth, household formation and employment growth~~;~~, (iii) identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Section 65584~~;~~, (iv) identify a transportation network to service the transportation needs of the region~~;~~, (v) gather and consider the best practically available scientific information regarding resource areas and farmland in the region as defined in subdivisions (a) and (b) of Section 65080.01~~;~~, (vi) consider the state housing goals specified in Sections 65580 and 65581~~;~~, (vii) set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the state board~~;~~, and (viii) allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506). Within the jurisdiction of the Metropolitan Transportation Commission, as defined by Section 66502, the Association of Bay Area Governments shall be responsible for clauses (i), (ii), (iii), (v), and (vi), the Metropolitan Transportation Commission shall be responsible for clauses (iv) and (viii)~~;~~, and the Association of Bay Area Governments and the Metropolitan Transportation Commission shall jointly be responsible for clause (vii).

(C) In the region served by the multicounty transportation planning agency described in Section 130004 of the Public Utilities Code, a subregional council of governments and the county transportation commission may work together to propose the sustainable communities strategy and an alternative planning strategy, if one is prepared pursuant to subparagraph (H), for that subregional area. The metropolitan planning organization may adopt a framework for a subregional sustainable communities strategy or a subregional alternative planning strategy to address the intraregional land use, transportation, economic, air quality,

and climate policy relationships. The metropolitan planning organization shall include the subregional sustainable communities strategy for that subregion in the regional sustainable communities strategy to the extent consistent with this section and federal law and approve the subregional alternative planning strategy, if one is prepared pursuant to subparagraph (H), for that subregional area to the extent consistent with this section. The metropolitan planning organization shall develop overall guidelines, create public participation plans pursuant to subparagraph (E), ensure coordination, resolve conflicts, make sure that the overall plan complies with applicable legal requirements, and adopt the plan for the region.

(D) The metropolitan planning organization shall conduct at least two informational meetings in each county within the region for members of the board of supervisors and city councils on the sustainable communities strategy and alternative planning strategy, if any. The metropolitan planning organization may conduct only one informational meeting if it is attended by representatives of the county board of supervisors and city council members representing a majority of the cities representing a majority of the population in the incorporated areas of that county. Notice of the meeting shall be sent to the clerk of the board of supervisors and to each city clerk. The purpose of the meeting shall be to present a draft of the sustainable communities strategy to the members of the board of supervisors and the city council members in that county and to solicit and consider their input and recommendations.

(E) Each metropolitan planning organization shall adopt a public participation plan, for development of the sustainable communities strategy and an alternative planning strategy, if any, that includes all of the following:

(i) Outreach efforts to encourage the active participation of a broad range of stakeholder groups in the planning process, consistent with the agency's adopted Federal Public Participation Plan, including, but not limited to, affordable housing advocates, transportation advocates, neighborhood and community groups, environmental advocates, home builder representatives, broad-based business organizations, landowners, commercial property interests, and homeowner associations.

(ii) Consultation with congestion management agencies, transportation agencies, and transportation commissions.

(iii) Workshops throughout the region to provide the public with the information and tools necessary to provide a clear understanding of the issues and policy choices. At least one workshop shall be held in each county in the region. For counties with a population greater than 500,000, at least three workshops shall be held. Each workshop, to the extent practicable, shall include urban simulation computer modeling to create visual representations of the sustainable communities strategy and the alternative planning strategy.

(iv) Preparation and circulation of a draft sustainable communities strategy and an alternative planning strategy, if one is prepared, not less than 55 days before adoption of a final regional transportation plan.

(v) At least three public hearings on the draft sustainable communities strategy in the regional transportation plan and alternative planning strategy, if one is prepared. If the metropolitan transportation organization consists of a single county, at least two public hearings shall be held. To the maximum extent feasible, the hearings shall be in different parts of the region to maximize the opportunity for participation by members of the public throughout the region.

(vi) A process for enabling members of the public to provide a single request to receive notices, information, and updates.

(F) In preparing a sustainable communities strategy, the metropolitan planning organization shall consider spheres of influence that have been adopted by the local agency formation commissions within its region.

(G) Prior to adopting a sustainable communities strategy, the metropolitan planning organization shall quantify the reduction in greenhouse gas emissions projected to be achieved by the sustainable communities strategy and set forth the difference, if any, between the amount of that reduction and the target for the region established by the state board.

(H) If the sustainable communities strategy, prepared in compliance with subparagraph (B) or (C), is unable to reduce greenhouse gas emissions to achieve the greenhouse gas emission reduction targets established by the state board, the metropolitan planning organization shall prepare an alternative planning strategy to the sustainable communities strategy showing how those greenhouse gas emission targets would be achieved through

alternative development patterns, infrastructure, or additional transportation measures or policies. The alternative planning strategy shall be a separate document from the regional transportation plan, but it may be adopted concurrently with the regional transportation plan. In preparing the alternative planning strategy, the metropolitan planning organization:

(i) Shall identify the principal impediments to achieving the targets within the sustainable communities strategy.

(ii) May include an alternative development pattern for the region pursuant to subparagraphs (B) to (F), inclusive.

(iii) Shall describe how the greenhouse gas emission reduction targets would be achieved by the alternative planning strategy, and why the development pattern, measures, and policies in the alternative planning strategy are the most practicable choices for achievement of the greenhouse gas emission reduction targets.

(iv) An alternative development pattern set forth in the alternative planning strategy shall comply with Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, except to the extent that compliance will prevent achievement of the greenhouse gas emission reduction targets approved by the state board.

(v) For purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), an alternative planning strategy shall not constitute a land use plan, policy, or regulation, and the inconsistency of a project with an alternative planning strategy shall not be a consideration in determining whether a project may have an environmental effect.

(I) (i) Prior to starting the public participation process adopted pursuant to subparagraph (E) ~~of paragraph (2) of subdivision (b) of Section 65080~~, the metropolitan planning organization shall submit a description to the state board of the technical methodology it intends to use to estimate the greenhouse gas emissions from its sustainable communities strategy and, if appropriate, its alternative planning strategy. The state board shall respond to the metropolitan planning organization in a timely manner with written comments about the technical methodology, including specifically describing any aspects of that methodology it concludes will not yield accurate estimates of greenhouse gas emissions, and suggested remedies. The metropolitan planning organization is encouraged to work

with the state board until the state board concludes that the technical methodology operates accurately.

(ii) After adoption, a metropolitan planning organization shall submit a sustainable communities strategy or an alternative planning strategy, if one has been adopted, to the state board for review, including the quantification of the greenhouse gas emission reductions the strategy would achieve and a description of the technical methodology used to obtain that result. Review by the state board shall be limited to acceptance or rejection of the metropolitan planning organization's determination that the strategy submitted would, if implemented, achieve the greenhouse gas emission reduction targets established by the state board. The state board shall complete its review within 60 days.

(iii) If the state board determines that the strategy submitted would not, if implemented, achieve the greenhouse gas emission reduction targets, the metropolitan planning organization shall revise its strategy or adopt an alternative planning strategy, if not previously adopted, and submit the strategy for review pursuant to clause (ii). At a minimum, the metropolitan planning organization must obtain state board acceptance that an alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets established for that region by the state board.

(J) Neither a sustainable communities strategy nor an alternative planning strategy regulates the use of land, nor, except as provided by subparagraph (I), shall either one be subject to any state approval. Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region. Nothing in this section shall be interpreted to limit the state board's authority under any other provision of law. Nothing in this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law. Nothing in this section shall require a city's or county's land use policies and regulations, including its general plan, to be consistent with the regional transportation plan or an alternative planning strategy. Nothing in this section requires a metropolitan planning organization to approve a sustainable communities strategy that would be inconsistent with Part 450 of Title 23 of, or Part 93 of Title 40 of, the Code of Federal Regulations and any administrative guidance under those

regulations. Nothing in this section relieves a public or private entity or any person from compliance with any other local, state, or federal law.

(K) Nothing in this section requires projects programmed for funding on or before December 31, 2011, to be subject to the provisions of this paragraph if they (i) are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program, (ii) are funded pursuant to Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2, or (iii) were specifically listed in a ballot measure prior to December 31, 2008, approving a sales tax increase for transportation projects. Nothing in this section shall require a transportation sales tax authority to change the funding allocations approved by the voters for categories of transportation projects in a sales tax measure adopted prior to December 31, 2010. For purposes of this subparagraph, a transportation sales tax authority is a district, as defined in Section 7252 of the Revenue and Taxation Code, that is authorized to impose a sales tax for transportation purposes.

(L) A metropolitan planning organization, or a regional transportation planning agency not within a metropolitan planning organization, that is required to adopt a regional transportation plan not less than every five years, may elect to adopt the plan not less than every four years. This election shall be made by the board of directors of the metropolitan planning organization or regional transportation planning agency no later than June 1, 2009, or thereafter 54 months prior to the statutory deadline for the adoption of housing elements for the local jurisdictions within the region, after a public hearing at which comments are accepted from members of the public and representatives of cities and counties within the region covered by the metropolitan planning organization or regional transportation planning agency. Notice of the public hearing shall be given to the general public and by mail to cities and counties within the region no later than 30 days prior to the date of the public hearing. Notice of election shall be promptly given to the Department of Housing and Community Development. The metropolitan planning organization or the regional transportation planning agency shall complete its next regional transportation plan within three years of the notice of election.

(M) Two or more of the metropolitan planning organizations for Fresno County, Kern County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County may work together to develop and adopt multiregional goals and policies that may address interregional land use, transportation, economic, air quality, and climate relationships. The participating metropolitan planning organizations may also develop a multiregional sustainable communities strategy, to the extent consistent with federal law, or an alternative planning strategy for adoption by the metropolitan planning organizations. Each participating metropolitan planning organization shall consider any adopted multiregional goals and policies in the development of a sustainable communities strategy and, if applicable, an alternative planning strategy for its region.

(3) An action element that describes the programs and actions necessary to implement the plan and assigns implementation responsibilities. The action element may describe all transportation projects proposed for development during the 20-year or greater life of the plan. The action element shall consider congestion management programming activities carried out within the region.

(4) (A) A financial element that summarizes the cost of plan implementation constrained by a realistic projection of available revenues. The financial element shall also contain recommendations for allocation of funds. A county transportation commission created pursuant to Section 130000 of the Public Utilities Code shall be responsible for recommending projects to be funded with regional improvement funds, if the project is consistent with the regional transportation plan. The first five years of the financial element shall be based on the five-year estimate of funds developed pursuant to Section 14524. The financial element may recommend the development of specified new sources of revenue, consistent with the policy element and action element.

(B) The financial element of transportation planning agencies with populations that exceed 200,000 persons may include a project cost breakdown for all projects proposed for development during the 20-year life of the plan that includes total expenditures and related percentages of total expenditures for all of the following:

(i) State highway expansion.

(ii) State highway rehabilitation, maintenance, and operations.

(iii) Local road and street expansion.

(iv) Local road and street rehabilitation, maintenance, and operation.

(v) Mass transit, commuter rail, and intercity rail expansion.

(vi) Mass transit, commuter rail, and intercity rail rehabilitation, maintenance, and operations.

(vii) Pedestrian and bicycle facilities.

(viii) Environmental enhancements and mitigation.

(ix) Research and planning.

(x) Other categories.

(C) The metropolitan planning organization or county transportation agency, whichever entity is appropriate, shall consider financial incentives for cities and counties that have resource areas or farmland, as defined in Section 65080.01, for the purposes of, for example, transportation investments for the preservation and safety of the city street or county road system and farm to market and interconnectivity transportation needs. The metropolitan planning organization or county transportation agency, whichever entity is appropriate, shall also consider financial assistance for counties to address countywide service responsibilities in counties that contribute ~~towards~~ *toward* the greenhouse gas emission reduction targets by implementing policies for growth to occur within their cities.

(c) Each transportation planning agency may also include other factors of local significance as an element of the regional transportation plan, including, but not limited to, issues of mobility for specific sectors of the community, including, but not limited to, senior citizens.

(d) Except as otherwise provided in this subdivision, each transportation planning agency shall adopt and submit, every four years, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation. A transportation planning agency located in a federally designated air quality attainment area or that does not contain an urbanized area may at its option adopt and submit a regional transportation plan every five years. When applicable, the plan shall be consistent with federal planning and programming requirements and shall conform to the regional transportation plan guidelines adopted by the California Transportation Commission. Prior to adoption of the regional transportation plan, a public hearing shall be held after

the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061.

SEC. 90. Section 66704 of the Government Code is amended to read:

66704. The authority has, and may exercise, all powers, expressed or implied, that are necessary to carry out the intent and purposes of this title, including, but not limited to, the power to do all of the following:

(a) (1) Levy a benefit assessment, special tax, or property-related fee consistent with the requirements of Articles XIII C and XIII D of the California Constitution, including, but not limited to, a benefit assessment levied pursuant to paragraph (2), except that a benefit assessment, special tax, or property-related fee shall not be levied pursuant to this subdivision after December 31, 2028.

(2) The authority may levy a benefit assessment pursuant to any of the following:

(A) The Improvement Act of 1911~~, Division~~ *(Division* 7 (commencing with Section 5000) of the Streets and Highways ~~Code~~ *Code)*.

(B) The Improvement Bond Act of 1915~~, Division~~ *(Division* 10 (commencing with Section 8500) of the Streets and Highways ~~Code~~ *Code)*.

(C) The Municipal Improvement Act of 1913~~, Division~~ *(Division* 12 (commencing with Section 10000) of the Streets and Highways ~~Code~~ *Code)*.

(D) The Landscaping and Lighting Assessment Act of 1972~~,~~ ~~Part~~ *(Part* 2 (commencing with Section 22500) of Division 15 of the Streets and Highways ~~Code~~ *Code)*, notwithstanding Section 22501 of the Streets and Highways Code.

(E) Any other statutory authorization.

(b) Apply for and receive grants from federal and state agencies.

(c) Solicit and accept gifts, fees, grants, and allocations from public and private entities.

(d) Issue revenue bonds for any of the purposes authorized by this title pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5).

(e) Incur bond indebtedness, subject to the following requirements:

(1) The principal and interest of any bond indebtedness incurred pursuant to this subdivision shall be paid and discharged prior to January 1, 2029.

(2) For purposes of incurring bond indebtedness pursuant to this subdivision, the authority shall comply with the requirements of Article 11 (commencing with Section 5790) of Chapter 4 of Division 5 of the Public Resources Code except where those requirements are in conflict with this provision. For purposes of this subdivision, all references in Article 11 (commencing with Section 5790) of Chapter 4 of Division 5 of the Public Resources Code to a board of directors shall mean the board and all references to a district shall mean the authority.

(3) The total amount of indebtedness incurred pursuant to this subdivision outstanding at any one time shall not exceed 10 percent of the authority's total revenues in the preceding fiscal year.

(f) Receive and manage a dedicated revenue source.

(g) Deposit or invest moneys of the authority in banks or financial institutions in the state in accordance with state law.

(h) Sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

(i) Engage counsel and other professional services.

(j) Enter into and perform all necessary contracts.

(k) Enter into joint powers agreements pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1).

(*l*) Hire staff, define their qualifications and duties, and provide a schedule of compensation for the performance of their duties.

(m) Use interim or temporary staff provided by appropriate state agencies or the Association of Bay Area Governments. A person who performs duties as interim or temporary staff shall not be considered an employee of the authority.

SEC. 91. Section 70321 of the Government Code is amended to read:

70321. (a) The Judicial Council, in consultation with the superior court of each county and the county shall enter into agreements regarding the transfer of responsibility for court facilities from that county to the Judicial Council. The agreements shall be executed no later than December 31, 2009. Transfer of responsibility may occur not earlier than July 1, 2004, and not later

than December 31, 2009. On or before July 1, 2003, each county shall designate those persons who shall negotiate the agreements on behalf of the county and shall give the Judicial Council the names of those persons. The name of a person designated by a county to negotiate on its behalf may be changed by the county at any time by providing written notice to the Judicial Council.

(b) (1) Notwithstanding any other provision of law and except as provided in paragraph (2)~~ of this subdivision~~, any transfer agreement that is executed on or after October 1, 2008, and on or before March 31, 2009, shall contain a requirement that the county pay, in addition to the county facility payment established pursuant to Article 5 (commencing with Section 70351), a continuing amount from the date of transfer calculated by multiplying the county facilities payment by the percentage change in the National Implicit Price Deflator for State and Local Government Purchases, as published by the Department of Finance, for the fiscal year in which the transfer agreement is executed as compared to the prior fiscal year.

(2) *(A)* Prior to September 30, 2008, the Administrative Office of the Courts and a county may jointly declare~~ that~~ *all of the following:*

(i) That extraordinary circumstances exist that have prohibited successful execution of a transfer agreement~~, that~~.

(ii) That all relevant transfer documents have been timely submitted and reviewed by the county~~; that~~.

(iii) That the failure to execute a transfer agreement prior to September 30, 2008, is not caused by the action, inaction, or delay on the part of the county~~; and that~~.

(iv) That the agreement can reasonably be executed on or before December 31, 2008.~~ If such a~~

(B) If that declaration is signed *pursuant to subparagraph (A)*, the application of the multiplier described in paragraph (1) shall be tolled through December 31, 2008. If the transfer agreement is executed by December 31, 2008, the multiplier shall not apply. Justification for a joint declaration shall be limited to *either of* the following:

(i) The failure to execute the transfer agreement was caused by the action, inaction, or delay of a third party, or a party to the transaction other than the county~~; or~~.

(ii) The Administrative Office of the Courts and the county have agreed to pursue an alternative method for complying with a seismic liability obligation under the provisions of Section 70324 and failure to execute the transfer agreement was caused by unique circumstances directly connected to the implementation of the alternative method authorized by the section.

(3) In exercising the authority provided under paragraph (2), a county shall not arbitrarily or capriciously request a joint declaration without a good faith belief that the conditions for ~~such a~~ *that* declaration are met, and the Administrative Office of the Courts shall not arbitrarily or capriciously decline to sign a joint declaration described in paragraph (2) if the conditions for ~~such a~~ *that* declaration are otherwise met.

(4) Copies of any ~~such~~ joint declarations described in paragraph (2) will be transmitted upon their signing by both parties to the ~~chairs~~ *chairpersons* of the Senate and Assembly *Committees on* Budget, Appropriations, and Judiciary ~~Committees~~.

(c) Notwithstanding any other provision of law, any transfer agreement that is executed on or after April 1, 2009, shall contain a requirement that the county pay, in addition to the county facility payment established pursuant to Article 5 (commencing with Section 70351), a continuing amount from the date of transfer calculated by multiplying the county facilities payment by the year-to-year percentage change in the annual state appropriations limit as described in Section 3 of Article XIII B of the California Constitution for the year in which the transfer agreement is executed.

SEC. 92. Section 70374 of the Government Code is amended to read:

70374. (a) The Judicial Council shall annually recommend to the Governor and the Legislature the amount proposed to be spent for projects paid for with ~~money~~ *moneys* in the State Court Facilities Construction Fund. The use of the appropriated ~~money~~ *moneys* is subject to subdivision (*l*) of Section 70391.

(b) Acquisition and construction of court facilities shall be subject to the State Building Construction Act of 1955 *(Part 10b* (commencing with Section 15800) *of Division 3 of Title 2)* and the Property Acquisition Law *(Part 11* (commencing with Section 15850) *of Division 3 of Title 2)*, except that~~,~~ (1) notwithstanding any other provision of law, the Administrative Office of the Courts

shall serve as an implementing agency upon approval of the Department of Finance, and (2) the provisions of subdivision (e) shall prevail. Acquisition and construction of facilities are not subject to the provisions of the Public Contract Code, but shall be subject to facilities contracting policies and procedures adopted by the Judicial Council after consultation and review by the Department of Finance.

(c) ~~Money~~ *Moneys* in the State Court Facilities Construction Fund shall only be used for either of the following:

(1) The planning, design, construction, rehabilitation, renovation, replacement, leasing, or acquisition of court facilities, as defined by subdivision (d) of Section 70301.

(2) The rehabilitation of one or more existing court facilities in conjunction with the construction, acquisition, or financing of one or more new court facilities.

(d) (1) Except as provided in Section 70374.2 and paragraph (2) of this subdivision, 25 percent of all ~~money~~ *moneys* collected for the State Court Facilities Construction Fund from any county shall be designated for implementation of trial court projects in that county. The Judicial Council shall determine the local projects after consulting with the trial court in that county and based on the locally approved trial court facilities master plan for that county.

(2) Paragraph (1) shall not apply to ~~money~~ *moneys* that ~~has~~ *have* been deposited in the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5.

(e) The following provisions shall prevail over provisions of the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) of Division 3 of Title 2) in regard to buildings subject to this section.

(1) The Administrative Office of the Courts shall be responsible for the operation, including, but not limited to, the maintenance and repair, of all court facilities whose title is held by the state. Notwithstanding Section 15807, the operation of buildings under this section shall be the responsibility of the Judicial Council.

(2) Notwithstanding Section 15808.1, the Judicial Council shall have the responsibility for determining whether a building under ~~this~~ *the* act shall be located within or outside of an existing public transit corridor.

(3) The buildings under this section are subject to Section 15814.12 concerning cogeneration and alternative energy sources at the request of, or with the consent of, the Judicial Council. Any building acquired by the state pursuant to this section on or before July 1, 2007, is not subject to subdivision (b) of Section 15814.12 concerning ~~acquiring~~ *the acquisition* of cogeneration or alternative energy equipment if the building, when acquired, already had cogeneration or alternative energy equipment. Section 15814.17 only applies to buildings to which the Judicial Council has given its consent under subdivision (a) of Section 15814.12.

SEC. 93. Section 1760 of the Harbors and Navigation Code is amended to read:

1760. (a) For purposes of this section, "council" means the California Marine and Intermodal Transportation System Advisory Council, a regional subunit of the Marine Transportation System National Advisory Council chartered by the federal Secretary of Transportation under the Federal Advisory Council Act (P.L. 92-463).

(b) The council is requested to do all of the following:

(1) Meet, hold public hearings, and compile data on issues that include, but need not be limited to, all of the following:

(A) The projected growth of each maritime port in the state.

(B) The costs and benefits of developing a coordinated state program to obtain federal funding for maritime port growth, security, and congestion relief.

(C) Impacts of maritime port growth on the state's transportation system.

(D) Air pollution caused by movement of goods through the state's maritime ports, and proposed methods of mitigating or alleviating that pollution.

(E) Maritime port security, including, but not limited to, training, readiness, certification of port personnel, exercise planning and conduct, and critical marine transportation system infrastructure protection.

(F) A statewide plan for continuing operation of maritime ports in cooperation with the United States Coast Guard, the federal Department of Homeland Security, the ~~Office of~~ *California* Emergency ~~Services~~ *Management Agency*, ~~the state Office of Homeland Security,~~ and the California National Guard, consistent with the state's emergency management system and the national

emergency management system, in the event of a major incident or disruption of port operations in one or more of the state's maritime ports.

(G) State marine transportation policy, legislation, and planning; regional infrastructure project funding; competitiveness; environmental impacts; port safety and security; and any other matters affecting the marine transportation system of the United States within, or affecting, the state.

(2) Identify all state agencies that are involved with the development, planning, or coordination of maritime ports in the state.

(3) Identify other states that have a statewide port master plan and determine whether that plan has assisted those states in improving their maritime ports.

(4) Compile all information obtained pursuant to paragraphs (1) to (3), inclusive, and submit its findings in a report to the Legislature not later than January 1, 2006. The report should include, but need not be limited to, recommendations on methods to better manage the growth of maritime ports and address the environmental impacts of moving goods through those ports.

(c) The activities of the council pursuant to this section shall not be funded with appropriations from the General Fund.

SEC. 94. Section 442.5 of the Health and Safety Code is amended to read:

442.5. When a health care provider makes a diagnosis that a patient has a terminal illness, the health care provider shall, upon the patient's request, provide the patient with comprehensive information and counseling regarding legal end-of-life care options pursuant to this section. When a terminally ill patient is in a health facility, as defined in Section 1250, the health care provider, or medical director of the health facility~~,~~ if the patient's health care provider is not available, may refer the patient to a hospice provider or private or public agencies and community-based organizations that specialize in end-of-life care case management and consultation to receive comprehensive information and counseling regarding legal end-of-life care options.

(a) If the patient indicates a desire to receive the information and counseling, the comprehensive information shall include, but not be limited to, the following:

(1) Hospice care at home or in a health care setting.

(2) A prognosis with and without the continuation of disease-targeted treatment.

(3) The patient's right to refusal of or withdrawal from life-sustaining treatment.

(4) The patient's right to continue to pursue disease-targeted treatment, with or without concurrent palliative care.

(5) The patient's right to comprehensive pain and symptom management at the end of life, including, but not limited to, adequate pain medication, treatment of nausea, palliative chemotherapy, relief of shortness of breath and fatigue, and other clinical treatments useful when a patient is actively dying.

(6) The patient's right to give individual health care instruction pursuant to Section 4670 of the Probate Code, which provides the means by which a patient may provide written health care instruction, such as an advance health care directive, and the patient's right to appoint a legally recognized health care decisionmaker.

(b) The information described in subdivision (a) may, but is not required to, be~~,~~ in writing. Health care providers may utilize information from organizations specializing in end-of-life care that provide information on factsheets and Internet Web sites to convey the information described in subdivision (a).

(c) Counseling may include, but *is* not ~~be~~ limited to, discussions about the outcomes for the patient and his or her family, based on the interest of the patient. Information and counseling, as described in subdivision (a), may occur over a series of meetings with the health care provider or others who may be providing the information and counseling based on the patient's needs.

(d) The information and counseling sessions may include a discussion of treatment options in a manner that the patient and his or her family can easily understand. If the patient requests information on the costs of treatment options, including the availability of insurance and eligibility of the patient for coverage, the patient shall be referred to the appropriate entity for that information.

SEC. 95. Section 1266 of the Health and Safety Code is amended to read:

1266. (a) The Licensing and Certification Division shall be supported entirely by federal funds and special funds by no earlier than the beginning of the 2009–10 fiscal year unless otherwise

specified in statute, or unless funds are specifically appropriated from the General Fund in the annual Budget Act or other enacted legislation. For the 2007–08 fiscal year, General Fund support shall be provided to offset licensing and certification fees in an amount of not less than two million seven hundred eighty-two thousand dollars ($2,782,000).

(b) The Licensing and Certification Program fees for the 2006–07 fiscal year shall be as follows:

Type of Facility	Fee	
General Acute Care Hospitals	$ 134.10	per bed
Acute Psychiatric Hospitals	$ 134.10	per bed
Special Hospitals	$ 134.10	per bed
Chemical Dependency Recovery Hospitals	$ 123.52	per bed
Skilled Nursing Facilities	$ 202.96	per bed
Intermediate Care Facilities	$ 202.96	per bed
Intermediate Care Facilities - Developmentally Disabled	$ 592.29	per bed
Intermediate Care Facilities - Developmentally Disabled - Habilitative	$1,000.00	per facility
Intermediate Care Facilities - Developmentally Disabled - Nursing	$1,000.00	per facility
Home Health Agencies	$2,700.00	per facility
Referral Agencies	$5,537.71	per facility
Adult Day Health Centers	$4,650.02	per facility
Congregate Living Health Facilities	$ 202.96	per bed
Psychology Clinics	$ 600.00	per facility
Primary Clinics - Community and Free	$ 600.00	per facility
Specialty Clinics - Rehab Clinics		
(For profit)	$2,974.43	per facility
(Nonprofit)	$ 500.00	per facility
Specialty Clinics - Surgical and Chronic	$1,500.00	per facility
Dialysis Clinics	$1,500.00	per facility
Pediatric Day Health/Respite Care	$ 142.43	per bed
Alternative Birthing Centers	$2,437.86	per facility
Hospice	$1,000.00	per facility
Correctional Treatment Centers	$ 590.39	per bed

(c) Commencing February 1, 2007, and every February 1 thereafter, the department shall publish a list of estimated fees pursuant to this section. The calculation of estimated fees and the publication of the report and list of estimated fees shall not be subject to the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) By February 1 of each year, the department shall prepare the following reports and shall make those reports, and the list of estimated fees required to be published pursuant to subdivision (c), available to the public by submitting them to the Legislature and posting them on the department's *Internet* Web site:

(1) The department shall prepare a report of all costs for activities of the Licensing and Certification Program. At a minimum, this report shall include a narrative of all baseline adjustments and their calculations, a description of how each category of facility was calculated, descriptions of assumptions used in any calculations, and shall recommend Licensing and Certification Program fees in accordance with the following:

(A) Projected workload and costs shall be grouped for each fee category.

(B) Cost estimates, and the estimated fees, shall be based on the appropriation amounts in the Governor's proposed budget for the next fiscal year, with and without policy adjustments to the fee methodology.

(C) The allocation of program, operational, and administrative overhead, and indirect costs to fee categories shall be based on generally accepted cost allocation methods. Significant items of costs shall be directly charged to fee categories if the expenses can be reasonably identified to the fee category that caused them. Indirect and overhead costs shall be allocated to all fee categories using a generally accepted cost allocation method.

(D) The amount of federal funds and General Fund moneys to be received in the budget year shall be estimated and allocated to each fee category based upon an appropriate metric.

(E) The fee for each category shall be determined by dividing the aggregate state share of all costs for the Licensing and Certification Program by the appropriate metric for the category of licensure. Amounts actually received for new licensure applications, including change of ownership applications, and late

payment penalties, pursuant to Section 1266.5, during each fiscal year shall be calculated and 95 percent shall be applied to the appropriate fee categories in determining Licensing and Certification Program fees for the second fiscal year following receipt of those funds. The remaining 5 percent shall be retained in the fund as a reserve until appropriated.

(2) (A) The department shall prepare a staffing and systems analysis to ensure efficient and effective utilization of fees collected, proper allocation of departmental resources to licensing and certification activities, survey schedules, complaint investigations, enforcement and appeal activities, data collection and dissemination, surveyor training, and policy development.

(B) The analysis under this paragraph shall be made available to interested persons and shall include all of the following:

(i) The number of surveyors and administrative support personnel devoted to the licensing and certification of health care facilities.

(ii) The percentage of time devoted to licensing and certification activities for the various types of health facilities.

(iii) The number of facilities receiving full surveys and the frequency and number of ~~follow up~~ *followup* visits.

(iv) The number and timeliness of complaint investigations.

(v) Data on deficiencies and citations issued, and numbers of citation review conferences and arbitration hearings.

(vi) Other applicable activities of the licensing and certification division.

(e) (1) The department shall adjust the list of estimated fees published pursuant to subdivision (c) if the annual Budget Act or other enacted legislation includes an appropriation that differs from those proposed in the Governor's proposed budget for that fiscal year.

(2) The department shall publish a final fee list, with an explanation of any adjustment, by the issuance of an ~~all facilities~~ *all-facilities* letter, by posting the list on the department's Internet Web site, and by including the final fee list as part of the licensing application package, within 14 days of the enactment of the annual Budget Act. The adjustment of fees and the publication of the final fee list shall not be subject to the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) (1) No fees shall be assessed or collected pursuant to this section from any state department, authority, bureau, commission, or officer, unless federal financial participation would become available by doing so and an appropriation is included in the annual Budget Act for that state department, authority, bureau, commission, or officer for this purpose. No fees shall be assessed or collected pursuant to this section from any clinic that is certified only by the federal government and is exempt from licensure under Section 1206, unless federal financial participation would become available by doing so.

(2) For the 2006–07 ~~state~~ fiscal year, no fee shall be assessed or collected pursuant to this section from any general acute care hospital owned by a health care district with 100 *or fewer* beds ~~or less~~.

(g) The Licensing and Certification Program may change annual license expiration renewal dates to provide for efficiencies in operational processes or to provide for sufficient ~~cash flow~~ *cashflow* to pay for expenditures. If an annual license expiration date is changed, the renewal fee shall be prorated accordingly. Facilities shall be provided with a 60-day notice of any change in their annual license renewal date.

SEC. 96. Section 1324.21 of the Health and Safety Code is amended to read:

1324.21. (a) For facilities licensed under subdivision (c) of Section 1250, there shall be imposed each ~~state~~ fiscal year a uniform quality assurance fee per resident day. The uniform quality assurance fee shall be based upon the entire net revenue of all skilled nursing facilities subject to the fee, except an exempt facility, as defined in Section 1324.20, calculated in accordance with subdivision (b).

(b) The amount of the uniform quality assurance fee to be assessed per resident day shall be determined based on the aggregate net revenue of skilled nursing facilities subject to the fee, in accordance with the methodology outlined in the request for federal approval required by Section 1324.27 and in regulations, provider bulletins, or other similar instructions. The uniform quality assurance fee shall be calculated as follows:

(1) (A) For the rate year 2004–05, the net revenue shall be projected for all skilled nursing facilities subject to the fee. The projection of net revenue shall be based on prior ~~rate year~~ *rate-year*

data. Once determined, the aggregate projected net revenue for all facilities shall be multiplied by 2.7 percent, as determined under the approved methodology, and then divided by the projected total resident days of all providers subject to the fee.

(B) Notwithstanding subparagraph (A), the Director of Health Care Services may increase the amount of the fee up to 3 percent of the aggregate projected net revenue if necessary for the implementation of Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) For the rate year 2005–06 and subsequent rate years through and including the 2010–11 rate year, the net revenue shall be projected for all skilled nursing facilities subject to the uniform quality assurance fee. The projection of net revenue shall be based on the prior rate year's data. Once determined, the aggregate projected net revenue for all facilities shall be multiplied by 6 percent, as determined under the approved methodology, and then divided by the projected total resident days of all providers subject to the fee. The amounts so determined shall be subject to the provisions of subdivision (d).

(c) The director may assess and collect a nonuniform fee consistent with the methodology approved pursuant to Section 1324.27.

(d) In no case shall the fees collected annually pursuant to this article, taken together with applicable licensing fees, exceed the amounts allowable under federal law.

(e) If there is a delay in the implementation of this article for any reason, including a delay in the approval of the quality assurance fee and methodology by the federal Centers for Medicare and Medicaid Services, in the 2004–05 rate year or in any other rate year, all of the following shall apply:

(1) Any facility subject to the fee may be assessed the amount the facility will be required to pay to the department, but shall not be required to pay the fee until the methodology is approved and Medi-Cal rates are increased in accordance with paragraph (2) of subdivision (a) of Section 1324.28 and the increased rates are paid to facilities.

(2) The department may retroactively increase and make payment of rates to facilities.

(3) Facilities that have been assessed a fee by the department shall pay the fee assessed within 60 days of the date rates are increased in accordance with paragraph (2) of subdivision (a) of Section 1324.28 and paid to facilities.

(4) The department shall accept a facility's payment notwithstanding that the payment is submitted in a subsequent fiscal year than the fiscal year in which the fee is assessed.

SEC. 97. Section 1361.1 of the Health and Safety Code is amended to read:

1361.1. *(a)* It is an unfair business practice for a solicitor, solicitor firm, or representative of a health care service plan to sell, solicit, or negotiate the purchase of health care coverage products by any of the following methods:

~~(a)~~

(1) The use of a marketing technique known as cold lead advertising when marketing a Medicare product. As used in this section, "cold lead advertising" means making use directly or indirectly of a method of marketing that fails to disclose in a conspicuous manner that a purpose of the marketing is health care service plan sales solicitation and that contact will be made by a solicitor, solicitor firm, or representative of a health care service plan.

~~(b)~~

(2) The use of an appointment that was made to discuss a particular Medicare product or to solicit the sale of a particular Medicare product in order to solicit the sale of another Medicare product or other health care coverage products, unless the consumer specifically agrees in advance of the appointment to discuss that other Medicare product or other types of health care coverage products during the same appointment. ~~As~~

(b) As used in this section, "Medicare product" includes Medicare Parts A, B, C, and D, and Medicare supplement plans.

SEC. 98. Section 1371 of the Health and Safety Code is amended to read:

1371. A health care service plan, including a specialized health care service plan, shall reimburse claims or any portion of any claim, whether in state or out of state, as soon as ~~practical~~ *practicable*, but no later than 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after

receipt of the claim by the health care service plan, unless the claim or portion thereof is contested by the plan in which case the claimant shall be notified, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimants' address of record within the respective 30 or 45 working days after receipt, interest shall accrue at the rate of 15 percent per annum beginning with the first calendar day after the 30- or 45-working-day period. A health care service plan shall automatically include in its payment of the claim all interest that has accrued pursuant to this section without requiring the claimant to submit a request for the interest amount. Any plan failing to comply with this requirement shall pay the claimant a ten dollar ($10) fee.

For the purposes of this section, a claim, or portion thereof, is reasonably contested ~~where~~ *if* the plan has not received the completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine payer liability for the claim includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the plan to determine the medical necessity for the health care services provided.

If a claim or portion thereof is contested on the basis that the plan has not received all information necessary to determine payer liability for the claim or portion thereof and notice has been provided pursuant to this section, ~~then~~ the plan shall have 30 working days or, if the health care service plan is a health maintenance organization, 45 working days after receipt of this additional information to complete reconsideration of the claim. If a plan has received all of the information necessary to determine payer liability for a contested claim and has not reimbursed a claim it has determined to be payable within 30 working days of the

receipt of that information, or if the plan is a health maintenance organization, within 45 working days of receipt of that information, interest shall accrue and be payable at a rate of 15 percent per annum beginning with the first calendar day after the 30- or ~~45-working day~~ *45-working-day* period.

The obligation of the plan to comply with this section shall not be deemed to be waived when the plan requires its medical groups, independent practice associations, or other contracting entities to pay claims for covered services.

SEC. 99. Section 1371.1 of the Health and Safety Code is amended to read:

1371.1. (a) Whenever a health care service plan, including a specialized health care service plan, determines that in reimbursing a claim for provider services an institutional or professional provider has been overpaid, and then notifies the provider in writing through a separate notice identifying the overpayment and the amount of the overpayment, the provider shall reimburse the health care service plan within 30 working days of receipt by the provider of the notice of overpayment unless the overpayment or portion thereof is contested by the provider in which case the health care service plan shall be notified, in writing, within 30 working days. The notice that an overpayment is being contested shall identify the portion of the overpayment that is contested and the specific reasons for contesting the overpayment.

If the provider does not make reimbursement for an uncontested overpayment within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the ~~30 working day~~ *30-working-day* period.

(b) (1) This subdivision shall only apply to a health care service plan contract covering dental services or a specialized health care service plan contract covering dental services pursuant to this chapter.

(2) The health care service plan's notice of overpayment shall inform the provider how to access the plan's dispute resolution mechanism offered pursuant to subdivision (h) of Section 1367. The notice shall include the name and address to which the dispute should be submitted and a statement that Section 1371.1 *of the Health and Safety Code* requires a provider to reimburse the plan for an overpayment within 30 working days of receipt by the provider of the notice of overpayment unless the provider contests

the overpayment within 30 working days. The notice shall also include information clearly identifying the claim, the name of the patient, the date of service, and a clear explanation of the basis upon which the plan or the plan's capitated provider believes the amount paid on the claim was in excess of the amount due, including interest and penalties on the claim. The notice shall also include a statement that if the provider does not make reimbursement of an uncontested overpayment within 30 working days after receipt of the notice, interest shall accrue at a rate of 10 percent per annum.

SEC. 100. Section 1373.65 of the Health and Safety Code, as added by Chapter 590 of the Statutes of 2003, is repealed.

~~1373.65. (a) At least 75 days prior to the termination date of its contract with a provider group or a general acute care hospital, the health care service plan shall submit an enrollee block transfer filing to the department that includes the written notice the plan proposes to send to affected enrollees. The plan may not send this notice to enrollees until the department has reviewed and approved its content. If the department does not respond within seven days of the date of its receipt of the filing, the notice shall be deemed approved.~~

~~(b) At least 60 days prior to the termination date of a contract between a health care service plan and a provider group or a general acute care hospital, the plan shall send the written notice described in subdivision (a) by United States mail to enrollees who are assigned to the terminated provider group or hospital. A plan that is unable to comply with the timeframe because of exigent circumstances shall apply to the department for a waiver. The plan is excused from complying with this requirement only if its waiver application is granted by the department or the department does not respond within seven days of the date of its receipt of the waiver application. If the terminated provider is a hospital and the plan assigns enrollees to a provider group with exclusive admitting privileges to the hospital, the plan shall send the written notice to each enrollee who is a member of the provider group and who resides within a 15-mile radius of the terminated hospital. If the plan operates as a preferred provider organization or assigns members to a provider group with admitting privileges to hospitals in the same geographic area as the terminated hospital, the plan~~

~~shall send the written notice to all enrollees who reside within a 15-mile radius of the terminated hospital.~~

~~(c) The health care service plan shall send enrollees of a preferred provider organization the written notice required by subdivision (b) only if the terminated provider is a general acute care hospital.~~

~~(d) If an individual provider terminates his or her contract or employment with a provider group that contracts with a health care service plan, the plan may require that the provider group send the notice required by subdivision (b).~~

~~(e) If, after sending the notice required by subdivision (b), a health care service plan reaches an agreement with a terminated provider to renew or enter into a new contract or to not terminate their contract, the plan shall offer each affected enrollee the option to return to that provider. If an affected enrollee does not exercise this option, the plan shall reassign the enrollee to another provider.~~

~~(f) A health care service plan and a provider shall include in all written, printed, or electronic communications sent to an enrollee that concern the contract termination or block transfer, the following statement in not less than eight-point type: "If you have been receiving care from a health care provider, you may have a right to keep your provider for a designated time period. Please contact your HMO's customer service department, and if you have further questions, you are encouraged to contact the Department of Managed Health Care, which protects HMO consumers, by telephone at its toll-free number, 1-888-HMO-2219, or at a TDD number for the hearing impaired at 1-877-688-9891, or online at www.hmohelp.com."~~

~~(g) For purposes of this section, "provider group" means a medical group, independent practice association, or any other similar organization.~~

SEC. 101. Section 1373.95 of the Health and Safety Code, as added by Chapter 590 of the Statutes of 2003, is repealed.

~~1373.95. (a) (1) A health care service plan, other than a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis, shall file a written continuity of care policy as a material modification with the department before March 31, 2004.~~

~~(2) A health care service plan shall include all of the following in its written continuity of care policy:~~

~~(A) A description of the plan's process for the block transfer of enrollees from a terminated provider group or hospital to a new provider group or hospital.~~

~~(B) A description of the manner in which the plan facilitates the completion of covered services pursuant to the provisions of Section 1373.96.~~

~~(C) A template of the notice the plan proposes to send to enrollees describing its policy and informing enrollees of their right to completion of covered services.~~

~~(D) A description of the plan's process to review an enrollee's request for the completion of covered services.~~

~~(E) A provision ensuring that reasonable consideration is given to the potential clinical effect on an enrollee's treatment caused by a change of provider.~~

~~(3) If approved by the department, the provisions of the written continuity of care policy shall replace all prior continuity of care policies. The plan shall file a revision of the policy with the department if it makes a material change to it.~~

~~(b) (1) The provisions of this subdivision apply to a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis.~~

~~(2) The plan shall file with the department a written policy describing the manner in which it facilitates the continuity of care for a new enrollee who has been receiving services from a nonparticipating mental health provider for an acute, serious, or chronic mental health condition when his or her employer changed health plans. The written policy shall allow the new enrollee a reasonable transition period to continue his or her course of treatment with the nonparticipating mental health provider prior to transferring to a participating provider and shall include the provision of mental health services on a timely, appropriate, and medically necessary basis from the nonparticipating provider. The policy may provide that the length of the transition period take into account on a case-by-case basis, the severity of the enrollee's condition and the amount of time reasonably necessary to effect a safe transfer. The policy shall ensure that reasonable consideration is given to the potential clinical effect of a change of provider on the enrollee's treatment for the condition. The policy shall describe the plan's process to review an enrollee's request to continue his or her course of treatment with a nonparticipating~~

~~mental health provider. Nothing in this paragraph shall be construed to require the plan to accept a nonparticipating mental health provider onto its panel for treatment of other enrollees. For purposes of the continuing treatment of the transferring enrollee, the plan may require the nonparticipating mental health provider, as a condition of the right conferred under this section, to enter into its standard mental health provider contract.~~

~~(3) A plan may require a nonparticipating mental health provider whose services are continued pursuant to the written policy, to agree in writing to the same contractual terms and conditions that are imposed upon the plan's participating providers, including location within the plan's service area, reimbursement methodologies, and rates of payment. If the plan determines that an enrollee's health care treatment should temporarily continue with his or her existing provider or nonparticipating mental health provider, the plan shall not be liable for actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provisions of services by the existing provider or a nonparticipating mental health provider.~~

~~(4) The written policy shall not apply to an enrollee who is offered an out-of-network option or to an enrollee who had the option to continue with his or her previous specialized health care service plan that offers professional mental health services on an employer-sponsored group basis or mental health provider and instead voluntarily chose to change health plans.~~

~~(5) This subdivision shall not apply to a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis if it includes out-of-network coverage that allows the enrollee to obtain services from his or her existing mental health provider or nonparticipating mental health provider.~~

~~(c) The health care service plan, including a specialized health care service plan that offers professional mental health services on an employer-sponsored group basis, shall provide to all new enrollees notice of its written continuity of care policy and information regarding the process for an enrollee to request a review under the policy and shall provide, upon request, a copy of the written policy to an enrollee.~~

~~(d) Nothing in this section shall require a health care service plan or a specialized health care service plan that offers~~

~~professional mental health services on an employer-sponsored group basis to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract.~~

~~(e) The following definitions apply for the purposes of this section:~~

~~(1) "Hospital" means a general acute care hospital.~~

~~(2) "Nonparticipating mental health provider" means a psychiatrist, licensed psychologist, licensed marriage and family therapist, or licensed social worker who does not contract with the specialized health care service plan that offers professional mental health services on an employer-sponsored group basis.~~

~~(3) "Provider group" means a medical group, independent practice association, or any other similar organization.~~

SEC. 102. Section 1373.96 of the Health and Safety Code, as added by Chapter 590 of the Statutes of 2003, is repealed.

~~1373.96. (a) A health care service plan shall at the request of an enrollee, provide the completion of covered services as set forth in this section by a terminated provider or by a nonparticipating provider.~~

~~(b) (1) The completion of covered services shall be provided by a terminated provider to an enrollee who at the time of the contract's termination, was receiving services from that provider for one of the conditions described in subdivision (c).~~

~~(2) The completion of covered services shall be provided by a nonparticipating provider to a newly covered enrollee who, at the time his or her coverage became effective, was receiving services from that provider for one of the conditions described in subdivision (c).~~

~~(c) The health care service plan shall provide for the completion of covered services for the following conditions:~~

~~(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. Completion of covered services shall be provided for the duration of the acute condition.~~

~~(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that~~

~~persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of covered services shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the health care service plan in consultation with the enrollee and the terminated provider or nonparticipating provider and consistent with good professional practice. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date or 12 months from the effective date of coverage for a newly covered enrollee.~~

~~(3) A pregnancy. A pregnancy is the three trimesters of pregnancy and the immediate postpartum period. Completion of covered services shall be provided for the duration of the pregnancy.~~

~~(4) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of covered services shall be provided for the duration of a terminal illness.~~

~~(5) The care of a newborn child between birth and age 36 months. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date or 12 months from the effective date of coverage for a newly covered enrollee.~~

~~(6) Performance of a surgery or other procedure that is authorized by the plan as part of a documented course of treatment and has been recommended and documented by the provider to occur within 180 days of the contract's termination date or within 180 days of the effective date of coverage for a newly covered enrollee.~~

~~(d) (1) The plan may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the plan is not required to continue the provider's services beyond the contract termination date.~~

~~(2) Unless otherwise agreed by the terminated provider and the plan or by the individual provider and the provider group, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the plan or the provider group for currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the terminated provider. Neither the plan nor the provider group is required to continue the services of a terminated provider if the provider does not accept the payment rates provided for in this paragraph.~~

~~(e) (1) The plan may require a nonparticipating provider whose services are continued pursuant to this section for a newly covered enrollee to agree in writing to be subject to the same contractual terms and conditions that are imposed upon currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the nonparticipating provider, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the nonparticipating provider does not agree to comply or does not comply with these contractual terms and conditions, the plan is not required to continue the provider's services.~~

~~(2) Unless otherwise agreed upon by the nonparticipating provider and the plan or by the nonparticipating provider and the provider group, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the plan or the provider group for currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the nonparticipating provider. Neither the plan nor the provider group is required to continue the services of a nonparticipating provider if the provider does not accept the payment rates provided for in this paragraph.~~

~~(f) The amount of, and the requirement for payment of, copayments, deductibles, or other cost-sharing components during the period of completion of covered services with a terminated provider or a nonparticipating provider are the same as would be paid by the enrollee if receiving care from a provider currently contracting with or employed by the plan.~~

~~(g) If a plan delegates the responsibility of complying with this section to a provider group, the plan shall ensure that the requirements of this section are met.~~

~~(h) This section shall not require a plan to provide for completion of covered services by a provider whose contract with the plan or provider group has been terminated or not renewed for reasons relating to a medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Profession Code, or fraud or other criminal activity.~~

~~(i) This section shall not require a plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract. This section shall not apply to a newly covered enrollee covered under an individual subscriber agreement who is undergoing a course of treatment on the effective date of his or her coverage for a condition described in subdivision (c).~~

~~(j) The provisions contained in this section are in addition to any other responsibilities of a health care service plan to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude a plan from providing continuity of care beyond the requirements of this section.~~

~~(k) The following definitions apply for the purposes of this section:~~

~~(1) "Individual provider" means a person who is a licentiate, as defined in Section 805 of the Business and Professions Code, or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.~~

~~(2) "Nonparticipating provider" means a provider who is not contracted with a health care service plan.~~

~~(3) "Provider" shall have the same meaning as set forth in subdivision (i) of Section 1345.~~

~~(4) "Provider group" means a medical group, independent practice association, or any other similar organization.~~

SEC. 103. Section 1522.41 of the Health and Safety Code is amended to read:

1522.41. (a) The director, in consultation and collaboration with county placement officials, group home provider organizations, the Director of Mental Health, and the Director of Developmental Services, shall develop and establish a certification program to ensure that administrators of group home facilities

have appropriate training to provide the care and services for which a license or certificate is issued.

(b) (1) In addition to any other requirements or qualifications required by the department, an administrator of a group home facility shall successfully complete a department-approved certification program, pursuant to subdivision (c), prior to employment. An administrator employed in a group home on the effective date of this section shall meet the requirements of paragraph (2) of subdivision (c).

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with all of the licensee and administrator requirements of this section.

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility.

(4) The licensee shall notify the department within 10 days of any change in administrators.

(c) (1) The administrator certification programs shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial and educational needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Administration, storage, misuse, and interaction of medication used by facility residents.

(H) Resident admission, retention, and assessment procedures, including the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(I) Nonviolent emergency intervention and reporting requirements.

(J) Basic instruction on the existing laws and procedures regarding the safety of foster youth at school and the ensuring of a ~~harassment~~ *harassment-* and ~~violence free~~ *violence-free* school environment contained in the ~~California Student~~ *School* Safety and Violence Prevention Act ~~of 2000~~ (Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code).

(2) The department shall adopt separate program requirements for initial certification for persons who are employed as group home administrators on the effective date of this section. A person employed as an administrator of a group home facility on the effective date of this section~~,~~ shall obtain a certificate by completing the training and testing requirements imposed by the department within 12 months of the effective date of the regulations implementing this section. After the effective date of this section, these administrators shall meet the requirements imposed by the department on all other group home administrators for certificate renewal.

(3) Individuals applying for certification under this section shall successfully complete an approved certification program, pass a written test administered by the department within 60 days of completing the program, and submit to the department the documentation required by subdivision (d) within 30 days after being notified of having passed the test. The department may extend these time deadlines for good cause. The department shall notify the applicant of his or her test results within 30 days of administering the test.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation from the applicant that he or she has passed the written test.

(4) Submission of fingerprints pursuant to Section 1522. The department may waive the submission for those persons who have a current clearance on file.

(5) That person is at least 21 years of age.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a group home facility. Any person willfully making any false representation as being a certified administrator or facility manager is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in subdivision (c). No more than one-half of the required 40 hours of continuing education necessary to renew the certificate may be satisfied through online courses. All other continuing education hours shall be completed in a classroom setting. For purposes of this section, an individual who is a group home facility administrator and who is required to complete the continuing education hours required by the regulations of the State Department of Developmental Services, and approved by the regional center, may have up to 24 of the required continuing education course hours credited toward the 40-hour continuing education requirement of this section. Community college course hours approved by the regional centers shall be accepted by the department for certification.

(2) Every administrator of a group home facility shall complete the continuing education requirements of this subdivision.

(3) Certificates issued under this section shall expire every two years on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after July 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting

to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate shall be proof of compliance with this paragraph.

(5) A suspended or revoked certificate shall be subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall submit proof of compliance with paragraphs (1) and (2) of subdivision (f), and shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension. Delinquency fees, if any, accrued subsequent to the time of its revocation or suspension and prior to an order for reinstatement, shall be waived for a period of 12 months to allow the individual sufficient time to complete the required continuing education units and to submit the required documentation. Individuals whose certificates will expire within 90 days after the order for reinstatement may be granted a three-month extension to renew their certificates during which time the delinquency fees shall not accrue.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification training program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the ~~reassurance~~ *reissuance* of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status and change of mailing address within 30 days of any change.

(g) Unless otherwise ordered by the department, the certificate shall be considered forfeited under either of the following conditions:

(1) The department has revoked any license held by the administrator after the department issued the certificate.

(2) The department has issued an exclusion order against the administrator pursuant to Section 1558, 1568.092, 1569.58, or

1596.8897, after the department issued the certificate, and the administrator did not appeal the exclusion order or, after the appeal, the department issued a decision and order that upheld the exclusion order.

(h) (1) The department, in consultation and collaboration with county placement officials, provider organizations, the State Department of Mental Health, and the State Department of Developmental Services, shall establish, by regulation, the program content, the testing instrument, the process for approving certification training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification training programs and continuing education courses. The department may also grant continuing education hours for continuing courses offered by accredited educational institutions that are consistent with the requirements in this section. The department may deny vendor approval to any agency or person in any of the following circumstances:

(A) The applicant has not provided the department with evidence satisfactory to the department of the ability of the applicant to satisfy the requirements of vendorization set out in the regulations adopted by the department pursuant to subdivision (j).

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in group home facilities.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in group homes and to pay directly for the services. The department may deny vendorization to this type of agency only as long as there are other vendor programs available to conduct the certification training programs and conduct education courses.

(2) The department may authorize vendors to conduct the administrator's certification training program pursuant to this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect certification training programs and continuing education courses, including online courses, at no charge to the department, to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the requirements of this

section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years, to certification program vendors for review and approval of the initial 40-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee, not to exceed one hundred dollars ($100) every two years, for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(7) (A) A vendor of online programs for continuing education shall ensure that each online course contains all of the following:

(i) An interactive portion in which the participant receives feedback, through online communication, based on input from the participant.

(ii) Required use of a personal identification number or personal identification information to confirm the identity of the participant.

(iii) A final screen displaying a printable statement, to be signed by the participant, certifying that the identified participant completed the course. The vendor shall obtain a copy of the final screen statement with the original signature of the participant prior to the issuance of a certificate of completion. The signed statement of completion shall be maintained by the vendor for a period of three years and be available to the department upon demand. Any person who certifies as true any material matter pursuant to this clause that he or she knows to be false is guilty of a misdemeanor.

(B) Nothing in this subdivision shall prohibit the department from approving online programs for continuing education that do not meet the requirements of subparagraph (A) if the vendor demonstrates to the department's satisfaction that, through advanced technology, the course and the course delivery meet the requirements of this section.

(i) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

(j) Subdivisions (b) to (i), inclusive, shall be implemented upon regulations being adopted by the department, by January 1, 2000.

(k) Notwithstanding any provision of law to the contrary, vendors approved by the department who exclusively provide either initial or continuing education courses for certification of administrators of a group home facility as defined by regulations of the department, an adult residential facility as defined by regulations of the department, or a residential care facility for the elderly as defined in subdivision (k) of Section 1569.2, shall be regulated solely by the department pursuant to this chapter. No other state or local governmental entity shall be responsible for regulating the activity of those vendors.

SEC. 104. Section 1571.71 of the Health and Safety Code is amended and renumbered to read:

~~1571.71.~~

1597.71. To encourage and facilitate the establishment of employer-sponsored child day care centers, the department shall allow for reasonable waivers of those regulations presenting difficulties to small businesses for licensure, provided that the health and safety of all children is maintained and that the applicant has agreed to alternative methods of meeting the purpose and intent of any regulation waived.

SEC. 105. Section 1798.200 of the Health and Safety Code is amended to read:

1798.200. (a) (1) (A) Except as provided in paragraph (2), an employer of an EMT-I or EMT-II may conduct investigations, as necessary, and take disciplinary action against an EMT-I or EMT-II who is employed by that employer for conduct in violation of subdivision (c). The employer shall notify the medical director of the local EMS agency that has jurisdiction in the county in which the alleged violation occurred within three days when an allegation has been validated as a potential violation of subdivision (c).

(B) Each employer of an EMT-I or EMT-II employee shall notify the medical director of the local EMS agency that has jurisdiction in the county in which a violation related to subdivision (c) occurred within three days after the EMT-I or EMT-II is terminated or suspended for a disciplinary cause, the EMT-I or EMT-II resigns following notification of an impending investigation based upon evidence that would indicate the existence of a disciplinary cause, or the EMT-I or EMT-II is removed from

EMT-related duties for a disciplinary cause after the completion of the employer's investigation.

(C) At the conclusion of an investigation, the employer of an EMT-I or EMT-II may develop and implement, in accordance with the guidelines for disciplinary orders, temporary suspensions, and conditions of probation adopted pursuant to Section 1797.184, a disciplinary plan for the EMT-I or EMT-II. Upon adoption of the disciplinary plan, the employer shall submit that plan to the local EMS agency within three working days. The employer's disciplinary plan may include a recommendation that the medical director of the local EMS agency consider taking action against the holder's certificate pursuant to paragraph (3).

(2) If an EMT-I or EMT-II is not employed by an ambulance service licensed by the Department of the California Highway Patrol or a public safety agency or if that ambulance service or public safety agency chooses not to conduct an investigation pursuant to paragraph (1) for conduct in violation of subdivision (c), the medical director of a local EMS agency shall conduct the investigations, and, upon a determination of disciplinary cause, take disciplinary action as necessary against this EMT-I or EMT-II. At the conclusion of these investigations, the medical director shall develop and implement, in accordance with the recommended guidelines for disciplinary orders, temporary orders, and conditions of probation adopted pursuant to Section 1797.184, a disciplinary plan for the EMT-I or EMT-II. The medical director's disciplinary plan may include action against the holder's certificate pursuant to paragraph (3).

(3) The medical director of the local EMS agency may, upon a determination of disciplinary cause and in accordance with regulations for disciplinary processes adopted pursuant to Section 1797.184, deny, suspend, or revoke any EMT-I or EMT-II certificate issued under this division, or may place any EMT-I or EMT-II certificate holder on probation, upon the finding by that medical director of the occurrence of any of the actions listed in subdivision (c) and the occurrence of one of the following:

(A) The EMT-I or EMT-II employer, after conducting an investigation, failed to impose discipline for the conduct under investigation, or the medical director makes a determination that the discipline imposed was not according to the guidelines for disciplinary orders and conditions of probation and the conduct of

the EMT-I or EMT-II certificate holder constitutes grounds for disciplinary action against the certificate.

(B) Either the employer of an EMT-I or EMT-II further determines, after an investigation conducted under paragraph (1), or the medical director determines after an investigation conducted under paragraph (2), that the conduct requires disciplinary action against the certificate.

(4) The medical director of the local EMS agency, after consultation with the employer of an EMT-I or EMT-II, may temporarily suspend, prior to a hearing, any EMT-I or EMT-II certificate or both EMT-I and EMT-II certificates upon a determination that both of the following conditions have been ~~meet~~ *met*:

(A) The certificate holder has engaged in acts or omissions that constitute grounds for revocation of the EMT-I or EMT-II certificate.

(B) Permitting the certificate holder to continue to engage in the certified activity without restriction would pose an imminent threat to the public health or safety.

(5) If the medical director of the local EMS agency temporarily suspends a certificate, the local EMS agency shall notify the certificate holder that his or her EMT-I or EMT-II certificate is suspended and shall identify the reasons therefor. Within three working days of the initiation of the suspension by the local EMS agency, the agency and employer shall jointly investigate the allegation in order for the agency to make a determination of the continuation of the temporary suspension. All investigatory information not otherwise protected by law held by the agency and employer shall be shared between the parties via facsimile transmission or overnight mail relative to the decision to temporarily suspend. The local EMS agency shall decide, within 15 calendar days, whether to serve the certificate holder with an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. If the certificate holder files a notice of defense, the hearing shall be held within 30 days of the local EMS agency's receipt of the notice of defense. The temporary suspension order shall be deemed vacated if the local EMS agency fails to make a final determination on the merits within 15 days after the administrative law judge renders the proposed decision.

(6) The medical director of the local EMS agency shall refer, for investigation and discipline, any complaint received on an EMT-I or EMT-II to the relevant employer within three days of receipt of the complaint, pursuant to subparagraph (A) of paragraph (1) of subdivision (a).

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c). Proceedings against any EMT-P license or licenseholder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate or licenseholder under this division:

(1) Fraud in the procurement of any certificate or license under this division.

(2) Gross negligence.

(3) Repeated negligent acts.

(4) Incompetence.

(5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

(7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

(8) Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.

(9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

(10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

(11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.

(12) Unprofessional conduct exhibited by any of the following:

(A) The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the performance of his or her duties would use if confronted with a similar circumstance. Nothing in this section shall be deemed to prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace officer, or a peace officer who is acting in the dual capacity of peace officer and EMT-I, EMT-II, or EMT-P, from using that force that is reasonably necessary to effect a lawful arrest or detention.

(B) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in ~~Sections 56 to 56.6, inclusive,~~ *Part 2.53 (commencing with Section 56) of Division 1* of the Civil Code.

(C) The commission of any sexually related offense specified under Section 290 of the Penal Code.

(d) The information shared among EMT-I, EMT-II, and EMT-P employers, medical directors of local EMS agencies, the authority, and EMT-I and EMT-II certifying entities shall be deemed to be an investigative communication that is exempt from public disclosure as a public record pursuant to subdivision (f) of Section 6254 of the Government Code. A formal disciplinary action against an EMT-I, EMT-II, or EMT-P shall be considered a public record available to the public, unless otherwise protected from disclosure pursuant to state or federal law.

(e) For purposes of this section, “disciplinary cause” means an act that is substantially related to the qualifications, functions, and duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat to the public health and safety described in subdivision (c).

SEC. 106. Section 11752.1 of the Health and Safety Code is amended to read:

11752.1. (a) “County board of supervisors” includes county boards of supervisors in the case of counties acting jointly.

(b) "Agency" means the California Health and Human Services Agency.

(c) "Secretary" means the Secretary of California Health and Human Services.

(d) "County plan for alcohol and other drug services" or "county plan" means the county plan, including a budget, adopted by the board of supervisors pursuant to Chapter 4 (commencing with Section 11795) *of Part 2*.

(e) "Advisory board" means the county advisory board on alcohol and other drug problems established at the sole discretion of the county board of supervisors pursuant to Section 11805. If a county does not establish an advisory board, ~~then~~ any provision of this chapter relative to the activities, duties, and functions of the advisory board shall be inapplicable to that county.

(f) "Alcohol and drug program administrator" means the county program administrator designated pursuant to Section 11800.

(g) "State alcohol and other drug program" includes all state alcohol and other drug projects administered by the department and all county alcohol and other drug programs funded under this division.

(h) "Health systems agency" means the health planning agency established pursuant to Public Law 93-641.

(i) "Alcohol and other drug problems" means problems of individuals, families, and the community that are related to the abuse of alcohol and other drugs.

(j) "Alcohol abuser" means anyone who has a problem related to the consumption of alcoholic beverages whether or not it is of a periodic or continuing nature. This definition includes, but is not limited to, persons referred to as "alcoholics" and "drinking drivers." These problems may be evidenced by substantial impairment to the person's physical, mental, or social well-being, which impairment adversely affects his or her abilities to function in the community.

(k) "Drug abuser" means anyone who has a problem related to the consumption of illicit, illegal, legal, or prescription drugs or over-the-counter medications in a manner other than prescribed, whether or not it is of a periodic or continuing nature. This definition includes, but is not limited to, persons referred to as "drug addicts." The drug-consumption-related problems of these persons may be evidenced by substantial impairment to the

person's physical, mental, or social well-being, which impairment adversely affects his or her abilities to function in the community.

(*l*) "Alcohol and other drug service" means a service that is designed to encourage recovery from the abuse of alcohol and other drugs and to alleviate or preclude problems in the individual, his or her family, and the community.

(m) "Alcohol and other drug abuse program" means a collection of alcohol and other drug services that are coordinated to achieve the specified objectives of this part.

(n) "Driving-under-the-influence program," "DUI program," or "licensed program" means an alcohol and other drug service that has been issued a valid license by the department to provide services pursuant to Chapter 9 (commencing with Section 11836) of Part 2.

(o) "Clients-participants" means recipients of alcohol and other drug prevention, treatment, and recovery program services.

(p) "Substance Abuse and Mental Health Services Administration" means that agency of the United States Department of Health and Human Services.

SEC. 107. Section 11758.46 of the Health and Safety Code is amended to read:

11758.46. (a) For purposes of this section, ~~"Drug~~ "*drug* Medi-Cal services" means all of the following services, administered by the department, and to the extent consistent with state and federal law:

(1) Narcotic treatment program services, as set forth in Section 11758.42.

(2) Day care rehabilitative services.

(3) Perinatal residential services for pregnant women and women in the postpartum period.

(4) Naltrexone services.

(5) Outpatient drug-free services.

(b) Upon federal approval of a federal Medicaid state plan amendment authorizing federal financial participation in the following services, and subject to appropriation of funds, ~~"Drug~~ "*drug* Medi-Cal services" shall also include the following services, administered by the department, and to the extent consistent with state and federal law:

(1) Notwithstanding subdivision (a) of Section 14132.90 of the Welfare and Institutions Code, day care habilitative services,

which, for purposes of this paragraph, are outpatient counseling and rehabilitation services provided to persons with alcohol or other drug abuse diagnoses.

(2) Case management services, including supportive services to assist persons with alcohol or other drug abuse diagnoses in gaining access to medical, social, educational, and other needed services.

(3) Aftercare services.

(c) (1) Annually, the department shall publish procedures for contracting for ~~Drug~~ *drug* Medi-Cal services with certified providers and for claiming payments, including procedures and specifications for electronic data submission for services rendered.

(2) The department, county alcohol and drug program administrators, and alcohol and drug service providers shall automate the claiming process and the process for the submission of specific data required in connection with reimbursement for ~~Drug~~ *drug* Medi-Cal services, except that this requirement applies only if funding is available from sources other than those made available for treatment or other services.

(d) A county or a contractor for the provision of ~~Drug~~ *drug* Medi-Cal services shall notify the department, within 30 days of the receipt of the county allocation, of its intent to contract, as a component of the single state-county contract, and provide certified services pursuant to Section 11758.42, for the proposed budget year. The notification shall include an accurate and complete budget proposal, the structure of which shall be mutually agreed to by county alcohol and drug program administrators and the department, in the format provided by the department, for specific services, for a specific time period, and including estimated units of service, estimated rate per unit consistent with law and regulations, and total estimated cost for appropriate services.

(e) (1) Within 30 days of receipt of the proposal described in subdivision (d), the department shall provide, to counties and contractors proposing to provide ~~Drug~~ *drug* Medi-Cal services in the proposed budget year, a proposed multiple-year contract, as a component of the single state-county contract, for these services, a current utilization control plan, and appropriate administrative procedures.

(2) A county contracting for alcohol and drug services shall receive a single state-county contract for the net negotiated amount and ~~Drug~~ *drug* Medi-Cal services.

(3) Contractors contracting for ~~Drug~~ *drug* Medi-Cal services shall receive a ~~Drug~~ *drug* Medi-Cal contract.

(f) (1) Upon receipt of a contract proposal pursuant to subdivision (d), a county and a contractor seeking to provide reimbursable ~~Drug~~ *drug* Medi-Cal services and the department may begin negotiations and the process for contract approval.

(2) If a county does not approve a contract by July 1 of the appropriate fiscal year, in accordance with subdivisions (c) to (e), inclusive, the county shall have 30 additional days in which to approve a contract. If the county has not approved the contract by the end of that 30-day period, the department shall contract directly for services within 30 days.

(3) Counties shall negotiate contracts only with providers certified to provide reimbursable ~~Drug~~ *drug* Medi-Cal services and that elect to participate in this program. Upon contract approval by the department, a county shall establish approved contracts with certified providers within 30 days following enactment of the annual Budget Act. A county may establish contract provisions to ensure interim funding pending the execution of final contracts, multiple-year contracts pending final annual approval by the department, and, to the extent allowable under the annual Budget Act, other procedures to ensure timely payment for services.

(g) (1) For counties and contractors providing ~~Drug~~ *drug* Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from state General Fund moneys shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(2) For counties and contractors providing ~~Drug~~ *drug* Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from federal Medicaid funds shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(3) The State Department of Health Care Services and the department shall develop methods to ensure timely payment of ~~Drug~~ *drug* Medi-Cal claims.

(4) The State Department of Health Care Services, in cooperation with the department, shall take steps necessary to streamline the billing system for reimbursable ~~Drug~~ *drug* Medi-Cal services, to assist the department in meeting the billing provisions set forth in this subdivision.

(h) The department shall submit a proposed interagency agreement to the State Department of Health Care Services by May 1 for the following fiscal year. Review and interim approval of all contractual and programmatic requirements, except final fiscal estimates, shall be completed by the State Department of Health Care Services by July 1. The interagency agreement shall not take effect until the annual Budget Act is enacted and fiscal estimates are approved by the State Department of Health Care Services. Final approval shall be completed within 45 days of enactment of the Budget Act.

(i) (1) A county or a provider certified to provide reimbursable ~~Drug~~ *drug* Medi-Cal services, that is contracting with the department, shall estimate the cost of those services by April 1 of the fiscal year covered by the contract, and shall amend current contracts, as necessary, by the following July 1.

(2) A county or a provider, except for a provider to whom subdivision (j) applies, shall submit accurate and complete cost reports for the previous ~~state~~ fiscal year by November 1, following the end of the ~~state~~ fiscal year. The department may settle cost for ~~Drug~~ *drug* Medi-Cal services, based on the cost report as the final amendment to the approved single state-county contract.

(j) Certified narcotic treatment program providers~~,~~ that are exclusively billing the state or the county for services rendered to persons subject to Section 1210.1 ~~of the Penal Code, Section~~ *or* 3063.1 of the Penal Code~~,~~ or Section 11758.42 *of this code* shall submit accurate and complete performance reports for the previous state fiscal year by November 1 following the end of that ~~state~~ fiscal year. A provider to which this subdivision applies shall estimate its budgets using the uniform state daily reimbursement rate. The format and content of the performance reports shall be mutually agreed to by the department, the County Alcohol and Drug Program Administrators Association of California, and representatives of the treatment providers.

SEC. 108. Section 18931.7 of the Health and Safety Code is amended to read:

18931.7. (a) All funds received by the commission under this part shall be deposited in the Building Standards Administration Special Revolving Fund, which is hereby established in the State Treasury.

(b) Moneys deposited in the fund shall be available, upon appropriation, to the commission, the department, and the Office of the State Fire Marshal for expenditure in carrying out the provisions of this part, and the provisions of Part 1.5 (commencing with Section 17910) that relate to building standards, as defined in Section 18909, with emphasis placed on the development, adoption, publication, updating, and educational efforts associated with green building standards.

SEC. 109. Section 19997 of the Health and Safety Code is amended to read:

19997. (a) Any person who violates any of the provisions of this part, a building standard published in the State Building Standards Code relating to factory-built housing, or any other rules or regulations adopted pursuant to this part is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment not exceeding ~~thirty (30)~~ *30* days, or by both ~~such~~ *that* fine and imprisonment.

(b) (1) For violations of Section 19980, 19991.3, or 19991.4, the department shall assess civil penalties in a range between two hundred fifty dollars ($250) and two thousand dollars ($2,000). When determining the amount of the assessed civil penalty, the department shall take into consideration whether one or more of the following or similar circumstances apply:

(A) The citation includes multiple violations.

(B) The cited person has a history of violations of the same or similar provisions of this part and the regulations promulgated under this part.

(C) In the judgment of the department, the person has exhibited bad faith or a conflict of interest.

(D) In the judgment of the department, the violation is serious or harmful.

(E) The citation involves a violation perpetrated against a senior citizen, veteran, or person with disabilities.

(F) ~~Exculpatory~~ *There is exculpatory* evidence that, in the judgment of the department, is material to the elements of the

current violation for which the citation is being issued and is significantly related to the degree of fault.

(2) If a citation lists more than one violation and each of the violations relates to the same manufacturing facility or client, the total penalty assessment in each citation shall not exceed ten thousand dollars ($10,000).

(3) If a citation lists more than one violation, the amount of assessed civil penalty shall be stated separately for each section violated.

(4) Appeals procedures shall be the same as those provided under subdivisions (c) to (e), inclusive, of Section 18021.7.

(c) Nothing in this section is intended to preclude remedies available under other provisions of law.

SEC. 110. Section 25214.12 of the Health and Safety Code is amended to read:

25214.12. For purposes of this article, the following terms have the following meanings:

(a) "Authorized official" means a representative of a manufacturer or supplier who is authorized pursuant to the laws of this state to bind the manufacturer or supplier regarding the accuracy of the content of a certificate of compliance.

(b) "ASTM" means the American Society for Testing and Materials.

(c) "Distribution" means the practice of taking title to a package or a packaging component for promotional purposes or resale. A person involved solely in delivering a package or a packaging component on behalf of a third party is not engaging in distribution.

(d) (1) "Intentional introduction" means the act of deliberately utilizing a regulated metal in the formation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.

(2) "Intentional introduction" does not include either of the following:

(A) The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, where the incidental retention of a residue of that metal in the final package or packaging component is not desired or deliberate, if the final package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(B) The use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of a regulated metal, if the new package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(e) "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

(f) "Manufacturer" means any person, firm, association, partnership, or corporation producing a package or packaging component.

(g) "Manufacturing" means the physical or chemical modification of a material to produce packaging or a packaging component.

(h) (1) Except as provided in paragraph (2), "package" means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product from its point of manufacture to its sale or transfer to a consumer, including a unity package, an intermediate package, or a shipping container, as defined in the ASTM specification D 996. "Package" also includes, but is not limited to, unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(2) "Package" does not include a reusable bag, as defined in subdivision (d) of Section 42250 of the Public Resources Code.

(i) "Packaging component" means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the ASTM specification A 623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

(j) "Purchaser" means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

(k) "Recycled material" means a material that has been separated from solid waste for the purpose of recycling the material as a secondary material feedstock. Recycled materials include paper, plastic, wood, glass, ceramics, metals, and other materials, except that recycled material does not include a regulated metal that has been separated from other materials into its elemental or other chemical state for recycling as a secondary material feedstock.

(*l*) "Regulated metal" means lead, mercury, cadmium, or hexavalent chromium.

(m) (1) "Supplier" means a person who does or is one or more of the following:

(A) Sells, offers for sale, or offers for promotional purposes, a package or packaging component that is used by any other person to package a product.

(B) Takes title to a package or packaging component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

(C) Acts as an intermediary for the purchase of a package or packaging component for resale from a manufacturer located in another country to a purchaser located in this state, and who may receive a commission or a fee on that sale.

(D) Listed as the importer of record on a United States Customs Service form for an imported package or packaging component.

(2) "Supplier" does not include a person involved solely in delivering a package or packaging component on behalf of a third party.

(n) "Toxics in Packaging Clearinghouse" means the Toxics in Packaging Clearinghouse (TPCH) of the Council of State Governments.

SEC. 111. Section 25252 of the Health and Safety Code is amended to read:

25252. (a) On or before January 1, 2011, the department shall adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern, in accordance with the review process specified in Section 25252.5. The department shall adopt these regulations in consultation with the office and all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to

comment. The regulations adopted pursuant to this section shall establish an identification and prioritization process that includes, but is not limited to, all of the following considerations:

(1) The volume of the chemical in commerce in this state.

(2) The potential for exposure to the chemical in a consumer product.

(3) Potential effects on sensitive subpopulations, including infants and children.

(b) (1) In adopting regulations pursuant to this section, the department shall develop criteria by which chemicals and their alternatives may be evaluated. These criteria shall include, but not be limited to, the traits, characteristics, and endpoints that are included in the clearinghouse data pursuant to Section 25256.1.

(2) In adopting regulations pursuant to this section, the department shall reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies that have undertaken similar chemical prioritization processes, so as to leverage the work and costs already incurred by those entities and to minimize costs and maximize benefits for the state's economy.

(3) Paragraph (2) does not require the department, when adopting regulations pursuant to this section, to reference and use only the available information specified in paragraph (2).

SEC. 112. Section 25253 of the Health and Safety Code is amended to read:

25253. (a) (1) On or before January 1, 2011, the department shall adopt regulations pursuant to this section that establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern, in accordance with the review process specified in Section 25252.5. The department shall adopt these regulations in consultation with all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment.

(2) The regulations adopted pursuant to this section shall establish a process that includes an evaluation of the availability of potential alternatives and potential hazards posed by those alternatives, as well as an evaluation of critical exposure pathways.

This process shall include life cycle assessment tools that take into consideration, but shall not be limited to, all of the following:

(A) Product function or performance.

(B) Useful life.

(C) Materials and resource consumption.

(D) Water conservation.

(E) Water quality impacts.

(F) Air emissions.

(G) Production, in-use, and transportation energy inputs.

(H) Energy efficiency.

(I) Greenhouse gas emissions.

(J) Waste and end-of-life disposal.

(K) Public health impacts, including potential impacts to sensitive subpopulations, including infants and children.

(L) Environmental impacts.

(M) Economic impacts.

(b) The regulations adopted pursuant to this section shall specify the range of regulatory responses that the department may take following the completion of the alternatives analysis, including, but not limited to, any of the following actions:

(1) Not requiring any action.

(2) Imposing requirements to provide additional information needed to assess a chemical of concern and its potential alternatives.

(3) Imposing requirements on the labeling or other type of consumer product information.

(4) Imposing a restriction on the use of the chemical of concern in the consumer product.

(5) Prohibiting the use of the chemical of concern in the consumer product.

(6) Imposing requirements that control access to or limit exposure to the chemical of concern in the consumer product.

(7) Imposing requirements for the manufacturer to manage the product at the end of its useful life, including recycling or responsible disposal of the consumer product.

(8) Imposing a requirement to fund green chemistry challenge grants where no feasible safer alternative exists.

(9) Any other outcome the department determines accomplishes the requirements of this article.

(c) The department, in developing the processes and regulations pursuant to this section, shall ensure that the tools available are in a form that allows for ease of use and transparency of application. The department shall also make every feasible effort to devise simplified and accessible tools that consumer product manufacturers, consumer product distributors, product retailers, and consumers can use to make consumer product manufacturing, sales, and purchase decisions.

SEC. 113. Section 33684 of the Health and Safety Code is amended to read:

33684. (a) (1) This section shall apply to each redevelopment project area that, pursuant to a redevelopment plan that contains the provisions required by Section 33670, meets any of the following:

(A) Was adopted on or after January 1, 1994, including later amendments to these redevelopment plans.

(B) Was adopted prior to January 1, 1994, but amended after January 1, 1994, to include new territory. For plans amended after January 1, 1994, only the tax increments from territory added by the amendment shall be subject to this section.

(2) This section shall apply to passthrough payments, as required by Sections 33607.5 and 33607.7, for the 2003–04 to 2008–09, inclusive, fiscal years. For purposes of this section, a passthrough payment shall be considered the responsibility of an agency in the fiscal year the agency receives the tax increment revenue for which the passthrough payment is required.

(3) For purposes of this section, “local educational agency” is a school district, a community college district, or a county office of education.

(b) On or before October 1, 2008, each agency shall submit a report to the county auditor and to each affected taxing entity that describes each project area, including its location, purpose, date established, date or dates amended, and statutory and contractual passthrough requirements. The report shall specify, by year, for each project area all of the following:

(1) Gross tax increment received between July 1, 2003, and June 30, 2008, that is subject to a passthrough payment pursuant to Sections 33607.5 and 33607.7, and accumulated gross tax increments through June 30, 2003.

(2) Total passthrough payments to each taxing entity that the agency deferred pursuant to a subordination agreement approved by the taxing agency under subdivision (e) of Section 33607.5 and the dates these deferred payments will be made.

(3) Total passthrough payments to each taxing entity that the agency was responsible to make between July 1, 2003, and June 30, 2008, pursuant to Sections 33607.5 and 33607.7, excluding payments identified in paragraph (2).

(4) Total passthrough payments that the agency disbursed to each taxing entity between July 1, 2003, and June 30, 2008, pursuant to Sections 33607.5 and 33607.7.

(5) Total sums reported in paragraph (4) for each local educational agency that are considered to be property taxes under the provisions of paragraph (4) of subdivision (a) of ~~Sections~~ *Section* 33607.5 and *Section* 33607.7.

(6) Total outstanding payment obligations to each taxing entity as of June 30, 2008. This amount shall be calculated by subtracting the amounts reported in paragraph (4) from paragraph (3) and reporting any positive ~~sum~~ *difference*.

(7) Total outstanding overpayments to each taxing entity as of June 30, 2008. This amount shall be calculated by subtracting the amounts reported in paragraph (3) from paragraph (4) and reporting any positive ~~sum~~ *difference*.

(8) The dates on which the agency made payments identified in paragraph (6) or intends to make the payments identified in paragraph (6).

~~(2)~~

(9) A revised estimate of the agency's total outstanding passthrough payment obligation to each taxing agency pursuant to paragraph (6) of subdivision (b) and paragraph (6) of subdivision (c) and the dates on which the agency intends to make these payments.

(c) On or before October 1, 2009, each agency shall submit a report to the county auditor and to each affected taxing entity that describes each project area, including its location, purpose, date established, date or dates amended, and statutory and contractual passthrough requirements. The report shall specify, by year, for each project area all of the following:

(1) Gross tax increment received between July 1, 2008, and June 30, 2009, that is subject to a passthrough payment pursuant to Sections 33607.5 and 33607.7.

(2) Total passthrough payments to each taxing entity that the agency deferred pursuant to a subordination agreement approved by the taxing entity under subdivision (e) of Section 33607.5 and the dates these deferred payments will be made.

(3) Total passthrough payments to each taxing entity that the agency was responsible to make between July 1, 2008, and June 30, 2009, pursuant to Sections 33607.5 and 33607.7, excluding payments identified in paragraph (2).

(4) Total passthrough payments that the agency disbursed to each taxing entity between July 1, 2008, and June 30, 2009, pursuant to Sections 33607.5 and 33607.7.

(5) Total sums reported in paragraph (4) for each local educational agency that are considered to be property taxes under the provisions of paragraph (4) of subdivision (a) of Sections 33607.5 and 33607.7.

(6) Total outstanding payment obligations to each taxing entity as of June 30, 2009. This amount shall be calculated by subtracting the amounts reported in paragraph (4) from paragraph (3) and reporting any positive ~~sum~~ *difference*.

(7) Total outstanding overpayments to each taxing entity as of June 30, 2009. This amount shall be calculated by subtracting the amounts reported in paragraph (3) from paragraph (4) and reporting any positive ~~sum~~ *difference*.

(8) The dates on which the agency made payments identified in paragraph (6) or intends to make the payments identified in paragraph (6).

(d) If an agency reports pursuant to paragraph (6) of subdivision (b) or paragraph (6) of subdivision ~~(c)~~ *(c)* that it has an outstanding passthrough payment obligation to any taxing entity, the agency shall submit annual updates to the county auditor on October 1 of each year until such time as the county auditor notifies the agency in writing that the agency's outstanding payment obligations have been fully satisfied. The report shall contain both of the following:

(1) A list of payments to each taxing agency and to the Educational Revenue Augmentation Fund pursuant to subdivision (j) that the agency disbursed after the agency's last update filed pursuant to this subdivision or, if no update has been filed, after

the agency's submission of the reports required pursuant to subdivisions (b) and ~~(c)~~ *(c)*. The list of payments shall include only those payments that address obligations identified pursuant to paragraph (6) of subdivision (b) and paragraph (6) of subdivision ~~(c)~~ *(c)*. The update shall specify the date on which each payment was disbursed.

(2) A revised estimate of the agency's total outstanding passthrough payment obligation to each taxing agency pursuant to paragraph (6) of subdivision (b) and paragraph (6) of subdivision ~~(c)~~ *(c)* and the dates on which the agency intends to make these payments.

(e) The county auditor shall review each agency's reports submitted pursuant to subdivisions (b) and (c) and any other relevant information to determine whether the county auditor concurs with the information included in the reports.

(1) If the county auditor concurs with the information included in a report, the county auditor shall issue a finding of concurrence within 45 days.

(2) If the county auditor does not concur with the information included in a report or considers the report to be incomplete, the county auditor shall return the report to the agency within 45 days with information identifying the elements of the report with which the county auditor does not concur or considers to be incomplete. The county auditor shall provide the agency at least 15 days to respond to concerns raised by the county auditor regarding the information contained in the report. An agency may revise a report that has not received a finding of concurrence and resubmit it to the county auditor.

(3) If an agency and county auditor do not agree regarding the passthrough requirements of Sections 33607.5 and 33607.7, an agency may submit a report pursuant to subdivisions (b) and (c) and a statement of dispute identifying the issue needing resolution.

(4) An agency may amend a report for which the county auditor has issued a finding of concurrence and resubmit the report pursuant to paragraphs (1), (2), and (3) if any of the following apply:

(A) The county auditor and agency agree that an issue identified in the agency's statement of dispute has been resolved and the agency proposes to modify the sections of the report to conform with the resolution of the statement of dispute.

(B) The county auditor and agency agree that the amount of gross tax increment or the amount of a passthrough payment to a taxing entity included in the report is not accurate.

(5) The Controller may revoke a finding of concurrence and direct the agency to resubmit a report to the county auditor pursuant to paragraphs (1), (2), and (3) if the Controller finds significant errors in a report.

(f) On or before December 15, 2008, and annually thereafter through 2014, the county auditor shall submit a report to the Controller that includes all of the following:

(1) The name of each redevelopment project area in the county for which an agency must submit a report pursuant to subdivision (b) or (c) and information as to whether the county auditor has issued a finding of concurrence regarding the report.

(2) A list of the agencies for which the county auditor has issued a finding of concurrence for all project areas identified in paragraph (1).

(3) A list of agencies for which the county auditor has not issued a finding of concurrence for all project areas identified in paragraph (1).

(4) Using information applicable to agencies listed in paragraph (2), the county auditor shall report all of the following:

(A) The total sums reported by each redevelopment agency related to each taxing entity pursuant to paragraphs (1) to (7), inclusive, of subdivision (b) and, on or after December 15, 2009, pursuant to paragraphs (1) to (7), inclusive, of subdivision (c).

(B) The names of agencies that have outstanding passthrough payment obligations to a local educational agency that exceed the amount of outstanding passthrough payments to the local educational agency.

(C) Summary information regarding agencies' stated plans to pay the outstanding amounts identified in paragraph (6) of subdivision (b) and paragraph (6) of subdivision (c) and the actual amounts that have been deposited into the county Educational Revenue Augmentation Fund pursuant to subdivision (j).

(D) All unresolved statements of dispute filed by agencies pursuant to paragraph (3) of subdivision (e) and the county auditor's analyses supporting the county auditor's conclusions regarding the issues under dispute.

(g) (1) On or before February 1, 2009, and annually thereafter through 2015, the Controller shall submit a report to the Legislative Analyst's Office and the Department of Finance and provide a copy to the Board of Governors of the California Community Colleges. The report shall provide information as follows:

(A) Identify agencies for which the county auditor has issued a finding of concurrence for all reports required under subdivisions (b) and (c).

(B) Identify agencies for which the county auditor has not issued a finding of concurrence for all reports required pursuant to subdivision (b) and all reports required pursuant to subdivision (c) or for which a finding of concurrence has been withdrawn by the Controller.

(C) Summarize the information reported in paragraph (4) of subdivision (f). This summary shall identify, by local educational agency and by year, the total amount of passthrough payments that each local educational agency received, was entitled to receive, subordinated, or that has not yet been paid, and the portion of these amounts that are considered to be property taxes for purposes of Sections 2558, 42238, and 84751 of the Education Code. The report shall identify, by agency, the amounts that have been deposited to the county Educational Revenue Augmentation Fund pursuant to subdivision (j).

(D) Summarize the statements of dispute. The Controller shall specify the status of these disputes, including whether the Controller or other state entity has provided instructions as to how these disputes should be resolved.

(E) Identify agencies that have outstanding passthrough payment liabilities to a local educational agency that exceed the amount of outstanding passthrough overpayments to the local educational agency.

(2) On or before February 1, 2009, and annually thereafter through 2015, the Controller shall submit a report to the State Department of Education and the Board of Governors of the California Community Colleges. The report shall identify, by local educational agency and by year of receipt, the total amount of passthrough payments that the local educational agency received from redevelopment agencies listed in subparagraph (A) of paragraph (1).

(h) (1) On or before April 1, 2009, and annually thereafter until April 1, 2015, the State Department of Education shall do all of the following:

(A) Calculate for each school district for the 2003–04 to 2007–08, inclusive, fiscal years the difference between 43.3 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount subtracted from each school district's apportionment pursuant to paragraph (6) of subdivision (h) of Section 42238 of the Education Code.

(B) Calculate for each county superintendent of schools for the 2003–04 to 2007–08, inclusive, fiscal years the difference between 19 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount received pursuant to Sections 33607.5 and 33607.7 and subtracted from each county superintendent of schools apportionment pursuant to subdivision (c) of Section 2558 of the Education Code.

(C) Notify each school district and county superintendent of schools for which any amount calculated in subparagraph (A) or (B) is nonzero as to the reported change and its resulting impact on apportionments. After April 1, 2009, however, the department shall not notify a school district or county superintendent of schools if the amount calculated in subparagraph (A) or (B) is the same amount as the department calculated in the preceding year.

(2) On or before April 1, 2010, and annually thereafter until April 1, 2015, the State Department of Education shall do all of the following:

(A) Calculate for each school district for the 2008–09 fiscal year the difference between 43.3 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount subtracted from each school district's apportionment pursuant to paragraph (6) of subdivision (h) of Section 42238 of the Education Code.

(B) Calculate for each county superintendent of schools for the 2008–09 fiscal year the difference between 19 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount received pursuant to Sections 33607.5 and 33607.7 and subtracted from each county superintendent of schools apportionment pursuant to subdivision (c) of Section 2558 of the Education Code.

(C) Notify each school district and county superintendent of schools for which any amount calculated in subparagraph (A) or (B) is nonzero as to the reported change and its resulting impact on revenue limit apportionments. After April 1, 2010, however, the department shall not notify a school district or county superintendent of schools if the amount calculated in subparagraph (A) or (B) is the same amount as the department calculated in the preceding year.

(3) For the purposes of Article 3 (commencing with Section 41330) of Chapter 3 of Part 24 of Division 3 of *Title 2 of* the Education Code, the amounts reported to each school district and county superintendent of schools in the notification required pursuant to subparagraph (C) of paragraph (1) and subparagraph (C) of paragraph (2) shall be deemed to be apportionment significant audit exceptions and the date of receipt of that notification shall be deemed to be the date of receipt of the final audit report that includes those audit exceptions.

(4) On or before March 1, 2009, and annually thereafter until March 1, 2015, the Board of Governors of the California Community Colleges shall do all of the following:

(A) Calculate for each community college district for the 2003–04 to 2007–08, inclusive, fiscal years the difference between 47.5 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount subtracted from each district's total revenue owed pursuant to subdivision (d) of Section 84751 of the Education Code.

(B) Notify each community college district for which any amount calculated in subparagraph (A) is nonzero as to the reported change and its resulting impact on apportionments. After March 1, 2009, however, the board shall not notify a school district or county superintendent of schools if the amount calculated in subparagraph (A) is the same amount as the board calculated in the preceding year.

(5) On or before March 1, 2010, and annually thereafter until March 1, 2015, the Board of Governors of the California Community Colleges shall do all of the following:

(A) Calculate for each community college district for the 2003–04 to 2007–08, inclusive, fiscal years the difference between 47.5 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount subtracted from each district's total

revenue owed pursuant to subdivision (d) of Section 84751 of the Education Code.

(B) Notify each community college district for which any amount calculated in subparagraph (A) is nonzero as to the reported change and its resulting impact on revenue apportionments. After March 1, 2010, however, the board shall not notify a community college district if the amount calculated in subparagraph (A) is the same amount as the board calculated in the preceding year.

(6) A community college district may submit documentation to the Board of Governors of the California Community Colleges showing that all or part of the amount reported to the district pursuant to subparagraph (B) of paragraph (4) and subparagraph (B) of paragraph (5) was previously reported to the California Community Colleges for the purpose of the revenue level calculations made pursuant to Section 84751 of the Education Code. Upon acceptance of the documentation, the board of governors shall adjust the amounts calculated in paragraphs (4) and (5) accordingly.

(7) The Board of Governors of the California Community Colleges shall make corrections in any amounts allocated in any fiscal year to each community college district for which any amount calculated in paragraphs (4) and (5) is nonzero so as to account for the changes reported pursuant to paragraph (4) of subdivision (b) and paragraph (4) of subdivision (c). The board may make the corrections over a period of time, not to exceed five years.

(i) (1) After February 1, 2009, for an agency listed on the most recent Controller's report pursuant to subparagraph (B) or (E) of paragraph (1) of subdivision (g), all of the following shall apply:

(A) The agency shall be prohibited from adding new project areas or expanding existing project areas. For purposes of this paragraph, "project area" has the same meaning as in Sections 33320.1 to 33320.3, inclusive, and Section 33492.3.

(B) The agency shall be prohibited from issuing new bonds, notes, interim certificates, debentures, or other obligations, whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33640).

(C) The agency shall be prohibited from encumbering any funds or expending any moneys derived from any source, except that the agency may encumber funds and expend funds to pay, if any, all of the following:

(i) Bonds, notes, interim certificates, debentures, or other obligations issued by an agency before the imposition of the prohibition in subparagraph (B) whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33460)~~ of this chapter~~.

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

(iii) Contractual obligations that, if breached, could subject the agency to damages or other liabilities or remedies.

(iv) Obligations incurred pursuant to Section 33445.

(v) Indebtedness incurred pursuant to Section 33334.2 or 33334.6.

(vi) Obligations incurred pursuant to Section 33401.

(vii) An amount, to be expended for the monthly operation and administration of the agency, that may not exceed 75 percent of the average monthly amount spent for those purposes in the fiscal year preceding the fiscal year in which the agency was first listed on the Controller's report pursuant to subparagraph (B) or (E) of paragraph (1) of subdivision (g).

(2) After February 1, 2009, an agency identified in subparagraph (B) or (E) of paragraph (1) of subdivision (g) shall incur interest charges on any passthrough payment that is made to a local educational agency more than 60 days after the close of the fiscal year in which the passthrough payment was required. Interest shall be charged at a rate equal to 150 percent of the current Pooled Money Investment Account earnings annual yield rate and shall be charged for the period beginning 60 days after the close of the fiscal year in which the passthrough payment was due through the date that the payment is made.

(3) The Controller, with the concurrence of the Director of Finance, may waive the provisions of paragraphs (1) and (2) for a period of up to 12 months if the Controller determines all of the following:

(A) The county auditor has identified the agency in its most recent report issued pursuant to paragraph (2) of subdivision (f) as an agency for which the auditor has issued a finding of concurrence for all reports required pursuant to subdivisions (b) and (c).

(B) The agency has filed a statement of dispute on an issue or issues that, in the opinion of the Controller, are likely to be resolved in a manner consistent with the agency's position.

(C) The agency has made passthrough payments to local educational agencies and the county Educational Revenue Augmentation Fund, or has had funds previously withheld by the auditor, in amounts that would satisfy the agency's passthrough payment requirements to local educational agencies if the issue or issues addressed in the statement of dispute were resolved in a manner consistent with the agency's position.

(D) The agency would sustain a fiscal hardship if it made passthrough payments to local educational agencies and the county Educational Revenue Augmentation Fund in the amounts estimated by the county auditor.

(j) Notwithstanding any other provision of law, if an agency report submitted pursuant to subdivision (b) or (c) indicates outstanding payment obligations to a local educational agency, the agency shall make these outstanding payments as follows:

(1) Of the outstanding payments owed to school districts, including any interest payments pursuant to paragraph (2) of subdivision (i), 43.3 percent shall be deposited in the county Educational Revenue Augmentation Fund and the remainder shall be allocated to the school district or districts.

(2) Of the outstanding payments owed to community college districts, including any interest payments pursuant to paragraph (2) of subdivision (i), 47.5 percent shall be deposited in the county Educational Revenue Augmentation Fund and the remainder shall be allocated to the community college district or districts.

(3) Of the outstanding payments owed to county offices of education, including any interest payments pursuant to paragraph (2) of subdivision (i), 19 percent shall be deposited in the county Educational Revenue Augmentation Fund and the remainder shall be allocated to the county office of education.

(k) (1) This section shall not be construed to increase any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 of, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 of, or Article 4 (commencing with Section 98) of

Chapter 6 of Part 0.5 of Division 1 of, the Revenue and Taxation Code had this section not been enacted.

(2) Notwithstanding any other provision of law, no funds deposited in the county Educational Revenue Augmentation Fund pursuant to subdivision (j) shall be distributed to a community college district.

(*l*) A county may require an agency to reimburse the county for any expenses incurred by the county in performing the services required by this section.

SEC. 114. Section 42310 of the Health and Safety Code is amended to read:

42310. (a) A permit shall not be required for any of the following:

(1) Any vehicle.

(2) Any structure designed for and used exclusively as a dwelling for not more than four families.

(3) An incinerator used exclusively in connection with a structure described in ~~subdivision (b)~~ *paragraph (2)*.

(4) Barbecue equipment that is not used for commercial purposes.

(5) (A) Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted.

(B) As used in this ~~subdivision~~ *paragraph*, maintenance does not include operation.

(b) Nothing in this section shall affect any requirements imposed on a district or a source of air pollution, including, but not limited to, an agricultural source, pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

SEC. 115. Section 50707 of the Health and Safety Code is amended to read:

50707. (a) The department shall issue a request for qualification to select one or more nonprofit entities that qualify under Section 501(c)(3) of the Internal Revenue Code to borrow moneys from the Practitioner Fund to purchase real property for the development or preservation of housing affordable to low- and moderate-income households. The selection of one or more nonprofit entities that qualify shall be made by the department, based on the review and recommendation of the department's Loan and Grant Committee. The loan from the Practitioner Fund will be for a maximum of five years.

(b) The entity or entities selected pursuant to subdivision (a) shall demonstrate all of the following:

(1) Operation as a nonprofit entity that qualifies under Section 501(c)(3) of the Internal Revenue Code with housing development experience in this state and a minimum of 25 employees.

(2) Availability of additional funds of at least three times the loan amount.

(3) Completion of not less than 2,500 total housing units, with each housing development project having a majority of its units affordable to low- and moderate-income families, as defined in Section 50052.5 or 50053. For purposes of this requirement, the applicant shall be the developer of record with primary day-to-day management and financial responsibility for the development.

(4) Sufficient organizational stability and capacity to use the Practitioner Fund to achieve scale economies in the development and preservation of affordable housing. Capacity may be demonstrated by substantial successful experience in affordable housing development and management, including successful partnerships with local government entities.

(5) Assets worth at least two hundred million dollars ($200,000,000), to demonstrate evidence of sufficient net worth for assurance of repayment of the loan.

(c) The guidelines and regulations, at a minimum, shall do all of the following:

(1) Establish the minimum criteria required of the practitioner and a point system for rating and ranking responses.

(2) Provide that any equity not originally contributed by the borrower shall be returned to the state for the purposes of this program, if property acquired with state funds is sold or transferred for purposes other than affordable housing.

(3) Give priority to those respondents who demonstrate an immediate need of funds from the committee and who can demonstrate the greatest levels of efficiency and economies of scale.

(4) Establish a reasonable practitioner administrative fee.

(d) Funds not used by a practitioner within 36 months after their availability to the practitioner shall be disencumbered and transferred to the Loan Fund.

(e) The guidelines and regulations shall require that before expending any state funds, the borrower shall obtain binding

commitments for at least three dollars ($3) of nonstate acquisition capital to leverage every dollar of loan funds. To be considered nonstate acquisition capital, those funds shall be committed for a term at least equal to the term of the loan made under this section, and shall be available to be used for the purposes of this section. Equity from the anticipated sale of either federal or state low-income housing tax credits shall not be considered nonstate acquisition capital. If the selected entity is unable to meet these capital leveraging requirements within 180 days after selection, the loan shall be repaid, with accumulated interest, to the department, deposited in the fund, and made available to the next highest rated qualified project sponsor. If, within 270 days after selection, there is no remaining qualified applicant available in the case of the ~~Practioner~~ *Practitioner* Fund, any unexpended funds shall be made available for the purposes of Section 50706.

(f) The department shall establish a schedule for the timely expenditure of funds by the applicant. The department may require repayment in the event that a selected entity fails to use the funds consistently with the schedule and the other terms of the program.

SEC. 116. Section 52013 of the Health and Safety Code, as amended by Section 1 of Chapter 283 of the Statutes of 2008, is amended to read:

52013. (a) "Home mortgage" or "mortgage" means an interest-bearing loan made as provided in this part to a mortgagor, whether originated in the manner provided in subdivision (a) or (b) of Section 52020~~, which~~ *that* is either of the following:

(1) Evidenced by a promissory note and secured by a mortgage, deed of trust, or other security instrument on a home, and ~~which~~ *that* may be, but is not required to be, additionally secured by insurance on the payment of the note~~,~~ for the purposes of purchasing, constructing, or improving a home that meets any of the criteria described in paragraphs (1) to (3), inclusive, of subdivision (b).

(2) Evidenced by a promissory note and secured by a mortgage, deed of trust, or other security instrument on a home, and ~~which~~ *that* is federally insured, federally guaranteed, or eligible to be purchased by the Federal National Mortgage Association or the Federal Home Loan and Mortgage Corporation~~,~~ for the purposes of refinancing a home that meets the criteria described in paragraph (3) of subdivision (b).

(b) The following criteria apply for the purposes of subdivision (a):

(1) Is newly constructed or is being rehabilitated and that, in either case, is located within an area or neighborhood in which the city or county is conducting a housing rehabilitation or code enforcement program~~;~~, a neighborhood preservation area or concentrated rehabilitation area designated pursuant to this division~~;~~, an area for which federal funds are being made available~~;~~, or a residential rehabilitation area as defined in Section 37912. However, a loan may be made for the purchase of a newly constructed home anywhere within the city or county if the purchase is in connection with a program adopted by ordinance of the city or county the purpose of which is to increase the housing supply.

(2) Is a home upon which no rehabilitation is being undertaken in connection with any financing pursuant to this part, where the purchaser will not be the first occupant and that is located within the city or county making or purchasing the home mortgage.

(3) Is an existing home within the city or county making or purchasing the home mortgage and the owner is, and will be, the occupant of the house.

(c) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 117. Section 52013 of the Health and Safety Code, as added by Section 2 of Chapter 283 of the Statutes of 2008, is amended to read:

52013. (a) "Home mortgage" or "mortgage" means an interest-bearing loan made as provided in this part to a mortgagor, whether originated in the manner provided in subdivision (a) or (b) of Section 52020~~, which~~ *that* is evidenced by a promissory note and secured by a mortgage, deed of trust, or other security instrument on a home, and ~~which~~ *that* may but is not required to be additionally secured by insurance on the payment of the note~~,~~ for the purpose of purchasing, constructing, or improving a home that meets either of the following criteria:

(1) Is newly constructed or is being rehabilitated and that, in either case, is located within an area or neighborhood in which the city or county is conducting a housing rehabilitation or code enforcement program~~;~~, a neighborhood preservation area or

concentrated rehabilitation area designated pursuant to this division~~;~~, an area for which federal funds are being made available~~;~~, or a residential rehabilitation area as defined in Section 37912. However, a loan may be made for the purchase of a newly constructed home anywhere within the city or county if the purchase is in connection with a program adopted by ordinance of the city or county the purpose of which is to increase the housing supply.

(2) Is a home upon which no rehabilitation is being undertaken in connection with any financing pursuant to this part, where the purchaser will not be the first occupant, and that is located within the city or county making or purchasing the home mortgage.

(b) A "home mortgage" or "mortgage" shall not include a loan to a mortgagor for the purpose of refinancing an existing obligation of the mortgagor, unless substantial rehabilitation is to be undertaken in connection with the loan.

(c) This section shall become operative January 1, 2012.

SEC. 118. Section 103526.5 of the Health and Safety Code is amended to read:

103526.5. (a) Each certified copy of a birth or death record issued pursuant to Section 103525 shall include the date issued, the name of the issuing officer, the signature of the issuing officer, whether that is the State Registrar, local registrar, county recorder, or county clerk, or an authorized facsimile thereof, and the seal of the issuing office.

(b) All certified copies of birth and death records issued pursuant to Section 103525 shall be printed on chemically sensitized security paper that measures 8½ by 11 inches and that has the following features:

~~(A)~~

(1) Intaglio print.

~~(B)~~

(2) Latent image.

~~(C)~~

(3) Fluorescent, consecutive numbering with matching barcode.

~~(D)~~

(4) Microprint line.

~~(E)~~

(5) Prismatic printing.

~~(F)~~

(6) Watermark.

~~(G)~~

(7) Void pantograph.

~~(H)~~

(8) Fluorescent security threads.

~~(I)~~

(9) Fluorescent fibers.

~~(J)~~

(10) Any other security features deemed necessary by the State Registrar.

(c) The State Registrar, local registrars, county recorders, and county clerks shall take precautions to ensure that uniform and consistent standards are used statewide to safeguard the security paper described in subdivision (b), including, but not limited to, the following measures:

(1) Security paper shall be maintained under secure conditions so as not to be accessible to the public.

(2) A log shall be kept of all visitors allowed in the area where security paper is stored.

(3) All spoilage shall be accounted for and subsequently destroyed by shredding on the premises.

SEC. 119. Section 107115 of the Health and Safety Code is amended to read:

107115. (a) A person seeking to participate in on-the-job training for purposes of paragraph (1) of subdivision (a) of Section 106976, or clause (i) of subparagraph (A) of *paragraph (4) of* subdivision (d) of Section 107155, shall, prior to his or her participation, do both of the following:

(1) Register with the department by submitting an application in accordance with subdivision (b).

(2) Obtain a receipt of acknowledgment, as described in subdivision (c).

(b) The application shall contain all of the following information:

(1) The applicant's legal name, mailing address, and telephone number.

(2) A statement identifying whether the on-the-job training will be performed to meet the requirements of the American Registry of Radiologic Technologists pursuant to paragraph (1) of subdivision (a) of Section 106976, or to meet the requirements of

the Nuclear Medicine Technology Certification Board pursuant to clause (i) of subparagraph (A) of paragraph (4) of subdivision (d) of Section 107155.

(3) For those applicants seeking to meet the requirements of paragraph (1) of subdivision (a) of Section 106976, the certificate number as shown on the applicant's Nuclear Medicine Technology Certificate (NMTC) issued by the department pursuant to Article 6 (commencing with Section 107150).

(4) For those applicants seeking to meet the requirements of clause (i) of subparagraph (A) of paragraph (4) of subdivision (d) of Section 107155, the certificate number as shown on the applicant's Radiologic Technology Certificate (RTC) issued by the department pursuant to Article 5 (commencing with Section 106955).

(5) A letter from each facility where the applicant will perform the activities described in Section 106976 or ~~Section~~ 107155, as applicable. The letter shall be on facility letterhead that identifies the facility and its mailing and physical addresses, and shall include all of the following information:

(A) The license number as shown on the facility's specific license issued pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9).

(B) Identification of the applicant within the letter and a statement that the individual is approved to perform activities in the facility to meet the clinical competencies required by the organizations identified in Section 106976 or ~~Section~~ 107155, as applicable.

(C) The name, signature, and date of signature of the person providing supervision pursuant to paragraph (2) of subdivision (a) of Section 106976 or clause (ii) of subparagraph (A) of paragraph (4) of subdivision (d) of Section 107155.

(6) The signature of the applicant.

(7) (A) A fee that is equal to the fee established pursuant to Section 107080 to obtain ~~a~~ *an* RTC, provided that the amount of the fee shall not exceed the reasonable cost of administering this section.

(B) All moneys collected pursuant to subparagraph (A) shall be deposited in the Radiation Control Fund established pursuant to Section 114980, and used for the purpose described in that section.

(c) (1) Upon receipt of the information and the fee described in subdivision (a), the individual shall be deemed registered, and the department shall issue to the individual an acknowledgment of registration.

(2) The registration shall be valid for a period of 24 consecutive months and is not renewable, except as provided in paragraph (3).

(3) (A) If the individual fails to obtain a valid computerized tomography certificate issued by the American Registry of Radiologic Technologists or positron emission tomography certificate issued by the Nuclear Medicine Technology Certification Board, as applicable, within the validity period of the registration, the individual may reapply for a one-time six-month extension by resubmitting the application described in subdivision (b). If the individual fails to obtain the appropriate certificate during the extended six-month period, the individual shall immediately cease activities.

(B) The department may reauthorize the individual to resume activities upon the department's approval of an action plan submitted by the individual. The action plan shall detail the reasons why the certificate was not obtained, how much of the required competencies have been completed, and what actions will be taken to complete the particular competencies and obtain the certificate. Reauthorization shall not exceed six months.

(d) A violation of this section is a misdemeanor pursuant to Sections 107075 or 107170, as applicable, and a violator is subject to discipline pursuant to ~~Sections~~ *Section* 107065, 107070, or 107165, as applicable.

SEC. 120. Section 112877 of the Health and Safety Code, as added by Section 2 of Chapter 694 of the Statutes of 2008, is amended to read:

112877. Olive oil grades are defined as follows:

(a) "Virgin olive oils" means those oils fit for consumption as they are, obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decanting, centrifuging, and filtration. Virgin olive oils fit for consumption as they are include:

(1) "Extra virgin olive oil" means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams

per 100 grams *oil*, has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil and meets the sensory standards of extra virgin olive oil as determined by a taste panel certified by the International Olive Council, or, if the International Olive Council ceases to certify taste panels, meets the sensory standards of a taste panel that is operated by the University of California or California State University according to guidelines adopted by the International Olive Council as of 2007.

(2) "Virgin olive oil" means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 2 grams per 100 grams oil and has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil.

(3) "Ordinary virgin olive oil" means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 3.3 grams per 100 grams oil and has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil.

(b) "Olive oil" is the oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption as they are as defined in this section. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams *oil*.

(c) "Refined olive oil" means the olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams oil.

(d) "Olive-pomace oils" means oils obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by reesterification processes and of any mixture with oils of other kinds. They shall be labeled and marketed with the following designations and definitions:

(1) "Olive-pomace oil" is the oil comprising the blend of refined olive-pomace oil and virgin olive oils fit for consumption as they are. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams oil. In no case shall this blend be called or labeled "olive oil."

(2) "Refined olive-pomace oil" is the oil obtained from crude olive-pomace oil by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams oil.

(3) “Crude olive-pomace oil” means olive-pomace oil that is intended for refining for use for human consumption or that is intended for technical use.

SEC. 121. Section 112877 of the Health and Safety Code, as added by Section 1 of Chapter 695 of the Statutes of 2008, is amended to read:

112877. Olive oil grades are defined as follows:

(a) “Virgin olive oils” means those oils fit for consumption as they are, obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decanting, centrifuging, and filtration. Virgin olive oils fit for consumption as they are include:

(1) “Extra virgin olive oil” means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams *oil*, has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil and would meet the sensory standards of extra virgin olive oil as determined by a taste panel certified by the International Olive Council, or, if the International Olive Council ceases to certify taste panels, would meet the sensory standards of a taste panel that is operated by the University of California or California State University according to guidelines adopted by the International Olive Council as of 2007.

(2) “Virgin olive oil” means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 2 grams per 100 grams oil and has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil.

(3) “Ordinary virgin olive oil” means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 3.3 grams per 100 grams oil and has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil.

(b) “Olive oil” is the oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption as they are as defined in this section. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams *oil*.

(c) “Refined olive oil” means the olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in

the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams oil.

(d) "Olive-pomace oils" means oils obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by reesterification processes and of any mixture with oils of other kinds. They shall be labeled and marketed with the following designations and definitions:

(1) "Olive-pomace oil" is the oil comprising the blend of refined olive-pomace oil and virgin olive oils fit for consumption as they are. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams oil. In no case shall this blend be called or labeled "olive oil."

(2) "Refined olive-pomace oil" is the oil obtained from crude olive-pomace oil by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams oil.

(3) "Crude olive-pomace oil" means olive-pomace oil that is intended for refining for use for human consumption or that is intended for technical use.

SEC. 122. Section 114094 of the Health and Safety Code is amended to read:

114094. (a) For purposes of this section, the following definitions shall apply:

(1) "Food facility" means a food facility in the state that operates under common ownership or control with at least 19 other food facilities with the same name in the state that offer for sale substantially the same menu items, or operates as a franchised outlet of a parent company with at least 19 other franchised outlets with the same name in the state that offer for sale substantially the same menu items, except that a "food facility" does not include the following:

(A) Certified farmer's markets.

(B) Commissaries.

(C) Grocery stores, except for separately owned food facilities to which this section otherwise applies that are located in the grocery store. For purposes of this paragraph, "grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry. "Grocery store" includes convenience stores.

(D) Licensed health care facilities.

(E) Mobile support units.

(F) Public and private school cafeterias.

(G) Restricted food service facilities.

(H) Retail stores in which a majority of sales are from a pharmacy, as defined in Section 4037 of the Business and Professions Code.

(I) Vending machines.

(2) "Calorie content information" means the total number of calories per standard menu item, as that item is usually prepared and offered for sale.

(3) "Drive-through" means an area where a customer may provide an order for and receive standard menu items while occupying a motor vehicle.

(4) "Menu board" means a posted list or pictorial display of food or beverage items offered for sale by a food facility.

(5) "Nutritional information" includes, but is not limited to, all of the following, per standard menu item, as that item is usually prepared and offered for sale:

(A) Total number of calories.

(B) Total number of grams of carbohydrates.

(C) Total number of grams of saturated fat.

(D) Total number of milligrams of sodium.

(6) "Point of sale" means the location where a customer makes an order.

(7) "Standard menu item" means a food or beverage item offered for sale by a food facility through a menu, menu board, or display tag at least 180 days per calendar year, except that "standard menu ~~item~~ *item*" does not include any of the following:

(A) A food item that is customized on a case-by-case basis in response to an unsolicited customer request.

(B) An alcoholic beverage, the labeling of which is not regulated by the federal Food and Drug Administration.

(C) A packaged food otherwise subject to the nutrition labeling requirements of the federal Nutrition Labeling and Education Act of 1990.

(D) A food ~~Hem~~ *item* when served at a consumer self-service salad bar.

(E) A food or beverage ~~Hem~~ *item* when served at a consumer self-service buffet.

(8) "Reasonable basis" means any reasonable means recognized by the federal Food and Drug Administration of determining nutritional information, as well as calorie content information, for a standard menu item, as usually prepared and offered for sale, including, but not limited to, nutrient databases and laboratory analyses.

(9) "Appetizer" means a food item that ~~in~~ *is* generally served prior to a food item that is generally regarded as the primary food item in a meal. An "appetizer" includes a first course, starter, or small plate.

(10) "Dessert" means a food item that ~~in~~ *is* generally served after a food item that is generally regarded as the primary food item in a meal. "Dessert" includes, but is not limited to, cakes, pastries, pies, ice cream and food items that contain ice cream, confections, and other sweets.

(b) (1) Commencing July 1, 2009, to December 31, 2010, inclusive, every food facility shall either disclose nutritional information as required by paragraph (2), or comply with subdivision (c) during this period of time.

(2) (A) In order to comply with paragraph (1), a food facility that does not provide sit-down service shall disclose the information in a clear and conspicuous manner on a brochure that is made available at the point of sale prior to or during the placement of an order. A food facility that provides sit-down service shall provide the nutritional information in a clear and conspicuous size and typeface on at least one of the following:

(i) A brochure available on the table.

(ii) A menu next to each standard menu item.

(iii) A menu, under an index section that is separate from the listing of standard menu items.

(iv) A menu insert.

(v) A table tent on the table.

(B) Notwithstanding subparagraph (A), a food facility that has a drive-through area and uses a menu board to display or list standard menu items at the point of sale shall, for purposes of the drive-through area only, disclose the nutritional information in a clear and conspicuous manner on a brochure that is available upon request, and shall conspicuously display a notice at the point of sale that reads: "NUTRITION INFORMATION IS AVAILABLE

UPON REQUEST" or other similar statement that indicates the disclosure of nutrition information is available upon request.

(c) (1) On and after January 1, 2011, every food facility that provides a menu shall disclose calorie content information for a standard menu item next to the item on the menu in a size and typeface that is clear and conspicuous.

(2) On and after January 1, 2011, every food facility that uses an indoor menu board shall disclose calorie content information for a standard menu item next to the item on the menu board in a size and typeface that is clear and conspicuous.

(3) On and after January 1, 2011, every food facility that uses a display tag as an alternative to a menu or menu board to describe a standard menu item that is displayed for sale in a display case within the food facility shall disclose calorie content information for that standard menu item on the display tag for that item in a size and typeface that is clear and conspicuous.

(4) On and after January 1, 2011, every food facility that has a drive-through area and uses a menu board to display or list standard menu items at the point of sale shall, for purposes of the drive-through area only, disclose the nutritional information for each standard menu item in a clear and conspicuous manner on a brochure that is available upon request, and shall clearly and conspicuously display a notice at the point of sale that reads: "NUTRITION INFORMATION IS AVAILABLE UPON REQUEST" or other similar statement that indicates the disclosure of nutrition information upon request. If a food facility subject to this paragraph discloses nutritional information in the manner described in subparagraph (B) of paragraph (2) of subdivision (b), the food facility shall be deemed to be in compliance with this paragraph.

(d) For purposes of subdivision (c), the disclosure of calorie content information on a menu or menu board next to a standard menu item that is a combination of at least two standard menu items on the menu or menu board, shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories for the calorie count information. If there is only one possible total amount of calories, then this total shall be disclosed.

(e) For purposes of subdivision (c), the disclosure of calorie content information on a menu or menu board next to a standard menu item that is not an appetizer or dessert, but is intended to serve more than one individual, shall include both of the following:

(1) The number of individuals intended to be served by the standard menu item.

(2) The calorie content information per individual serving. If the standard menu item is a combination of at least two standard menu items, this disclosure shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories. If there is only one possible total amount of calories, then this total shall be disclosed.

(f) The nutritional information and calorie content information required by this section shall be determined on a reasonable basis. A reasonable basis determination of nutritional information and calorie content information shall be required only once per standard menu item, provided that portion size is reasonably consistent and the food facility follows a standardized recipe and trains to a consistent method of preparation.

(g) (1) Every brochure provided pursuant to this section shall include the statement: “Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium.”

(2) Menus and menu boards may include a disclaimer that indicates that there may be variations in nutritional content across servings, based on variations in overall size and quantities of ingredients, and based on special ordering.

(h) This section shall not be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state law or limit any claim, right of action, or civil liability that otherwise exists under state law. The only enforcement mechanism of the section is the local enforcement agency.

(i) This section shall not be construed to preclude any food facility from voluntarily providing nutritional information in addition to the requirements of this section.

(j) To the extent consistent with federal law, this section, as well as any other state law that regulates the disclosure of nutritional information, is a matter of statewide concern and occupies the whole field of regulation regarding the disclosure of

nutritional information by a food facility. No ordinance or regulation of a local government shall regulate the dissemination of nutritional information by a food facility. Any ordinance or regulation that violates this prohibition is void and shall have no force or effect.

(k) Commencing July 1, 2009, a food facility that violates this section is guilty of an infraction, punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500), which may be assessed by a local enforcement agency. However, a food facility may not be found to violate this section more than once during an inspection visit. Notwithstanding Section 114395, a violation of this section is not a misdemeanor.

(*l*) If any provision of this section, or the application thereof, is for any reason held invalid, ineffective, or unconstitutional by a court of competent jurisdiction, the remainder of this section, shall not be affected thereby, and to this end, the provisions of this section are severable.

SEC. 123. Section 130501 of the Health and Safety Code is amended to read:

130501. For purposes of this division, the following definitions shall apply:

(a) "Average manufacturer's price" has the same meaning as this term is defined in Section 1927(k)(1) of the federal Social Security Act (42 U.S.C. Sec. ~~1396r-8)(k)(1)~~ *1396r-8(k)(1)*.

(b) "Department" means the State Department of Health Care Services.

(c) "Eligible Californian" means a resident of the state who meets any one or more of the following:

(1) Has total unreimbursed medical expenses equal to at least 10 percent of his or her family's income where the family's income does not exceed the state median family income.

(2) To the extent allowed by federal law, is enrolled in the Medicare Program, but whose prescription drugs are not covered by the Medicare Program.

(3) Has a family income that does not exceed 300 percent of the federal poverty guidelines and who does not have outpatient prescription drug coverage paid for by any one of the following:

(A) In whole by the Medi-Cal program.

(B) In whole or in part by the Healthy Families Program or other programs funded by the state.

(C) In whole or in part by another third-party payer, provided that the individual has not reached the annual limit on his or her prescription drug coverage.

(4) For purposes of this subdivision, the cost of drugs provided under this division is considered an expense incurred by the family for eligibility determination purposes.

(d) "Fund" means the California Discount Prescription Drug Program Fund.

(e) "Manufacturer" means a drug manufacturer as defined in Section 4033 of the Business and Professions Code.

(f) "Manufacturer's rebate" means the rebate for an individual drug or aggregate rebate for a group of drugs necessary to make the price for the drug ingredients equal to or less than the applicable benchmark price.

(g) "Medicaid best price" has the same meaning as this term is defined in Section 1927(c)(1)(C) of the Social Security Act (42 U.S.C. Sec. ~~1396r-8)(c)(1)(C)~~ *1396r-8(c)(1)(C)*.

(h) "Multiple-source drug" has the same meaning as this term is defined in Section 1927(k)(7) of the Social Security Act (42 U.S.C. Sec. ~~1396r-8)(k)(7)~~ *1396r-8(k)(7)*.

(i) "National drug code" or "NDC" means the unique 10-digit, three-segment number assigned to each drug product listed under Section 510 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360). This number identifies the labeler or vendor, product, and trade package.

(j) "National sales data" means prescription data obtained from a national-level prescription tracking service.

(k) "Participating manufacturer" means a drug manufacturer that has contracted with the department to provide an individual drug or group of drugs for the program.

(*l*) "Participating pharmacy" means a pharmacy that has executed a pharmacy provider agreement with the department for this program.

(m) "Pharmacy contract rate" means the negotiated per prescription reimbursement rate for drugs dispensed to eligible Californians. The department shall establish a single, basic pharmacy rate, but may contract at different rates with pharmacies in order to provide access throughout the state.

(n) "Prescription drug" means any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," ~~"Rx~~ "*R*x only," or words of similar import.

(o) "Private discount drug program" means a prescription drug discount card or manufacturer patient assistance program that provides discounted or free drugs to eligible individuals. For the purposes of this division, a private discount drug program is not considered insurance or a ~~third-party payer~~ *third-party-payer* program.

(p) "Program" means the California Discount Prescription Drug Program.

(q) "Single-source drug" has the same meaning as this term~~,~~ and the term innovator multiple-source drug~~,~~ are defined in Section 1927(k)(7) of the Social Security Act (42 U.S.C. Sec. ~~1396r-8)(k)(7)~~ *1396r-8(k)(7)*.

(r) "Therapeutic category" means a drug or a grouping of drugs determined by the department to have similar attributes and to be alternatives for the treatment of a specific disease or condition.

(s) "Volume weighted average discount" means the aggregated average discount for the drugs of a manufacturer, weighted by each drug's percentage of the total prescription volume of that manufacturer's drugs. For purposes of this calculation, discounts shall include any rebate amounts used to fund program costs pursuant to Section 130542.1. Drugs excluded from contracting by the department, pursuant to subdivision (d) of Section 130506 and in a manner consistent with subdivision (c) of Section 130506, shall be excluded from the calculation of the volume weighted average discount. National sales data shall be used to calculate the volume weighted average discount pursuant to Section 130506. Program utilization data shall be used to calculate the volume weighted average discount pursuant to Section 130507.

SEC. 124. Section 130506 of the Health and Safety Code is amended to read:

130506. (a) The department shall negotiate drug discount agreements with manufacturers to provide discounts for single-source and multiple-source prescription drugs through the program. The department shall attempt to negotiate the maximum possible discount for an eligible Californian. The department shall attempt to negotiate, with each manufacturer, discounts to offer single-source prescription drugs under the program at a volume

weighted average discount that is equal to or below any one of the following benchmark prices:

(1) Eighty-five percent of the average manufacturer price for a drug, as published by the *federal* Centers for Medicare and Medicaid Services.

(2) The lowest price provided to any nonpublic entity in the state by a manufacturer to the extent that the Medicaid best price exists under federal law.

(3) The Medicaid best price, to the extent that this price exists under federal law.

(b) The department may require the drug manufacturer to provide information that is reasonably necessary for the department to carry out its duties pursuant to this division.

(c) The department shall pursue manufacturer discount agreements to ensure that the number and type of drugs available through the program is sufficient to give an eligible Californian a formulary comparable to the Medi-Cal list of contract drugs, or if this information is available to the department, a formulary that is comparable to that provided to CalPERS enrollees.

(d) To obtain the most favorable discounts, the department may limit the number of drugs available through the program.

(e) The drug discount agreements negotiated pursuant to this section shall be used to reduce the cost of drugs purchased by program participants and to fund program costs pursuant to Section 130542.1.

(f) All information reported by a manufacturer to, negotiations with, and agreements executed with, the department or its third-party vendor pursuant to this section, shall be considered confidential and corporate proprietary information. This information shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The Bureau of State Audits and the Controller shall have access to pricing information in a manner that is consistent with their access to this information under the Medi-Cal program and under law. The Bureau of State Audits and the Controller may use this information only to investigate or audit the administration of the program. Neither the Bureau of State Audits, the Controller, nor the department may disclose this information in a form that identifies a specific manufacturer or wholesaler or prices charged for drugs

of this manufacturer or wholesaler. Information provided to the department pursuant to subdivision (e) of Section 130530 shall not be affected by the confidentiality protections established by this subdivision.

(g) (1) Any pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code may participate in the program.

(2) Any manufacturer may participate in the program.

SEC. 125. Section 779.11 of the Insurance Code is amended to read:

779.11. The provisions of subdivisions ~~(d)~~ *(e)* and ~~(e)~~ *(f)* of Section 10291.5 shall be applicable to the withdrawal of the approval of forms, whether of life or disability insurance, required by this article to be filed with or approved by the commissioner.

SEC. 126. Section 790.037 of the Insurance Code is amended to read:

790.037. *(a)* It is an unfair business practice for a health insurance agent or broker to sell, solicit, or negotiate the purchase of health insurance by any of the following methods:

~~(a)~~

(1) The use of a marketing technique known as cold lead advertising when marketing a Medicare product. As used in this section, "cold lead advertising" means making use directly or indirectly of a method of marketing that fails to disclose in a conspicuous manner that a purpose of the marketing is health insurance sales solicitation and that contact will be made by a health insurance agent or broker.

~~(b)~~

(2) The use of an appointment that was made to discuss a particular Medicare product or to solicit the sale of a particular Medicare product in order to solicit the sale of another Medicare product or other health insurance products, unless the consumer specifically agrees in advance of the appointment to discuss that other Medicare product or other types of health insurance products during the same appointment. ~~As~~

(b) As used in this section, "Medicare product" includes Medicare Parts A, B, C, and D, and Medicare supplement plans.

SEC. 127. Section 1063.1 of the Insurance Code is amended to read:

1063.1. As used in this article:

(a) "Member insurer" means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) "Insolvent insurer" means an insurer that was a member insurer of the association, consistent with paragraph (11) of subdivision (c), either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction, or, in the case of the State Compensation Insurance Fund, if a finding of insolvency is made by a duly enacted legislative measure.

(c) (1) "Covered claims" means the obligations of an insolvent insurer, including the obligation for unearned premiums, ~~(A) imposed~~ *that satisfy all of the following requirements:*

(A) Imposed by law and within the coverage of an insurance policy of the insolvent insurer~~; (B) which~~.

(B) Which were unpaid by the insolvent insurer~~; (C) which~~.

(C) Which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings~~; (D) which~~.

(D) Which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed~~; (E) for~~.

(E) For which the assets of the insolvent insurer are insufficient to discharge in full~~; (F) in~~.

(F) In the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state~~; and (G) in~~.

(G) In the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) "Covered claims" also ~~include~~ *includes* the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. "Covered

claims" under this paragraph shall be required to satisfy the requirements of subparagraphs (A) to (G), inclusive, of paragraph (1), except for the requirement that the claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.

(3) "Covered claims" does not include obligations arising from the following:

(A) Life, annuity, health, or disability insurance.

(B) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(C) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.

(D) Credit insurance.

(E) Title insurance.

(F) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.

(G) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers' compensation policy issued pursuant to subdivision (c) of Section 3702.8 of the Labor Code that covers all or any part of workers' compensation liabilities of an employer that is issued, or was previously issued, a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(4) "Covered claims" does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled by the liquidator, nor any obligations to any state or to the federal government.

(5) "Covered claims" does not include any obligations to insurers, insurance pools, or underwriting associations, nor their

claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount of the policy limits of the insolvent insurer's policy, or in the amount of the limits remaining, where those limits have been diminished by the payment of other claims.

(6) "Covered claims," except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include any claim in an amount of one hundred dollars ($100) or less, nor that portion of any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(7) "Covered claims" does not include that portion of any claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars ($500,000).

(8) "Covered claims" does not include any amount awarded as punitive or exemplary damages, nor any amount awarded by the Workers' Compensation Appeals Board pursuant to Section 5814 or 5814.5 *of the Labor Code* because payment of compensation was unreasonably delayed or refused by the insolvent insurer.

(9) "Covered claims" does not include (A) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured ~~nor~~ *or* (B) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian, or other personal representative or trustee in bankruptcy, and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(10) "Covered claims" does not include any obligations arising out of the issuance of an insurance policy written by the separate

division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.

(11) "Covered claims" does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.

(12) "Covered claims" does not include surplus deposits of subscribers as defined in Section 1374.1.

(13) "Covered claims" shall also include obligations arising under an insurance policy written to indemnify a permissibly self-insured employer pursuant to subdivision (b) or (c) of Section 3700 of the Labor Code for its liability to pay workers' compensation benefits in excess of a specific or aggregate retention, provided, however, that for purposes of this article, those claims shall not be considered workers' compensation claims and therefore are subject to the per claim limit in paragraph (7) and any payments and expenses related thereto shall be allocated to category (c) for claims other than workers' compensation, homeowners, and automobile, as provided in Section 1063.5.

These provisions shall apply to obligations arising under any policy as described herein issued to a permissibly self-insured employer or group of self-insured employers pursuant to Section 3700 of the Labor Code and notwithstanding any other provision of the Insurance Code, those obligations shall be governed by this provision in the event that the Self-Insurers' Security Fund is ordered to assume the liabilities of a permissibly self-insured employer or group of self-insured employers pursuant to Section 3701.5 of the Labor Code. The provisions of this paragraph apply only to insurance policies written to indemnify a permissibly self-insured employer or group of self-insured employers under subdivision (b) or (c) of Section 3700, for its liability to pay workers' compensation benefits in excess of a specific or aggregate retention, and this paragraph does not apply to special excess workers' compensation insurance policies unless issued pursuant to authority granted in subdivision (c) of Section 3702.8 of the Labor Code, and as provided for in subparagraph (G) of paragraph (3) of subdivision (c). In addition, this paragraph does not apply to any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses as are excluded in subparagraph (G) of paragraph (3) of subdivision (c).

Each ~~permissibility~~ *permissibly* self-insured employer or group of self-insured employers, or the Self-Insurers' Security Fund, shall, to the extent required by the Labor Code, be responsible for paying, adjusting, and defending each claim arising under policies of insurance covered under this section, unless the benefits paid on a claim exceed the specific or aggregate retention, in which case:

(A) If the benefits paid on the claim exceed the specific or aggregate retention, and the policy requires the insurer to defend and adjust the claim, the California Insurance Guarantee Association (CIGA) shall be solely responsible for adjusting and defending the claim, and shall make all payments due under the claim, subject to the limitations and exclusions of this article with regards to covered claims. As to each claim subject to this paragraph, notwithstanding any other provisions of the Insurance Code or the Labor Code, and regardless of whether the amount paid by CIGA is adequate to discharge a claim obligation, neither the self-insured employer, group of *self-insured* employers, nor the Self-Insurers' Security Fund, shall have any obligation to pay benefits over and above the specific or aggregate retention, except as provided in subdivision (c).

(B) If the benefits paid on the claim exceed the specific or aggregate retention, and the policy does not require the insurer to defend and adjust the claim, the ~~permissibility~~ *permissibly* self-insured employer or group of self-insured employers, or the Self-Insurers' Security Fund, shall not have any further payment obligations with respect to the claim, but shall continue defending and adjusting the claim, and shall have the right, but not the obligation, in any proceeding to assert all applicable statutory limitations and exclusions as contained in this article with regard to the covered claim. CIGA shall have the right, but not the obligation, to intervene in any proceeding where the self-insured employer, group of self-insured employers, or the Self-Insurers' Security Fund is defending any such claim and shall be permitted to raise the appropriate statutory limitations and exclusions as contained in this article with respect to covered claims. Regardless of whether the self-insured employer or group of *self-insured* employers, or the Self-Insurers' Security Fund, asserts the applicable statutory limitations and exclusions, or whether CIGA intervenes in any such proceeding, CIGA shall be solely

responsible for paying all benefits due on the claim, subject to the exclusions and limitations of this article with respect to covered claims. As to each claim subject to this paragraph, notwithstanding any other provision of the Insurance Code or the Labor Code and regardless of whether the amount paid by CIGA is adequate to discharge a claim obligation, neither the self-insured employer, group of *self-insured* employers, nor the Self-Insurers' Security Fund, shall have any obligation to pay benefits over and above the specific or aggregate retention, except as provided in this subdivision.

(C) In the event that the benefits paid on the covered claim exceed the per claim limit in paragraph (7) of subdivision (c), the responsibility for paying, adjusting, and defending the claim shall be returned to the permissibly self-insured employer or group of employers, or the Self-Insurers' Security Fund.

These provisions shall apply to all pending and future insolvencies. For purposes of this paragraph, a pending insolvency is one involving a company that is currently receiving benefits from the guaranty association.

(d) "Admitted to transact insurance in this state" means an insurer possessing a valid certificate of authority issued by the department.

(e) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) "Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(h) "Ocean marine insurance" includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance such as hull and machinery, marine builders' risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.

(i) "Unearned premium" means that portion of a premium as calculated by the liquidator that had not been earned because of the cancellation of the insolvent insurer's policy and is that premium remaining for the unexpired term of the insolvent insurer's policy. "Unearned premium" does not include any amount sought as return of a premium under any policy providing retroactive insurance of a known loss or return of a premium under any retrospectively rated policy or a policy subject to a contingent surcharge or any policy in which the final determination of the premium cost is computed after expiration of the policy and is calculated on the basis of actual loss experience during the policy period.

SEC. 128. Section 1063.2 of the Insurance Code is amended to read:

1063.2. (a) The association shall pay and discharge covered claims and in connection therewith pay for or furnish loss adjustment services and defenses of claimants when required by policy provisions. It may do so either directly by itself or through a servicing facility or through a contract for reinsurance and assumption of liabilities by one or more member insurers or through a contract with the liquidator, upon terms satisfactory to the association and to the liquidator, under which payments on

covered claims would be made by the liquidator using funds provided by the association.

(b) The association shall be a party in interest in all proceedings involving a covered claim, and shall have the same rights as the insolvent insurer would have had if not in liquidation, including, but not limited to, the right to: (1) appear, defend, and appeal a claim in a court of competent jurisdiction~~;~~, (2) receive notice of, investigate, adjust, compromise, settle, and pay a covered claim~~;~~, and (3) investigate, handle, and deny a noncovered claim. The association shall have no cause of action against the insureds of the insolvent insurer for any sums it has paid out, except as provided by this article.

(c) (1) If damages against uninsured motorists are recoverable by the claimant from his or her own insurer, the applicable limits of the uninsured ~~motorists~~ *motorist* coverage shall be a credit against a covered claim payable under this article. Any person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, he or she shall seek recovery first from the association of the permanent location of the property, and if it is a workers' compensation claim, he or she shall seek recovery first from the association of the residence of the claimant. Any recovery under this article shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent. A member insurer may recover in subrogation from the association only one-half of any amount paid by ~~such~~ *that* insurer under uninsured motorist coverage for bodily injury or wrongful death (and nothing for a payment for anything else), in those cases where the injured person insured by such an insurer has proceeded under his or her uninsured motorist coverage on the ground that the tort-feasor is uninsured as a result of the insolvency of his or her liability insurer (an insolvent insurer as defined in this article), provided that ~~such~~ *the* member insurer shall waive all rights of subrogation against such tort-feasor. Any amount paid a claimant in excess of the amount authorized by this section may be recovered by action, or other proceeding, brought by the association.

(2) Any claimant having collision coverage on a loss which is covered by the insolvent company's liability policy shall first proceed against his or her collision carrier. Neither that claimant nor the collision carrier, if it is a member of the association, shall have the right to sue or continue a suit against the insured of the insolvent insurance company for ~~such~~ *that* collision damage.

(d) The association shall have the right to recover from any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this article the amount of any covered claim and allocated claims expense paid on behalf of that person pursuant to this article.

(e) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim, shall be required to first exhaust his or her right under the program. Any amount payable on a covered claim shall be reduced by the amount of any recovery under the program.

(f) "Covered claims" for unearned premium by lenders under insurance premium finance agreements as defined in Section 673 shall be computed as of the earliest cancellation date of the policy pursuant to Section 673 or subdivision (g) of this section.

(g) "Covered claims" shall not include any judgments against or obligations or liabilities of the insolvent insurer or the commissioner, as liquidator, or otherwise resulting from alleged or proven torts, nor shall any default judgment or stipulated judgment against the insolvent insurer, or against the insured of the insolvent insurer, be binding against the association.

(h) "Covered claims" shall not include any loss adjustment expenses, including adjustment fees and expenses, ~~attorney~~ *attorney's* fees and expenses, court costs, interest, and bond premiums, incurred prior to the appointment of a liquidator.

SEC. 129. Section 1765 of the Insurance Code is amended to read:

1765. (a) A license under this chapter shall be applied for and renewed by the filing with the commissioner of a written application therefor, in accordance with Section 1652.

(b) Subject to subdivision (f), the commissioner shall issue a license authorizing any applicant who is trustworthy and competent to transact an insurance brokerage business in a manner as to safeguard the interest of the insured, to act as a surplus line broker

from the date of the license until the expiration date specified in Section 1630.

(c) An applicant for a surplus line broker's license shall, as part of the application and a condition of the issuance of the license, file a bond to the people of the State of California in the sum of fifty thousand dollars ($50,000), conditioned that the licensee will fully and faithfully comply with the requirements of this chapter, and all applicable provisions of this code. The bond shall be subject to Sections 1662 and 1663. A surplus line broker bond is not required for an individual licensed as a surplus line broker who ~~only~~ transacts *only* on behalf of a licensed surplus line broker organization.

(d) The filing fee for a license to act as a surplus line broker shall be one thousand dollars ($1,000) every two years, or for any initial fractional license year. For an individual licensed as a surplus line broker who only transacts on behalf of a surplus line broker organization, the filing fee shall be five hundred dollars ($500) every two years, or for any initial fractional license year. Every applicant for a business entity license, as provided in subdivision (a) of Section 1765.2, shall provide the names of all persons who may exercise the power and perform the duties under the license. Whenever an organization licensed as a surplus line broker desires to change, remove, or add to the natural person or persons who are to transact insurance under authority of its license, it shall immediately file an application or notice with the commissioner for an endorsement changing its license accordingly, on a form prescribed by the commissioner. The fee for adding or removing from any surplus line broker's license issued to an organization the name of any natural person, named thereon, shall be twenty-four dollars ($24). The commissioner shall require that the qualifying examination provided by subdivision (a) of Section 1676 be taken by any natural person named by the organization to exercise its agency or brokerage powers who would be required to take and pass the qualifying examination. That natural person or persons and the organization are in all other respects subject to the provisions of this chapter and the insurance laws.

(e) The department is authorized to collect additional license fees resulting from the increases in ~~licensee~~ *license* fees provided by ~~the act that adds this subdivision~~ *Chapter 29 of the Statutes of*

2008 and shall credit any overpayment resulting from reductions in license fees provided by that act.

(f) A business entity licensed under this chapter shall provide two hours of appropriate training to its employees who solicit, negotiate, or effect insurance coverage placed by a nonadmitted insurer. The training shall be given to each eligible employee every five years. The surplus line advisory organization authorized pursuant to Chapter 6.1 (commencing with Section 1780.50) shall develop the curriculum for the training.

(g) The license shall be renewed in accordance with, and subject to, Sections 1717, 1718, 1719, and 1720.

(h) The commissioner may deny, suspend, or revoke any license applied for or granted pursuant to this chapter on all or any one of the grounds and in accordance with the procedures provided in Article 6 (commencing with Section 1666) and Article 13 (commencing with Section 1737) of Chapter 5, whenever the commissioner finds that the applicant or licensee has committed a violation of any provision of this code.

SEC. 130. Section 10123.145 of the Insurance Code is amended to read:

10123.145. (a) Whenever an insurer issuing group or individual policies of disability insurance which covers hospital, medical, or surgical expenses determines that in reimbursing a claim for provider services an institutional or professional provider has been overpaid, and then notifies the provider in writing through a separate notice identifying the overpayment and the amount of the overpayment, the provider shall reimburse the insurer within 30 working days of receipt by the provider of the notice of overpayment unless the overpayment or portion thereof is contested by the provider in which case the insurer shall be notified, in writing, within 30 working days. The notice that an overpayment is being contested shall identify the portion of the overpayment that is contested and the specific reasons for contesting the overpayment.

If the provider does not make reimbursement for an uncontested overpayment within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the ~~30 working day~~ *30-working-day* period.

(b) (1) This subdivision shall only apply to a health insurance policy covering dental services or a specialized health insurance policy covering dental services.

(2) The insurer's notice of overpayment shall inform the provider how to access the insurer's dispute resolution mechanism offered pursuant to subdivision (a) of Section 10123.137. The notice shall include the name and address to which the dispute should be submitted and a statement that Section 10123.145 *of the Insurance Code* requires a provider to reimburse the insurer for an overpayment within 30 working days of receipt by the provider of the notice of overpayment unless the provider contests the overpayment within 30 working days. The notice shall also include information clearly identifying the claim, the name of the patient, the date of service, and a clear explanation of the basis upon which the insurer believes the amount paid on the claim was in excess of the amount due, including interest and penalties on the claim. The notice shall also include a statement that if the provider does not make reimbursement of an uncontested overpayment within 30 working days after receipt of the notice, interest shall accrue at a rate of 10 percent per annum.

SEC. 131. Section 10232.2 of the Insurance Code, as added by Section 3 of Chapter 699 of the Statutes of 1997, is repealed.

~~10232.2. (a) Every insurer that offers policies or certificates that are intended to be federally qualified long-term care insurance contracts, including riders to life insurance policies providing long-term care coverage, shall fairly and affirmatively concurrently offer and market long-term care insurance policies or certificates that are not intended to be federally qualified, as described in subdivision (a) of Section 10232.1.~~

~~(b) All long-term care insurance contracts, including riders to life insurance contracts providing long-term care coverage, approved after the effective date of this section shall meet all of the requirements of this chapter.~~

~~(c) Until January 1, 1999, or 90 days after approval of contracts submitted for approval pursuant to subdivision (b), whichever comes first, insurers may continue to offer and market previously approved long-term care insurance contracts.~~

~~(d) Group policies issued prior to January 1, 1997, shall be allowed to remain in force and not be required to meet the requirements of this chapter, as amended during the 1997 portion~~

~~of the 1997-98 Regular Session, unless those polices cease to be treated as federally qualified long-term care insurance contracts. If such a policy or certificate issued on such a group policy ceases to be a federally qualified long-term care insurance contract under the grandfather rules issued by the United States Department of the Treasury pursuant to Section 7702B(f)(2) of the Internal Revenue Code, the insurer shall offer the policy and certificate holders the option to convert, on a guaranteed-issue basis, to a policy or certificate that is federally tax qualified if the insurer sells tax-qualified policies.~~

SEC. 132. Section 10232.2 of the Insurance Code, as added by Section 2 of Chapter 700 of the Statutes of 1997, is repealed.

~~10232.2. (a) Every insurer that offers policies or certificates that are intended to be federally qualified long-term care insurance contracts, including riders of life insurance contracts providing long-term care coverage, shall fairly and affirmatively concurrently offer and market long-term care insurance policies or certificates that are not intended to be federally qualified, as described in subdivision (a) of Section 10232.1.~~

~~(b) All long-term care insurance contracts, including riders to life insurance contracts providing long-term care coverage, approved after the effective date of this section shall meet all of the requirements of this chapter.~~

~~(c) Until January 1, 1999, or 90 days after approval of contracts submitted for approval pursuant to subdivision (b), whichever comes first, insurers may continue to offer and market previously approved long-term care insurance contracts.~~

~~(d) Group policies issued prior to January 1, 1997, shall be allowed to remain in force and not be required to meet the requirements of this chapter, as amended during the 1997 portion of the 1997-98 Regular Session, unless those policies cease to be treated as federally qualified long-term care insurance contracts. If such a policy or certificate issued on such a group policy ceases to be a federally qualified long-term care insurance contract under the grandfather rules issued by the United States Department of the Treasury pursuant to Section 7702B(f)(2) of the Internal Revenue Code, the insurer shall offer the policy and certificate holders the option to convert, on a guaranteed-issue basis, to a policy or certificate that is federally tax qualified if the insurer sells tax-qualified policies.~~

SEC. 133. Section 12693.43 of the Insurance Code is amended to read:

12693.43. (a) Applicants applying to the purchasing pool shall agree to pay family contributions, unless the applicant has a family contribution sponsor. Family contribution amounts consist of the following two components:

(1) The flat fees described in subdivision (b) or (d).

(2) Any amounts that are charged to the program by participating health, dental, and vision plans selected by the applicant that exceed the cost to the program of the highest cost Family Value Package in a given geographic area.

(b) In each geographic area, the board shall designate one or more Family Value Packages for which the required total family contribution is:

(1) Seven dollars ($7) per child with a maximum required contribution of fourteen dollars ($14) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Nine dollars ($9) per child with a maximum required contribution of twenty-seven dollars ($27) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level and for applicants on behalf of children described in clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 12693.70. Commencing the first day of the fifth month following the enactment of the 2008–09 Budget Act, the family contribution pursuant to this paragraph shall be twelve dollars ($12) per child with a maximum required contribution of thirty-six dollars ($36) per month per family.

(3) (A) On and after July 1, 2005, fifteen dollars ($15) per child with a maximum required contribution of forty-five dollars ($45) per month per family for applicants with annual household income to which subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is applicable. Notwithstanding any other provision of law, if an application with an effective date prior to July 1, 2005, was based on annual household income to which subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is applicable, ~~then~~ this subparagraph shall be applicable to the applicant on July 1, 2005, unless subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is no longer

applicable to the relevant family income. The program shall provide prior notice to any applicant for currently enrolled subscribers whose premium will increase on July 1, 2005, pursuant to this subparagraph and, prior to the date the premium increase takes effect, shall provide that applicant with an opportunity to demonstrate that subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is no longer applicable to the relevant family income.

(B) Commencing the first day of the fifth month following the enactment of the 2008–09 Budget Act, the family contribution pursuant to this paragraph shall be seventeen dollars ($17) per child with a maximum required contribution of fifty-one dollars ($51) per month per family.

(c) Combinations of health, dental, and vision plans that are more expensive to the program than the highest cost Family Value Package may be offered to and selected by applicants. However, the cost to the program of those combinations that exceeds the price to the program of the highest cost Family Value Package shall be paid by the applicant as part of the family contribution.

(d) The board shall provide a family contribution discount to those applicants who select the health plan in a geographic area that has been designated as the Community Provider Plan. The discount shall reduce the portion of the family contribution described in subdivision (b) to the following:

(1) A family contribution of four dollars ($4) per child with a maximum required contribution of eight dollars ($8) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Six dollars ($6) per child with a maximum required contribution of eighteen dollars ($18) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level and for applicants on behalf of children described in clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 12693.70. Commencing the first day of the fifth month following the enactment of the 2008–09 Budget Act, the family contribution pursuant to this paragraph shall be nine dollars ($9) per child with a maximum required contribution of twenty-seven dollars ($27) per month per family.

(3) (A) On and after July 1, 2005, twelve dollars ($12) per child with a maximum required contribution of thirty-six dollars ($36) per month per family for applicants with annual household income to which subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is applicable. Notwithstanding any other provision of law, if an application with an effective date prior to July 1, 2005, was based on annual household income to which subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is applicable, then this subparagraph shall be applicable to the applicant on July 1, 2005, unless subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is no longer applicable to the relevant family income. The program shall provide prior notice to any applicant for currently enrolled subscribers whose premium will increase on July 1, 2005, pursuant to this subparagraph and, prior to the date the premium increase takes effect, shall provide that applicant with an opportunity to demonstrate that subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is no longer applicable to the relevant family income.

(B) Commencing the first day of the fifth month following the enactment of the 2008–09 Budget Act, the family contribution pursuant to this paragraph shall be fourteen dollars ($14) per child with a maximum required contribution of forty-two dollars ($42) per month per family.

(e) Applicants, but not family contribution sponsors, who pay three months of required family contributions in advance shall receive the fourth consecutive month of coverage with no family contribution required.

(f) Applicants, but not family contribution sponsors, who pay the required family contributions by an approved means of electronic fund transfer shall receive a 25-percent discount from the required family contributions.

(g) It is the intent of the Legislature that the family contribution amounts described in this section comply with the premium cost sharing limits contained in Section 2103 of Title XXI of the Social Security Act. If the amounts described in subdivision (a) are not approved by the federal government, the board may adjust these amounts to the extent required to achieve approval of the state plan.

(h) The adoption and one readoption of regulations to implement paragraph (3) of subdivision (b) and paragraph (3) of subdivision (d) shall be deemed to be an emergency and necessary for the immediate preservation of public peace, health, and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the board is hereby exempted from the requirement that it describe specific facts showing the need for immediate action and from review by the Office of Administrative Law. For purpose of subdivision (e) of Section 11346.1 of the Government ~~code~~ *Code*, the 120-day period, as applicable to the effective period of an emergency regulatory action and submission of specified materials to the Office of Administrative ~~law~~ *Law*, is hereby extended to 180 days.

(i) The board may adopt, and may only ~~one-time~~ *one time* readopt, regulations to implement the changes to this section that are effective the first day of the fifth month following the enactment of the 2008–09 Budget Act. The adoption and one-time readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the board is hereby exempted for this purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code.

SEC. 134. Section 12957 of the Insurance Code is amended to read:

12957. The commissioner shall not withdraw approval of a policy ~~theretofore~~ *previously* approved by him *or her* except upon those grounds as, in his *or her* opinion, would authorize disapproval upon original submission thereof. Any withdrawal of approval shall be in writing and shall specify the ground thereof. If the insurer demands a hearing on a withdrawal, the hearing shall be granted and commenced within ~~thirty~~ *30* days of *the* filing of a written demand ~~therefor~~ with the commissioner. Unless the hearing is ~~so~~ commenced, the notice of withdrawal shall become ineffective upon the ~~thirty-first~~ *31st* day from and after the date of filing of the demand.

This section shall not apply to policies subject to the provisions of subdivision (f) of Section 10291.5, or to policies, contracts, or agreements that were approved under an alternative filing and approval procedure as provided for in subdivision (f) of Section 10506.4 or subdivision (c) of Section 10507.5.

SEC. 135. Section 87 of the Labor Code is amended to read:

87. All persons, other than temporary employees, serving in the state civil service and engaged in the performance of a function transferred pursuant to this chapter, or engaged in the administration of a law, the administration of which is transferred pursuant to this chapter, shall, in accordance with Section ~~19370~~ *19050.9* of the Government Code, remain in the state civil service and are hereby transferred to the Division of Labor Standards Enforcement. The status, positions, and rights of ~~such~~ *those* persons shall not be affected by their transfer and shall continue to be retained by them pursuant to the State Civil Service Act *(Part 2 (commencing with Section 18500) of Division 5 of Title 5 of the Government Code)*, except as to positions the duties of which are vested in a position that is exempt from civil service.

SEC. 136. Section 2699.5 of the Labor Code is amended to read:

2699.5. The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and

2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

SEC. 137. Section 3702.1 of the Labor Code is amended to read:

3702.1. (a) No person, firm, or corporation, other than an insurer admitted to transact workers' compensation insurance in this state, shall contract to administer claims of self-insured employers as a third-party administrator unless in possession of a certificate of consent to administer self-insured ~~employers~~ *employers'* workers' compensation claims.

(b) As a condition of receiving a certificate of consent, all persons given discretion by a third-party administrator to deny, accept, or negotiate a workers' compensation claim shall demonstrate their competency to the director by written examination, or other methods approved by the director.

(c) A separate certificate shall be required for each adjusting location operated by a third-party administrator. A third-party administrator holding a certificate of consent shall be subject to regulation only under this division with respect to the adjustment, administration, and management of workers' compensation claims for any self-insured employer.

(d) A third-party administrator retained by a self-insured employer to administer the employer's workers' compensation claims shall estimate the total accrued liability of the employer for the payment of compensation for the employer's annual report to the director and shall make the estimate both in good faith and with the exercise of a reasonable degree of care. The use of a third-party administrator shall not, however, discharge or alter the employer's responsibilities with respect to the report.

SEC. 138. Section 1023 of the Military and Veterans Code is amended to read:

1023. (a) The department may sue and be sued in any of the courts of this state. All property held by the department for the home shall be held in trust for the state and for the use and benefit of the home. The administrator shall manage the home and administer its affairs, and, subject to the direction of the director, adopt rules and regulations for the government of the home in conformity, as nearly as possible, to the rules and regulations of

the United States ~~Veterans' Administration~~ *Department of Veterans Affairs* for their facilities.

(b) The Director of General Services may lease or let any real property held by the department for the home, and not needed for any direct or immediate purpose of the home, to any entity or person upon terms and conditions determined to be in the best interests of the home. In any leasing or letting, primary consideration shall be given to the use of real property for agricultural purposes, and except as provided in Section 1048, all ~~money~~ *moneys* received in connection ~~therein~~ *therewith* shall be deposited in the General Fund to the credit of, and shall augment the current appropriation for the support of, the home.

SEC. 139. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b), (c), and (d), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of the terms as written of any process or court order or out-of-state court order, lawfully issued by any court, including orders pending trial.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness~~;~~ or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or

written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by telephone or mail, or directly, and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay-away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, or elder or dependent adult abuse, as defined in Section 368, or that is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) apply to the following court orders:

(A) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of

a prior conviction for a violation of any of those orders and involving an act of violence or "a credible threat" of violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or ~~Sections~~ *Section* 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under the provisions of subdivision (g) of Section 12021.

(2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(e) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall impose probation consistent with ~~the provisions of~~ Section 1203.097 of the Penal Code.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of

subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c) may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 140. Section 326.4 of the Penal Code is amended to read:

326.4. ~~326.4.~~ (a) Consistent with the Legislature's finding that card-minding devices, as described in subdivision (p) of Section 326.5, are the only permissible electronic devices to be used by charity bingo players, and in an effort to ease the transition to remote caller bingo on the part of those nonprofit organizations that, as of July 1, 2008, used electronic devices other than card-minding devices to conduct games in reliance on an ordinance of a city, county, or city and county that, as of July 1, 2008, expressly recognized the operation of electronic devices other than card-minding devices by organizations purportedly authorized to conduct bingo in the city, county, or city and county, there is hereby created the Charity Bingo Mitigation Fund.

(b) The Charity Bingo Mitigation Fund shall be administered by the *California* Gambling Control Commission.

(c) Mitigation payments to be made by the Charity Bingo Mitigation Fund shall not exceed five million dollars *($5,000,000)* in the aggregate.

(d) (1) To allow the Charity Bingo Mitigation Fund to become immediately operable, five million dollars ($5,000,000) shall be loaned from the accrued interest in the Indian Gaming Special Distribution Fund to the Charity Bingo Mitigation Fund on~~,~~ or

after January 1, 2009, to make mitigation payments to eligible nonprofit organizations. Five million dollars ($5,000,000) of this loan amount is hereby appropriated to the *California* Gambling Control Commission for the purposes of providing mitigation payments to certain charitable organizations, as described in subdivision (e). Pursuant to Section 16304 of the Government Code, after three years the unexpended balance shall revert back to the Charity Bingo Mitigation Fund.

(2) To reimburse the Special Distribution Fund, those nonprofit organizations that conduct a remote caller bingo game pursuant to Section 326.3 shall pay to the *California* Gambling Control Commission an amount equal to 5 percent of the gross revenues of each remote caller bingo game played until that time as the full advanced amount plus interest on the loan at the rate accruing to moneys in the Pooled Money Investment Account is reimbursed.

(e) (1) An organization meeting the requirements in subdivision (a) shall be eligible to receive mitigation payments from the Charity Bingo Mitigation Fund only if the city, county, or city and county in which the organization is located maintained official records of the net revenues generated for the fiscal year ending June 30, 2008, by the organization from the use of electronic devices or the organization maintained audited financial records for the fiscal year ending June 30, 2008, which show the net revenues generated from the use of electronic devices.

(2) In addition, an organization applying for mitigation payments shall provide proof that its board of directors has adopted a resolution and its chief executive officer has signed a statement executed under penalty of perjury stating that, as of January 1, 2009, the organization has ceased using electronic devices other than card-minding devices, as described in subdivision (p) of Section 326.5, as a fundraising tool.

(3) Each eligible organization may apply to the *California* Gambling Control Commission no later than January 31, 2009, for the mitigation payments in the amount equal to net revenues from the fiscal year ending June 30, 2008, by filing an application, including therewith documents and other proof of eligibility, including any and all financial records documenting the organization's net revenues for the fiscal year ending June 30, 2008, as the *California* Gambling Control Commission may require. The *California* Gambling Control Commission is

authorized to access and examine the financial records of charities requesting funding in order to confirm the legitimacy of the request for funding. In the event that the total of those requests exceeds five million dollars ($5,000,000), payments to all eligible applicants shall be reduced in proportion to each requesting organization's reported or audited net revenues from the operation of electronic devices.

SEC. 141. Section 599f of the Penal Code is amended to read:

599f. (a) No slaughterhouse, stockyard, auction, market agency, or dealer shall buy, sell, or receive a nonambulatory animal.

(b) No slaughterhouse shall process, butcher, or sell meat or products of nonambulatory animals for human consumption.

(c) No slaughterhouse shall hold a nonambulatory animal without taking immediate action to humanely euthanize the animal.

(d) No stockyard, auction, market agency, or dealer shall hold a nonambulatory animal without taking immediate action to humanely euthanize the animal or to provide immediate veterinary treatment.

(e) While in transit or on the premises of a stockyard, auction, market agency, dealer, or slaughterhouse, a nonambulatory animal may not be dragged at any time, or pushed with equipment at any time, but shall be moved with a sling or on a stoneboat or other sled-like or wheeled conveyance.

(f) No person shall sell, consign, or ship any nonambulatory animal for the purpose of delivering a nonambulatory animal to a slaughterhouse, stockyard, auction, market agency, or dealer.

(g) No person shall accept a nonambulatory animal for transport or delivery to a slaughterhouse, stockyard, auction, market agency, or dealer.

(h) A violation of this section is subject to imprisonment in ~~the~~ *a* county jail for a period not to exceed one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both that fine and imprisonment.

(i) As used in this section, "nonambulatory" means unable to stand and walk without assistance.

(j) As used in this section, "animal" means live cattle, swine, sheep, or goats.

(k) As used in this section, "humanely ~~euthanized"~~ *euthanize"* means to kill by a mechanical, chemical, or electrical method that rapidly and effectively renders the animal insensitive to pain.

SEC. 142. Section 626.2 of the Penal Code is amended to read:

626.2. Every student or employee who, after a hearing, has been suspended or dismissed from a community college, a state university, the university, or a public or private school for disrupting the orderly operation of the campus or facility of the institution, and as a condition of the suspension or dismissal has been denied access to the campus or facility, or both, of the institution for the period of the suspension or in the case of dismissal for a period not to exceed one year; who has been served by registered or certified mail, at the last address given by that person, with a written notice of the suspension or dismissal and condition; and who willfully and knowingly enters upon the campus or facility of the institution to which he or she has been denied access, without the express written permission of the chief administrative officer of the campus or facility, is guilty of a misdemeanor and shall be punished as follows:

(a) Upon a first conviction, by a fine ~~of~~ not exceeding five hundred dollars ($500), by imprisonment in ~~the~~ *a* county jail for a period of not more than six months, or by both ~~the~~ *that* fine and imprisonment.

(b) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in ~~the~~ *a* county jail for a period of not less than 10 days or more than six months, or by both that imprisonment and a fine ~~of~~ not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(c) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in ~~the~~ *a* county jail for a period of not less than 90 days or more than six months, or by both that imprisonment and a fine ~~of~~ not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

Knowledge shall be presumed if notice has been given as prescribed in this section. The presumption established by this section is a presumption affecting the burden of proof.

SEC. 143. Section 626.8 of the Penal Code is amended to read:

626.8. (a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of the school or disrupt the school or its pupils or school activities, is guilty of a misdemeanor if he or she does any of the following:

(1) Remains there after being asked to leave by the chief administrative official of that school or his or her designated representative, or by a person employed as a member of a security or police department of a school district pursuant to Section 39670 of the Education Code, or a city police officer, or sheriff or deputy sheriff, or a Department of the California Highway Patrol peace officer.

(2) Reenters or comes upon that place within seven days of being asked to leave by a person specified in paragraph (1).

(3) Has otherwise established a continued pattern of unauthorized entry.

This section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly.

(b) Punishment for violation of this section shall be as follows:

(1) Upon a first conviction by a fine ~~of~~ not exceeding five hundred dollars ($500), by imprisonment in ~~the~~ *a* county jail for a period of not more than six months, or by both ~~the~~ *that* fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in ~~the~~ *a* county jail for a period of not less than 10 days or more than six months, or by both imprisonment and a fine ~~of~~ not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in ~~the~~ *a* county jail for a period of not less than 90 days or more than six months, or by both imprisonment and a fine ~~of~~ not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

(c) As used in this section, the following definitions apply:

(1) "Lawful business" means a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance.

(2) "Continued pattern of unauthorized entry" means that on at least two prior occasions in the same school year the defendant came into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and his or her presence or acts interfered with the peaceful conduct of the activities of the school or disrupted the school or its pupils or school activities, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

(3) "School" means any preschool or public or private school having *kindergarten or* any of grades ~~kindergarten through~~ *1 to* 12, inclusive.

(d) When a person is directed to leave pursuant to paragraph (1) of subdivision (a), the person directing him or her to leave shall inform the person that if he or she reenters the place within seven days he or she will be guilty of a crime.

SEC. 144. Section 653.2 of the Penal Code is amended to read:

653.2. (a) Every person who, with intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action, is guilty of a misdemeanor punishable by up to one year in ~~the~~ *a* county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) For purposes of this section, ~~the term~~ "electronic communication device" includes, but is not limited to, telephones, cell phones, computers, Internet Web pages or sites, Internet phones, hybrid cellular/Internet/wireless devices, personal digital assistants (PDAs), video recorders, fax machines, or pagers.

"Electronic communication" has the same meaning as the term is defined in Section 2510(12) of Title 18 of the United States Code.

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

(1) "Harassment" means a knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.

(2) "Of a harassing nature" means ~~information~~ *of a nature* that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing *of* the person and that serves no legitimate purpose.

SEC. 145. Section 831.5 of the Penal Code is amended to read:

831.5. (a) As used in this section, a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of San Diego County, Fresno County, Kern County, Stanislaus County, Riverside County, Santa Clara County, or a county having a population of 425,000 or less who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein. Custodial officers of a county shall be employees of, and under the authority of, the sheriff, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it. A custodial officer includes a person designated as a correctional officer, jailer, or other similar title. The duties of a custodial officer may include the serving of warrants, court orders, writs, and subpoenas in the detention facility or under circumstances arising directly out of maintaining custody of prisoners and related tasks.

(b) A custodial officer has no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the sheriff or chief of police, while engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots, lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of the sheriff or chief of police.

(c) Each person described in this section as a custodial officer shall, within 90 days following the date of the initial assignment to that position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a custodial officer shall, within one year following the date of the initial assignment as a custodial officer, have satisfactorily met the minimum selection and training standards prescribed by the ~~Board of~~ Corrections *Standards Authority* pursuant to Section 6035. Persons designated as custodial officers, before the expiration of the 90-day and one-year periods described in this subdivision, who have not yet completed the required training, shall not carry or possess firearms in the performance of their prescribed duties, but may perform the duties of a custodial officer only while under the direct supervision of a peace officer, as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required in this section.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may make warrantless arrests pursuant to Section 836.5 only during the duration of his or her job; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

(g) Custodial officers employed by the Santa Clara County Department of Corrections are authorized to perform the following additional duties in the facility:

(1) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce.

(2) Search property, cells, prisoners or visitors.

(3) Conduct strip or body cavity searches of prisoners pursuant to Section 4030.

(4) Conduct searches and seizures pursuant to a duly issued warrant.

(5) Segregate prisoners.

(6) Classify prisoners for the purpose of housing or participation in supervised activities.

These duties may be performed at the Santa Clara Valley Medical Center as needed and only as they directly relate to guarding inpatient, in-custody inmates. This subdivision shall not be construed to authorize the performance of any law enforcement activity involving any person other than the inmate or his or her visitors.

(h) Nothing in this section shall authorize a custodial officer to carry or possess a firearm when the officer is not on duty.

(i) It is the intent of the Legislature that this section, as it relates to Santa Clara County, enumerate specific duties of custodial officers (known as "correctional officers" in Santa Clara County) and to clarify the relationships of the correctional officers and deputy sheriffs in Santa Clara County. These duties are the same duties of the custodial officers prior to the date of enactment of ~~Senate Bill 1019 of the 1999–2000 Regular Session of the Legislature~~ *Chapter 635 of the Statutes of 1999* pursuant to local rules and judicial decisions. It is further the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process between the County of Santa Clara and the authorized bargaining representative for the custodial officers. However, nothing in this section shall be construed to assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs nor to affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs.

(j) This section shall become operative on January 1, 2003.

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

~~In order to finally, fully, and expeditiously implement the voters' wishes in creating the county department of corrections, giving it~~

~~explicit direction to operate the county jails for all sentenced and unsentenced prisoners under authority of the county board of supervisors, it is necessary that this act take effect immediately.~~

SEC. 146. Section 1170.3 of the Penal Code, as amended by Section 3 of Chapter 416 of the Statutes of 2008, is amended to read:

1170.3. The Judicial Council shall seek to promote uniformity in sentencing under Section 1170~~,~~ by:

(a) The adoption of rules providing criteria for the consideration of the trial judge at the time of sentencing regarding the court's decision to:

(1) Grant or deny probation.

(2) Impose the lower, middle, or upper prison term.

(3) Impose concurrent or consecutive sentences.

(4) Determine whether or not to impose an enhancement where that determination is permitted by law.

(b) The adoption of rules standardizing the minimum content and the sequential presentation of material in probation officer reports submitted to the court.

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

SEC. 147. Section 1170.3 of the Penal Code, as amended by Section 4 of Chapter 416 of the Statutes of 2008, is amended to read:

1170.3. The Judicial Council shall seek to promote uniformity in sentencing under Section 1170~~,~~ by:

(a) The adoption of rules providing criteria for the consideration of the trial judge at the time of sentencing regarding the court's decision to:

(1) Grant or deny probation.

(2) Impose the lower or upper prison term.

(3) Impose concurrent or consecutive sentences.

(4) Determine whether or not to impose an enhancement where that determination is permitted by law.

(b) The adoption of rules standardizing the minimum content and the sequential presentation of material in probation officer reports submitted to the court.

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

SEC. 148. Section 1369.1 of the Penal Code is amended to read:

1369.1. (a) As used in this chapter, for the sole purpose of administering antipsychotic medication pursuant to a court order, "treatment facility" includes a county jail. Upon the concurrence of the county board of supervisors, the county mental health director, and the county sheriff, the jail may be designated to provide medically approved medication to defendants found to be mentally incompetent and unable to provide informed consent due to a mental disorder, pursuant to this chapter. In the case of Madera, Napa, and Santa Clara Counties, the concurrence shall be with the board of supervisors, the county mental health director, and the county sheriff or the chief of corrections. The provisions of Sections 1370 and 1370.01 shall apply to antipsychotic medications provided in a county jail, provided, however, that the maximum period of time a defendant may be treated in a treatment facility pursuant to this section shall not exceed six months.

(b) The State Department of Mental Health shall report to the Legislature on or before January 1, 2009, on all of the following:

(1) The number of defendants in the state who are incompetent to stand trial.

(2) The resources available at state hospitals and local mental health facilities, other than jails, for returning these defendants to competence.

(3) Additional resources that are necessary to reasonably treat, in a reasonable period of time, at the state and local levels, excluding jails, defendants who are incompetent to stand trial.

(4) What, if any, statewide standards and organizations exist concerning local treatment facilities that could treat defendants who are incompetent to stand trial.

(5) Address the concerns regarding defendants who are incompetent to stand trial who are currently being held in jail awaiting treatment.

(c) This section does not abrogate or limit any provision of law enacted to ensure the due process rights set forth in Sell v. United States (2003) 539 U.S. 166.

~~(d)This~~

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

SEC. 149. Section 12011 of the Penal Code is amended to read:

12011. The Prohibited Armed Persons File database shall function as follows:

(a) Upon entry into the Automated Criminal History System of a disposition for a conviction of any felony, a conviction for any firearms-prohibiting charge specified in Section 12021, a conviction for an offense described in Section 12021.1, a firearms prohibition pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, or any firearms possession prohibition identified by the federal National Instant *Criminal Background* Check System, the Department of Justice shall determine if the subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1991, or an assault weapon registration, or a .50 BMG rifle registration.

(b) Upon an entry into any department automated information system that is used for the identification of persons who are prohibited by state or federal law from acquiring, owning, or possessing firearms, the department shall determine if the subject has an entry in the Consolidated Firearms Information System indicating ownership or possession of a firearm on or after January 1, 1991, or an assault weapon registration, or a .50 BMG rifle registration.

(c) If the department determines that, pursuant to subdivision (a) or (b), the subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1991, or an assault weapon registration, or a .50 BMG rifle registration, the following information shall be entered into the Prohibited Armed Persons File:

(1) The subject's name.

(2) The subject's date of birth.

(3) The subject's physical description.

(4) Any other identifying information regarding the subject that is deemed necessary by the Attorney General.

(5) The basis of the firearms possession prohibition.

(6) A description of all firearms owned or possessed by the subject, as reflected by the Consolidated Firearms Information System.

SEC. 150. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, ~~the term~~ "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice. The Department of Justice shall examine its records and records available to the department in the National Instant Criminal Background Check System in order to determine if the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm and issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited by state or federal law from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms

capable of being concealed upon the person, outside the building designated in the license, provided *that* the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is prohibited by state or federal law from ~~processing~~ *possessing*, owning, purchasing, or receiving a firearm. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the reason for the prohibition.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) and paragraph (1) of subdivision (f) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(B) "IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(C) "IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(D) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE

TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(E) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."

(F) "NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD."

(8) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no dealer may deliver a handgun unless the person receiving the handgun presents to the dealer a valid handgun safety certificate. The firearms dealer shall retain a photocopy of the handgun safety certificate as proof of compliance with this requirement.

(C) Commencing January 1, 2003, no handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indicating that he or she is a California resident. Satisfactory documentation shall include a utility bill from within the last three months, a residential lease, a property deed, or military permanent duty station orders indicating assignment within this state, or other evidence of residency as permitted by the Department of Justice. The firearms dealer shall

retain a photocopy of the documentation as proof of compliance with this requirement.

(D) Commencing January 1, 2003, except as authorized by the department, no firearms dealer may deliver a handgun unless the recipient performs a safe handling demonstration with that handgun. The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness, that is, the firearm is pointed in a safe direction, preferably down at the ground, and trigger discipline, that is, the trigger finger is outside of the trigger guard and along side of the handgun frame, at all times, the handgun recipient shall correctly and safely perform the following:

(i) If the handgun is a semiautomatic pistol:

(I) Remove the magazine.

(II) Lock the slide back. If the model of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure that it is clear.

(III) Visually and physically inspect the chamber, to ensure that the handgun is unloaded.

(IV) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(V) Load one bright orange, red, or other readily identifiable dummy round into the magazine. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(VI) Insert the magazine into the magazine well of the firearm.

(VII) Manipulate the slide release or pull back and release the slide.

(VIII) Remove the magazine.

(IX) Visually inspect the chamber to reveal that a round can be chambered with the magazine removed.

(X) Lock the slide back to eject the bright orange, red, or other readily identifiable dummy round. If the handgun is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure that the chamber is clear. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(XI) Apply the safety, if applicable.

(XII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(ii) If the handgun is a double-action revolver:

(I) Open the cylinder.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) While maintaining muzzle awareness and trigger discipline, load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder and rotate the cylinder so that the round is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Close the cylinder.

(VI) Open the cylinder and eject the round.

(VII) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(VIII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(iii) If the handgun is a single-action revolver:

(I) Open the loading gate.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device required to be sold with the handgun. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) Load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder, close the loading gate and rotate the cylinder so that the round is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Open the loading gate and unload the revolver.

(VI) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(VII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(E) The recipient shall receive instruction regarding how to render that handgun safe in the event of a jam.

(F) The firearms dealer shall sign and date an affidavit stating that the requirements of subparagraph (D) have been met. The firearms dealer shall additionally obtain the signature of the handgun purchaser on the same affidavit. The firearms dealer shall retain the original affidavit as proof of compliance with this requirement.

(G) The recipient shall perform the safe handling demonstration for a department-certified instructor.

(H) No demonstration shall be required if the dealer is returning the handgun to the owner of the handgun.

(I) Department-certified instructors who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (j) of Section 12804.

(J) The persons who are exempt from the requirements of subdivision (b) of Section 12801, pursuant to Section 12807, are also exempt from performing the safe handling demonstration.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) Except as provided in subparagraphs (B) and (C) of paragraph (1) of subdivision (b), all firearms that are in the inventory of the licensee shall be kept within the licensed location. The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) Except as provided in subparagraphs (B) and (C) of paragraph (1) of subdivision (b), any time when the licensee is not open for business, all inventory firearms shall be stored in the licensed location. All firearms shall be secured using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county or within a city may impose security requirements that are more strict or are at a higher standard than those specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to ~~Chapter 44 (commencing with~~ Section ~~921)~~ *921 and following* of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 478.102 (c) of Title 27 of the Code of Federal Regulations.

(20) (A) Firearms dealers may require any agent who handles, sells, or delivers firearms to obtain and provide to the dealer a certificate of eligibility from the department pursuant to paragraph (4) of subdivision (a). The agent or employee shall provide on the

application~~,~~ the name and California firearms dealer number of the firearms dealer with whom he or she is employed.

(B) The department shall notify the firearms dealer in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing firearms.

(C) If the local jurisdiction requires a background check of the agents or employees of the firearms dealer, the agent or employee shall obtain a certificate of eligibility pursuant to subparagraph (A).

(D) Nothing in this paragraph shall be construed to preclude a local jurisdiction from conducting an additional background check pursuant to Section 11105 or prohibiting employment based on criminal history that does not appear as part of obtaining a certificate of eligibility, provided, however, that the local jurisdiction may not charge a fee for the additional criminal history check.

(E) The licensee shall prohibit any agent who the licensee knows or reasonably should know is within a class of persons prohibited from possessing firearms pursuant to Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code, from coming into contact with any firearm that is not secured and from accessing any key, combination, code, or other means to open any of the locking devices described in clause (ii) of subparagraph (G)~~ of this paragraph~~.

(F) Nothing in this paragraph shall be construed as preventing a local government from enacting an ordinance imposing additional conditions on licensees with regard to agents.

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

(i) An “agent” is an employee of the licensee.

(ii) “Secured” means a firearm that is made inoperable in one or more of the following ways:

(I) The firearm is inoperable because it is secured by a firearms safety device listed on the department’s roster of approved firearms safety devices pursuant to subdivision (d) of Section 12088~~ of this chapter~~.

(II) The firearm is stored in a locked gun safe or long-gun safe which meets the standards for department-approved gun safes set forth in Section 12088.2.

(III) The firearm is stored in a distinct locked room or area in the building that is used to store firearms that can only be unlocked by a key, a combination, or similar means.

(IV) The firearm is secured with a hardened steel rod or cable that is at least one-eighth of an inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least ½-inch diameter or metal grating of at least 9 gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(3) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(4) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in subdivision (a) of Section 478.124, Section 478.124a, and subdivision (e) of Section 478.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 478.124a and subdivision (e) of Section 478.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 478.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with ~~the requirements of~~ paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) (1) Except as otherwise provided in this paragraph, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located.

(2) The department shall remove from the centralized list any person whose federal firearms license has expired or has been revoked.

(3) Information compiled from the list shall be made available, upon request, for the following purposes only:

(A) For law enforcement purposes.

(B) When the information is requested by a person licensed pursuant to ~~Chapter 44 (commencing with~~ Section ~~921)~~ *921 and following* of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(C) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(4) Information provided pursuant to paragraph (3) shall be limited to information necessary to corroborate an individual's current license status as being one of the following:

(A) A person licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(B) A person licensed pursuant to ~~Chapter 44 (commencing with~~ Section ~~921)~~ *921 and following* of Title 18 of the United States Code and who is not subject to the requirement that he or she be licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section

5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 151. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor, provided, however, that any

person who is prohibited from obtaining a firearm pursuant to Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code, who knowingly furnishes a fictitious name or address or knowingly furnishes any incorrect information or knowingly omits any information required to be provided for the register shall be punished by imprisonment in a county jail not exceeding one year or imprisonment in the state prison for a term of 8, 12, or 18 months.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, Firearms~~,~~ and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is a private party transfer conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller or purchaser by the dealer, upon request. The dealer shall redact all of the purchaser's personal information, as required pursuant to paragraph (1) of subdivision (b) and paragraph (1) of subdivision (c) of Section 12077, from the seller's copy, and the seller's personal information from the purchaser's copy.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the

signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor, provided, however, that any person who is prohibited from obtaining a firearm pursuant to Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code, who knowingly furnishes a fictitious name or address or knowingly furnishes any incorrect information or knowingly omits any information required to be provided for the register shall be punished by imprisonment in a county jail not exceeding one year or imprisonment in the state prison for a term of 8, 12, or 18 months.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, Firearms~~,~~ and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is a private party transfer conducted pursuant to Section 12082, a copy shall be provided to the seller or purchaser by the dealer, upon request. The dealer shall redact all of the purchaser's personal information, as required pursuant to paragraph (1) of subdivision (b) and paragraph (1) of subdivision (c) of Section 12077, from the seller's copy, and the seller's personal information from the purchaser's copy.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State

Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate, and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the ~~California~~ Department of Industrial Relations. The fee shall be no more than is necessary to fund the following:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(10) The department for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) ~~of this subdivision~~, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) ~~of this subdivision~~, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) ~~of this subdivision~~, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, and the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the ~~California~~ Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) for implementing this subdivision.

(g) All ~~money~~ *moneys* received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Sections 12083 and 12099, subdivision (c) of Section 12131, Sections 12234, 12289, and 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be

used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 152. Section 13777.2 of the Penal Code is amended to read:

13777.2. (a) The Commission on the Status of Women shall convene an advisory committee consisting of one person appointed by the Attorney General and one person appointed by each of the organizations named in subdivision (b) of Section 13776 that chooses to appoint a member, and any other subject matter experts

the commission may appoint. The advisory committee shall elect its chair and any other officers of its choice.

(b) The advisory committee shall make two reports, the first by December 31, 2007, and the second by December 31, 2011, to the Committees on Health, Judiciary, and Public Safety of the Senate and Assembly, to the Attorney General, the Commission on Peace Officer Standards and Training, and the Commission on the Status of Women. The reports shall evaluate the implementation of Chapter 899~~,~~ *of the* Statutes of 2001 and any subsequent amendments made to ~~Title 5.7 of Chapter 4 of Part 3~~ *this title* and the effectiveness of the plan developed by the Attorney General pursuant to ~~subparagraph (A) of~~ paragraph (4) of *subdivision (a) of* Section 13777. The reports shall also include recommendations concerning whether the Legislature should extend or repeal the sunset dates in Section 13779, recommendations regarding any other legislation, and recommendations for any other actions by the Attorney General, Commission on Peace Officer Standards and Training, or the Commission on the Status of Women.

(c) The Commission on the Status of Women shall transmit the reports of the advisory committee to the appropriate committees of the Legislature, including, but not limited to, the Committees on Health, Judiciary, and Public Safety in the Senate and Assembly, and make the reports available to the public, including by posting them on the Commission on the Status of Women's *Internet* Web site. To avoid production and distribution costs, the Commission on the Status of Women may submit the reports electronically or as part of any other report that the Commission on the Status of Women submits to the Legislature.

(d) The Commission on Peace Officer Standards and Training shall make the telecourse that it produced in 2002 pursuant to subdivision (a) of Section 13778 available to the advisory committee. However, before providing the telecourse to the advisory committee or otherwise making it public, the commission shall remove the name and face of any person who appears in the telecourse as originally produced who informs the commission in writing that he or she has a reasonable apprehension that making the telecourse public without the removal will endanger his or her life or physical safety.

(e) Nothing in this section requires any state agency to pay for compensation, travel, or other expenses of any advisory committee member.

SEC. 153. Section 3140 of the Probate Code is amended to read:

3140. (a) A conservator served pursuant to this article shall, and the Director of Mental Health or the Director of Developmental Services given notice pursuant to Section 1461 may, appear at the hearing and represent a spouse alleged to lack legal capacity for the proposed transaction.

(b) The court may, in its discretion, appoint an investigator to review the proposed transaction and report to the court regarding its advisability.

(c) If the court determines that a spouse alleged to lack legal capacity has not competently retained independent counsel, the court may in its discretion appoint the public guardian, public administrator, or a guardian ad litem to represent the interests of the spouse.

(d) (1) If a spouse alleged to lack legal capacity is unable to retain legal counsel, upon request of the spouse, the court shall appoint the public defender or private counsel under Section 1471 to represent the spouse and, if that appointment is made, Section 1472 applies.

(2) If the petition proposes a transfer of substantial assets to the petitioner from the other spouse and the court determines that the spouse has not competently retained independent counsel for the proceeding, the court may, in its discretion, appoint counsel for the other spouse if the court determines that appointment would be helpful to resolve the matter or necessary to protect the interests of the other spouse.

(e) Except as provided in ~~subdivision~~ paragraph (1) of subdivision (d), the court may fix a reasonable fee, to be paid out of the proceeds of the transaction or otherwise as the court may direct, for all services rendered by privately engaged counsel, the public guardian, public administrator, or guardian ad litem, and by counsel for ~~such~~ *those* persons.

SEC. 154. Section 7103 of the Public Contract Code is amended to read:

7103. (a) (1) Every original contractor to who is awarded a contract by a state entity, as defined in subdivision (d), involving

an expenditure in excess of twenty-five thousand dollars ($25,000) for any public work shall, before entering upon the performance of the work, file a payment bond with and approved by the officer or state entity by who the contract was awarded. The bond shall be in a sum not less than ~~one hundred~~ *100* percent of the total amount payable by the terms of the contract.

(2) The state entity shall state in its call for bids for any contract that a payment bond is required in the case of such an expenditure.

(b) A payment bond filed and approved in accordance with this section shall be sufficient to enter upon the performance of work under a duly authorized contract that supplements the contract for which the payment bond was filed if the requirement of a new bond is waived by the state entity.

(c) For purposes of this section, providers of architectural, engineering, and land surveying services pursuant to a contract with a state entity for a public work shall not be deemed an original contractor and shall not be required to post or file the payment bond required in subdivisions (a) and (b).

(d) For purposes of this section, "state entity" means every state office, department, division, bureau, board, or commission, but does not include the Legislature, the courts, any agency in the judicial branch of government, or the University of California. All other public entities shall be governed by Section 3247 of the Civil Code.

(e) For purposes of this section, "public work" includes the erection, construction, alteration, repair, or improvement of any state structure, building, road, or other state improvement of any kind.

SEC. 155. Section 4291 of the Public Resources Code is amended to read:

4291. (a) A person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material, shall at all times do all of the following:

(1) Maintain defensible space no greater than 100 feet from each side of the structure, but not beyond the property line unless allowed by state law, local ordinance, or regulation and as provided in paragraph (2). The amount of fuel modification necessary shall take into account the flammability of the structure as affected by

building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first 30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion.

(2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

(3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the director, provides findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

(4) Remove that portion of any tree that extends within 10 feet of the outlet of a chimney or stovepipe.

(5) Maintain any tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.

(6) Maintain the roof of a structure free of leaves, needles, or other vegetative materials.

(7) ~~(a)~~ Prior to constructing a new building or structure or rebuilding a building or structure damaged by a fire in an area

subject to this section, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official~~,~~ a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) (1) Except as provided in Section 18930 of the Health and Safety Code, the director may adopt regulations exempting a structure with an exterior constructed entirely of nonflammable materials, or, conditioned upon the contents and composition of the structure, the director may vary the requirements respecting the removing or clearing away of flammable vegetation or other combustible growth with respect to the area surrounding those structures.

(2) An exemption or variance under paragraph (1) shall not apply unless and until the occupant of the structure, or if there is not an occupant, the owner of the structure, files with the department, in a form as the director shall prescribe, a written consent to the inspection of the interior and contents of the structure to ascertain whether this section and the regulations adopted under this section are complied with at all times.

(d) The director may authorize the removal of vegetation that is not consistent with the standards of this section. The director may prescribe a procedure for the removal of that vegetation and make the expense a lien upon the building, structure, or grounds,

in the same manner that is applicable to a legislative body under Section 51186 of the Government Code.

(e) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its Internet Web site a guidance document on fuels management pursuant to this chapter. Guidance shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, wood decks, and outdoor lawn furniture.

(f) As used in this section, "person" means a private individual, organization, partnership, limited liability company, or corporation.

SEC. 156. Section 14514.7 of the Public Resources Code is amended to read:

14514.7. "Nonprofit convenience zone recycler" means a recycling center that meets the criteria described in subdivision (a) or (b):

(a) The recycling center is all of the following:

(1) Operated by an organization established under Section 501(c) or 501(d) of Title 26 of the United States Code.

(2) Certified by the department pursuant to Section 14538.

(3) Located within a convenience zone, but is not necessarily a supermarket site.

(b) The recycling center is all of the following:

(1) Operated by an organization established under Section 501(c) or 501(d) of Title 26 of the United States Code and has operated in the same location for a period of not less than five years.

(2) Certified by the department pursuant to Section 14538.

(3) Located within one mile of a supermarket that is in *a* convenience zone that is exempt from the ~~requirement~~ *requirements* of subdivision (a) of Section 14571.

SEC. 157. Section 14581 of the Public Resources Code is amended to read:

14581. (a) Subject to the availability of funds, and pursuant to subdivision (c), the department shall expend the moneys set aside in the fund, pursuant to subdivision (c) of Section 14580, for the purposes of this section:

(1) (A) On and after July 1, 2005, to June 30, 2006, inclusive, up to thirty-one million dollars ($31,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(B) On and after July 1, 2006, to June 30, 2007, inclusive, up to thirty-three million dollars ($33,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(C) On and after July 1, 2007, to June 30, 2008, inclusive, up to thirty-five million dollars ($35,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(D) For each fiscal year commencing July 1, 2008, the department may expend the amount necessary to make the required handling fee payment pursuant to Section 14585.

(2) Fifteen million dollars ($15,000,000) shall be expended annually for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3) (A) Fifteen million dollars ($15,000,000), plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps that were in existence on September 30, 1999, or that are formed subsequent to that date, that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

(ii) Community conservation corps that are designated by a county to perform litter abatement, recycling, and related activities, and are certified by the California Conservation Corps as having operated for a minimum of two years and as meeting all other criteria of Section 14507.5.

(B) Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(4) (A) On or after July 1, 2007, until June 30, 2008, for only that fiscal year, up to twenty million dollars ($20,000,000) may be expended in the form of competitive grants issued to community

conservation corps that are designated by a city or county, and that meet ~~all~~ *both* of the following criteria:

(i) Are certified by the California Conservation Corps as having operated for a minimum of two years.

(ii) Meet all other requirements under Section 14507.5.

(B) The department shall prepare and adopt criteria and procedures for evaluating grant applications on a competitive basis. Eligible activities for the use of these funds shall include developing new projects, or enhancing or assisting existing projects, to increase beverage container recycling and increasing the quality of recycled material at the following locations:

(i) Multifamily dwellings.

(ii) Schools.

(iii) Commercial, state, and local government buildings.

(iv) Bars, restaurants, hotels, and lodging establishments, and entertainment venues.

(v) Parks and beaches.

(C) Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(D) Any grants provided pursuant to this paragraph shall support one-time capital improvement projects and shall not be used to support ongoing staff activities.

(E) Any grant funds appropriated pursuant to this paragraph that have not been awarded to a grantee prior to the end of the 2007–08 fiscal year shall revert to the fund.

(5) (A) Ten million five hundred thousand dollars ($10,500,000) may be expended annually for payments of five thousand dollars ($5,000) to cities and ten thousand dollars ($10,000) for payments to counties for beverage container recycling and litter cleanup activities, or the department may calculate the payments to counties and cities on a per capita basis, and may pay whichever amount is greater, for those activities.

(B) Eligible activities for the use of these funds may include, but are not necessarily limited to, support for new or existing curbside recycling programs, neighborhood dropoff recycling programs, public education-promoting beverage container recycling, litter prevention, and cleanup, cooperative regional efforts among two or more cities or counties, or both, or other beverage container recycling programs.

(C) These funds may not be used for activities unrelated to beverage container recycling or litter reduction.

(D) To receive these funds, a city, county, or city and county shall fill out and return a funding request form to the Department of Conservation. The form shall specify the beverage container recycling or litter reduction activities for which the funds will be used.

(E) The Department of Conservation shall annually prepare and distribute a funding request form to each city, county, or city and county. The form shall specify the amount of beverage container recycling and litter cleanup funds for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city, county, or city and county does not return the funding request form within 90 days of receipt of the form from the department, the city, county, or city and county is not eligible to receive the funds for that funding cycle.

(F) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(6) One million five hundred thousand dollars ($1,500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(7) (A) The department shall expend the amount necessary to pay the processing payment ~~and supplemental processing payment~~ established pursuant to ~~Sections~~ *Section* 14575 ~~and 14575.5 and pay processing fee rebates pursuant to Section 14575.2~~. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee are calculated pursuant to Section 14575, or for which a processing payment is calculated pursuant to Section 14575 and a voluntary artificial scrap value is calculated pursuant to Section 14575.1, into which account shall be deposited ~~all~~ *both* of the following:

(i) All amounts paid as processing fees for each beverage container material type pursuant to Section 14575.

(ii) Funds equal to the difference between the amount in clause (i) and the amount of the processing payments established in subdivision (b) of Section 14575, and adjusted pursuant to paragraph (2) of subdivision (c) of, and subdivision (f) of, Section 14575, to reduce the processing fee to the level provided in subdivision (f) of Section 14575, or to reflect the agreement by a willing purchaser to pay a voluntary artificial scrap value pursuant to Section 14575.1.

~~(iii) Funds equal to an amount sufficient to pay the total amount of the supplemental processing payments established pursuant to Section 14575.5.~~

(B) Notwithstanding Section 13340 of the Government Code, the moneys in each processing fee account are hereby continuously appropriated to the department for expenditure without regard to fiscal years, for purposes of making processing payments~~ and supplemental processing payments, and reducing processing fees,~~ pursuant to~~ Sections~~ *Section* 14575~~ and 14575.5, and paying processing fee rebates pursuant to Section 14575.2~~.

(8) Up to five million dollars ($5,000,000) may be annually expended by the department for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

(9) Until January 1, 2008, the department may expend up to five million dollars ($5,000,000) for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers that meets both of the following requirements:

(A) The public education and information campaign is multimedia and includes print, radio, and television.

(B) The public education and information campaign is multilingual.

(10) Up to fifteen million dollars ($15,000,000) may be expended annually by the department for quality incentive payments for empty beverage containers pursuant to Section 14549.1.

(11) Up to twenty million dollars ($20,000,000) may be expended annually by the department, until January 1, 2012, to issue grants for recycling market development and

expansion-related activities aimed at increasing the recycling of beverage containers, including, but not limited to, the following:

(A) Research and development of collecting, sorting, processing, cleaning, or otherwise upgrading the market value of recycled beverage containers.

(B) Identification, development, and expansion of markets for recycled beverage containers.

(C) Research and development for products manufactured using recycled beverage containers.

(D) Research and development to provide high-quality materials that are substantially free of contamination.

(E) Payments to California manufacturers who recycle beverage containers that are marked by resin type identification code “3,” “4,” “5,” “6,” or “7,” pursuant to Section 18015.

(12) Up to ten million dollars ($10,000,000) may be transferred on a one-time basis by the department to the Recycling Infrastructure Loan Guarantee Account, for expenditure pursuant to Section 14582.

(13) Up to ten million dollars ($10,000,000) may be expended annually by the department for the payment of recycling incentive payments pursuant to Section 14549.7 until payments for eligible beverage containers redeemed or collected for recycling on or before December 31, 2009, have been paid.

(14) Up to five million dollars ($5,000,000) may be expended annually by the department for market development payments for empty plastic beverage containers pursuant to Section 14549.2, until January 1, 2012.

(15) Up to five million dollars ($5,000,000) may be expended, by the department, on a one-time basis beginning on January 1, 2007, in coordination with the Department of Parks and Recreation for the purposes of installing source separated beverage container recycling receptacles at each of the state parks, starting with those parks that have the highest day use.

(16) Up to five million dollars ($5,000,000) may be expended, from January 1, 2007, to January 1, 2008, to provide grants to local governments or nonprofit agencies to place multifamily housing source separated beverage container recycling receptacles in low-income communities.

(17) (A) Up to fifteen million dollars ($15,000,000) may be expended from January 1, 2008, to January 1, 2009, to provide

grants to place source separated beverage container recycling receptacles in multifamily housing.

(B) Notwithstanding subdivision (b) of Section 14580, the amount of one hundred ninety-eight thousand dollars ($198,000) may be expended by the department from the fund, on a one-time basis, for the administrative costs of implementing the grant program established by subparagraph (A).

(18) (A) Up to twenty million dollars ($20,000,000) may be expended from July 1, 2009, to January 1, 2012, inclusive, for either of the following:

(i) Grants for beverage container recycling and litter reduction programs that emphasize the greatest and most effective collection of beverage containers per dollar spent to ensure the program's performance and accountability.

(ii) Focused, regional community beverage container recycling and litter reduction programs that enable the department to more effectively organize the amount and type of resources needed for regional and statewide efforts to increase recycling.

(B) The department shall require, as a condition of receiving grant funds pursuant to subparagraph (A), each grant recipient to submit a final report including, but not limited to, the grant recipient's reported volumes of beverage containers recycled, where applicable.

(C) On or before July 1, 2014, the department shall publish an evaluation of all grants made pursuant to ~~paragraph~~ *subparagraph* (A). At a minimum, the evaluation shall summarize each final report submitted by each grantee pursuant to subparagraph (B) and assess whether the grantee adequately met the scope and objectives outlined in the grant agreement.

(b) The fifteen million dollars ($15,000,000) that is set aside pursuant to paragraph (3) of subdivision (a) is a base amount that the department shall adjust annually to reflect any increases or decreases in the cost of living, as measured by the Department of Labor, or a successor agency, of the federal government.

(c) (1) The department shall review all funds on a quarterly basis to ensure that there are adequate funds to make the payments specified in this section and the processing fee reductions required pursuant to Section 14575.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to

pay the payments required by this section and the processing fee reductions required pursuant to Section 14575, the department shall immediately notify the appropriate policy and fiscal committees of the Legislature regarding the inadequacy.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the funds as necessary, according to the procedure set forth in subdivision (d).

(d) If the department determines that there are insufficient funds to make the payments specified pursuant to this section and Section 14575, the department shall reduce all payments proportionally.

(e) Prior to making an expenditure pursuant to paragraph (7) of subdivision (a), the department shall convene an advisory committee consisting of representatives of the beverage industry, beverage container manufacturers, environmental organizations, the recycling industry, nonprofit organizations, and retailers to advise the department on the most cost-effective and efficient method of the expenditure of the funds for that education and information campaign.

(f) After setting aside money for the expenditures required pursuant to subdivisions (a) and (b) and Section 14580, the department may, on and after January 1, 2007, but not after July 1, 2007, expend remaining moneys in the fund to pay a refund value in an amount greater than the refund value established pursuant to subdivision (b) of Section 14560.

SEC. 158. Section 29735 of the Public Resources Code is amended to read:

29735. There is hereby created the Delta Protection Commission consisting of 23 members as follows:

(a) One member of the board of supervisors, or his or her designee, of each of the five counties within the delta whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of the county.

(b) (1) Three elected city council members shall be selected and appointed by city selection committees, from regional and area councils of government, one in each of the following areas:

(A) One from the north delta, consisting of the Counties of ~~Yolo~~ *Sacramento* and ~~Sacramento~~ *Yolo*.

(B) One from the south delta, consisting of the County of San Joaquin.

(C) One from the west delta, consisting of the Counties of Contra Costa and Solano.

(2) A city council member may select a designee for purposes of paragraph (1).

(c) (1) One member each from the board of directors of five different reclamation districts that are located within the primary zone who are residents of the delta, and who are elected by the trustees of ~~reclamations~~ *reclamation* districts within the following areas:

(A) Two members from the area of the North Delta Water Agency as described in Section 9.1 of the North Delta Water Agency Act (Chapter 283 of the Statutes of 1973), provided *that* at least one member is also a member of the Delta Citizens Municipal Advisory Council.

(B) One member from the west delta consisting of the area of Contra Costa County within the delta.

(C) One member from the area of the Central Delta Water Agency as described in Section 9.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973).

(D) One member from the area of the South Delta Water Agency as described in Section 9.1 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973).

(2) Each reclamation district may nominate one director to be a member. The member from an area shall be selected from among the nominees by a majority vote of the reclamation districts in that area. The member may select a designee for this purpose. For purposes of this section, each reclamation district shall have one vote. The north delta area shall conduct separate votes to select each of its two members.

(d) The Director of Parks and Recreation, or the director's sole designee.

(e) The Director of Fish and Game, or the director's sole designee.

(f) The Secretary of Food and Agriculture, or the secretary's sole designee.

(g) The executive officer of the State Lands Commission, or the executive officer's sole designee.

(h) The Director of Boating and Waterways, or the director's sole designee.

(i) The Director of Water Resources, or the director's sole designee.

(j) The public member of the California Bay-Delta Authority who represents the delta region or his or her designee.

(k) (1) The Governor shall appoint three members and three alternates from the general public who are delta residents or delta landowners, as follows:

(A) One member and one alternate shall represent the interests of production agriculture with a background in promoting the agricultural viability of delta farming.

(B) One member and one alternate shall represent the interests of conservation of wildlife and habitat resources of the delta region and ecosystem.

(C) One member and one alternate shall represent the interests of outdoor recreational opportunities, including, but not limited to, hunting and fishing.

(2) An alternate may serve in the absence of a member.

SEC. 159. Section 41825 of the Public Resources Code, as added by Section 13 of Chapter 343 of the Statutes of 2008, is amended to read:

41825. (a) Using the information in the report submitted to the board by the jurisdiction pursuant to Section 41821 and any other relevant information, the board shall make a finding whether each jurisdiction was in compliance with Section 41780 for calendar year 2006 and shall review a jurisdiction's compliance with Section 41780 in accordance with the following schedule:

(1) If the board makes a finding that the jurisdiction was in compliance with Section 41780 for calendar year 2006, the board shall review, commencing January 1, 2012, and at least once every four years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(2) If the board makes a finding that the jurisdiction made a good faith effort to implement its source reduction and recycling element and household hazardous waste element, the board shall review, commencing January 1, 2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(3) If the board makes a finding that the jurisdiction was not in compliance with Section 41780 for calendar year 2006 or for any subsequent calendar year, the board shall review, commencing January 1, 2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(4) If, after determining that a jurisdiction is subject to paragraph (2), or, if, after determining that a jurisdiction is not in compliance with Section 41780 and is subject to paragraph (3), the board subsequently determines that the jurisdiction has come into compliance with Section 41780, the board shall review, at least once every four years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste *element* in the same manner as a jurisdiction that is subject to paragraph (1).

(5) If, after determining that a jurisdiction is in compliance with Section 41780 and is subject to paragraph (1), the board subsequently determines that the jurisdiction is not in compliance with Section 41780, the board shall review, at least once every two years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element in the same manner as a jurisdiction that is subject to paragraph (2) or (3).

(b) In addition to the requirements of subdivision (a), the board may review whether a jurisdiction is in compliance with Section 41780 in accordance with the requirements of this section at any time that the board receives information that indicates the jurisdiction may not be making a good faith effort to implement its source reduction and recycling element and household hazardous waste element.

(c) (1) Before issuing a compliance order pursuant to subdivision (d), the board shall confer with the jurisdiction regarding conditions relating to the proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The board shall issue a notice of intent to issue an order of compliance not less than 30 days before the board holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) The proposed actions the board recommends are necessary for the jurisdiction to complete to implement its source reduction and recycling element or household hazardous waste element.

(C) The proposed recommendations to the board.

(3) The board shall consider any information provided pursuant to subdivision (c) of Section 41821 if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal.

(d) (1) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, the board finds that a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall issue an order of compliance with a specific schedule for achieving compliance.

(2) The compliance order shall include those conditions that the board determines to be necessary for the jurisdiction to implement its diversion programs.

(3) In addition to considering the good faith efforts of a jurisdiction, as specified in subdivision (e), to implement a diversion program, the board shall consider both of the following factors in determining whether or not to issue a compliance order:

(A) Whether an exceptional growth rate may have affected compliance.

(B) Other information that the jurisdiction may provide that indicates the effectiveness of the jurisdiction's programs, such as disposal characterization studies or other jurisdiction specific information.

(e) For purposes of making a determination pursuant to this section whether a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall consider all of the following criteria:

(1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section, "good faith effort" may also include the evaluation by a jurisdiction of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the jurisdiction to adequately address all sources of significant disposal, the submission by the jurisdiction of a compliance schedule, and the undertaking of all other reasonable and feasible efforts to implement the programs identified in the jurisdiction's source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the board shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

(4) The board shall consider all of the following when considering whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element:

(A) Natural disasters.

(B) Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees.

(C) Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element or household hazardous waste element.

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

(E) The extent to which the jurisdiction has implemented additional source reduction, recycling, and composting activities.

(F) The extent to which the jurisdiction has made program implementation choices driven by considerations related to other environmental issues, including climate change.

(G) Whether the jurisdiction has provided information to the board concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for

diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(H) The extent to which the jurisdiction has implemented programs to comply with Section 41780 and to maintain its per capita disposal rate.

(5) In making a determination whether a jurisdiction has made a good faith effort, pursuant to this section, the board may consider a jurisdiction's per capita disposal rate as a factor in determining whether the jurisdiction adequately implemented its diversion programs. The board shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 160. Section 71205.3 of the Public Resources Code is amended to read:

71205.3. (a) On or before January 1, 2008, the commission shall adopt regulations that do all of the following:

(1) Except as provided otherwise in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement the interim performance standards for the discharge of ballast water recommended in accordance with Table x-1 of the California State Lands Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the commission on January 26, 2006.

(2) Except as provided otherwise in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with the following implementation schedule:

Ballast water capacity of vessel	Standards apply to new vessels in this size class constructed on or after:	Standards apply to all other vessels in this size class beginning ~~in~~ *on*:
<1500 metric tons	January 1, 2010	January 1, 2016
1500-5000 metric tons	January 1, 2010	January 1, 2014

>5000 metric tons	January 1, 2012	January 1, 2016

(3) Notwithstanding Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to meet the final performance standard for the discharge of ballast water of zero detectable for all organism size classes by 2020, as approved by the commission on January 26, 2006.

(b) On or before January 1, 2009, for the interim performance standards specified in paragraph (1) of subdivision (a) that have to be complied with in 2010, as specified in paragraph (2) of subdivision (a), and not less than 18 months prior to the scheduled compliance date specified in paragraph (2) of subdivision (a) for each subsequent class and the date for implementation of the final performance standard, as specified in paragraph (3) of subdivision (a), the commission, in consultation with the State Water Resources Control Board, the United States Coast Guard, and the advisory panel described in subdivision (b) of Section 71204.9, shall prepare, or update, and submit to the Legislature a review of the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available technologies for ballast water treatment systems. If technologies to meet the performance standards are determined in a review to be unavailable, the commission shall include in that review an assessment of why the technologies are unavailable.

SEC. 161. Section 75125 of the Public Resources Code is amended to read:

75125. The council shall do all of the following:

(a) Identify and review activities and funding programs of member state agencies that may be coordinated to improve air and water quality, improve natural resource protection, increase the availability of affordable housing, improve transportation, meet the goals of the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), encourage sustainable land use planning, and revitalize urban and community centers in a sustainable manner. At a minimum, the council shall review and comment on the five-year infrastructure plan developed pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Division 3 of the Government Code and the State Environmental

Goals and Policy Report developed pursuant to Section 65041 of the Government Code.

(b) Recommend policies and investment strategies and priorities to the Governor, the Legislature, and to appropriate state agencies to encourage the development of sustainable communities, such as those communities that promote equity, strengthen the economy, protect the environment, and promote public health and safety, ~~and is~~ consistent with subdivisions (a) and (c) of Section 75065.

(c) Provide, fund, and distribute data and information to local governments and regional agencies that will assist in developing and planning sustainable communities.

(d) Manage and award grants and loans to support the planning and development of sustainable communities, pursuant to Sections 75127, 75128, and 75129. To implement this subdivision, the council may do all of the following:

(1) Develop guidelines for awarding financial assistance, including criteria for eligibility and additional consideration.

(2) Develop criteria for determining the amount of financial assistance to be awarded. The council shall award a revolving loan to an applicant for a planning project, unless the council determines that the applicant lacks the fiscal capacity to carry out the project without a grant. The council may establish criteria that would allow the applicant to illustrate an ongoing commitment of financial resources to ensure the completion of the proposed plan or project.

(3) Provide for payments of interest on loans made pursuant to this article. The rate of interest shall not exceed the rate earned by the Pooled Money Investment Board.

(4) Provide for the time period for repaying a loan made pursuant to this article.

(5) Provide for the recovery of funds from an applicant that fails to complete the project for which financial assistance was awarded. The council shall direct the ~~State~~ Controller to recover funds by any available means.

(6) Provide technical assistance for application preparation.

(7) Designate a state agency or department to administer technical and financial assistance programs for the disbursing of grants and loans to support the planning and development of sustainable communities, pursuant to Sections 75127, 75128, and 75129.

(e) No later than July 1, 2010, and every year thereafter, provide a report to the Legislature that shall include, but is not limited to, all of the following:

(1) A list of applicants for financial assistance.

(2) Identification of which applications were approved.

(3) The amounts awarded for each approved application.

(4) The remaining balance of available funds.

(5) A report on the proposed or ongoing management of each funded project.

(6) Any additional minimum requirements and priorities for a project or plan proposed in a grant or loan application developed and adopted by the council pursuant to subdivision (c) of Section ~~75216~~ *75126*.

SEC. 162. Section 281 of the Public Utilities Code, as amended by Section 64 of Chapter 751 of the Statutes of 2008, is amended and renumbered to read:

~~281.~~

282. Any revenues that are deposited in funds created pursuant to this chapter shall not be used by the state for any purpose other than as specified in this chapter. Notwithstanding any other provision of law, the Controller may use the funds created pursuant to this chapter for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code.

SEC. 163. Section 739 of the Public Utilities Code is amended to read:

739. (a) As used in this section:

(1) "Baseline quantity" means a quantity of electricity or gas allocated by the commission for residential customers based on from 50 to 60 percent of average residential consumption of these commodities, except that, for residential gas customers and for all-electric residential customers, the baseline quantity shall be established at from 60 to 70 percent of average residential consumption during the winter heating season. In establishing the baseline quantities, the commission shall take into account climatic and seasonal variations in consumption and the availability of gas service. The commission shall review and revise baseline quantities as average consumption patterns change in order to maintain these ratios.

(2) "Residential customer" means those customers receiving electrical or gas service pursuant to a domestic rate schedule and

excludes industrial, commercial, and every other category of customer.

(b) The commission shall designate a baseline quantity of gas and electricity which is necessary to supply a significant portion of the reasonable energy needs of the average residential customer. In estimating those quantities, the commission shall take into account differentials in energy needs between customers whose residential energy needs are currently supplied by electricity alone or by both electricity and gas. The commission shall develop a separate baseline quantity for all-electric residential customers. For these purposes, "all-electric residential customers" are residential customers having electrical service only or whose space heating is provided by electricity, or both. The commission shall also take into account differentials in energy use by climatic zone and season.

(c) (1) The commission shall establish a standard limited allowance which shall be in addition to the baseline quantity of gas and electricity for residential customers dependent on life-support equipment, including, but not limited to, emphysema and pulmonary patients. A residential customer dependent on life-support equipment shall be allocated a higher energy allocation than the average residential customer.

(2) "Life-support equipment" means that equipment which utilizes mechanical or artificial means to sustain, restore, or supplant a vital function, or mechanical equipment which is relied upon for mobility both within and outside of buildings. "Life-support equipment," as used in this subdivision, includes all of the following: all types of respirators, iron lungs, hemodialysis machines, suction machines, electric nerve stimulators, pressure pads and pumps, aerosol tents, electrostatic and ultrasonic nebulizers, compressors, IPPB machines, and motorized wheelchairs.

(3) The limited allowance specified in this subdivision shall also be made available to paraplegic and quadriplegic persons in consideration of the increased heating and cooling needs of those persons.

(4) The limited allowance specified in this subdivision shall also be made available to multiple sclerosis patients in consideration of the increased heating and cooling needs of those persons.

(5) The limited allowance specified in this subdivision shall also be made available to scleroderma patients in consideration of the increased heating needs of those persons.

(6) The limited allowance specified in this subdivision shall also be made available to persons who are being treated for a life-threatening illness or have a compromised immune system, if a licensed physician and surgeon or a person licensed pursuant to the Osteopathic Initiative Act certifies in writing to the utility that the additional heating or cooling allowance, or both, is medically necessary to sustain the life of the person or prevent deterioration of the person's medical condition.

(d) (1) The commission shall require that every electrical and gas corporation file a schedule of rates and charges providing baseline rates. The baseline rates shall apply to the first or lowest block of an increasing block rate structure which shall be the baseline quantity. In establishing these rates, the commission shall avoid excessive rate increases for residential customers, and shall establish an appropriate gradual differential between the rates for the respective blocks of usage.

(2) In establishing residential electric and gas rates, including baseline rates, the commission shall ~~assure~~ *ensure* that the rates are sufficient to enable the electrical corporation or gas corporation to recover a just and reasonable amount of revenue from residential customers as a class, while observing the principle that electricity and gas services are necessities, for which a low affordable rate is desirable and while observing the principle that conservation is desirable in order to maintain an affordable bill.

(3) At least until December 31, 2003, the commission shall require that all charges for residential electric customers are volumetric, and shall prohibit any electrical corporation from imposing any charges on residential consumption that are independent of consumption, unless those charges are in place prior to April 12, 2001.

(e) (1) Each electrical corporation and each gas corporation shall, in a timeframe consistent with each electrical and gas corporation's next general rate case, disclose on the billing statement of a residential customer all of the following:

(A) Cost per kilowatthour or gas therm per tier.

(B) Allocation of kilowatthour or gas therm per tier.

(C) Visual representation of usage and cost per tier.

(D) Usage comparison with prior periods.

(E) Itemized cost components in the bill to identify state and local taxes.

(F) Identification of delivery, generation, public purpose, and other charges.

(G) Contact information for the commission's Consumer Affairs Branch.

(2) An electrical corporation and a gas corporation shall make available online to residential customers both of the following:

(A) Examples of how conservation measures, including changing thermostat settings and turning off unused lights, could reduce energy usage and costs.

(B) Examples of how energy-saving devices and weatherization measures could reduce energy usage and costs.

(3) The commission may modify, adjust, or add to the requirements of this subdivision as the individual circumstances of each electrical corporation or gas corporation merits, or for master-meter customers, as individual circumstances merit.

(4) The commission shall, as part of the general rate case of an electrical corporation or gas corporation, assess opportunities to improve the quality of information contained in the utility's periodic billings.

(f) Wholesale electrical or gas purchases, and the rates charged therefor, are exempt from this section.

(g) Nothing contained in this section shall be construed to prohibit experimentation with alternative gas or electrical rate schedules for the purpose of achieving energy conservation.

SEC. 164. Section 99171 of the Public Utilities Code is amended to read:

99171. (a) (1) A transit district may issue a prohibition order to any person to whom either of the following applies:

(A) On at least three separate occasions within a period of 60 consecutive days, the person is cited for an infraction committed in or on a vehicle, bus stop, or light rail station of the transit district for any act that is a violation of paragraph (2) or (5) of subdivision (a) of Section 99170~~,~~ *of this code or* paragraph (6), (7), (8), or (9) of subdivision (b) of Section 640 or Section 640.5 of the Penal Code.

(B) The person is arrested or convicted for a misdemeanor or felony committed in or on a vehicle, bus stop, or light rail station

of the transit district for acts involving violence, threats of violence, lewd or lascivious behavior, or possession for sale or sale of a controlled substance.

(C) The person is convicted of a violation of Section 11532 of the Health and Safety Code or Section 653.22 of the Penal Code.

(2) A person subject to a prohibition order may not enter the property, facilities, or vehicles of the transit district for a period of time deemed appropriate by the transit district, provided that the duration of a prohibition order shall not exceed the following, as applicable:

(A) Thirty days if issued pursuant to subparagraph (A) of paragraph (1), provided that a second prohibition order within one year may not exceed 90 days, and a third or subsequent prohibition order within one year may not exceed 180 days.

(B) Thirty days if issued pursuant to an arrest pursuant to subparagraph (B) of paragraph (1). Upon conviction of a misdemeanor offense, the duration of the prohibition order for the conviction, when added to the duration of the prohibition order for the initial arrest, if any, may not exceed 180 days. Upon conviction of a felony offense, the duration of the prohibition order for the conviction, when added to the duration of the prohibition order for the initial arrest, if any, may not exceed one year.

(3) No prohibition order issued under this subdivision shall be effective unless the transit district first affords the person an opportunity to contest the transit district's proposed action in accordance with procedures adopted by the transit district for this purpose. A transit district's procedures shall provide, at a minimum, for the notice and other protections set forth in subdivisions (b) and (c), and the transit district shall provide reasonable notification to the public of the availability of those procedures.

(b) (1) A notice of a prohibition order issued under subdivision (a) shall set forth a description of the conduct underlying the violation or violations giving rise to the prohibition order, including reference to the applicable statutory provision, ordinance, or transit district rule violated, the date of the violation, the approximate time of the violation, the location where the violation occurred, the period of the proposed prohibition, and the scope of the prohibition. The notice shall include a clear and conspicuous statement indicating the procedure for contesting the prohibition order. The notice of prohibition order shall be personally served

upon the violator. The notice of prohibition order, or a copy, shall be considered a record kept in the ordinary course of business of the transit district and shall be prima facie evidence of the facts contained in the notice establishing a rebuttable presumption affecting the burden of producing evidence. For purposes of this paragraph, "clear and conspicuous" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(2) For purposes of this section, "personal service" ~~shall mean~~ *means* any of the following:

(A) In-person delivery.

(B) Delivery by any form of mail providing for delivery confirmation, postage prepaid, to at least one address provided by the person being served, including, but not limited to, the address set forth in any citation or in court records.

(C) Any alternate method approved in writing by the transit district and the person being served.

(3) If a person served with a notice of prohibition order is not able, or refuses, to provide a mailing address, the notice of prohibition order shall set forth the procedure for obtaining any letters, notices, or orders related to the prohibition order from the administrative offices of the transit district. For purposes of this section, delivery shall be deemed to have been made on the following date, as applicable:

(A) On the date of delivery, if delivered in person.

(B) On the date of confirmed delivery, for any delivery by mail.

(C) For any alternate method of service, as provided in the writing specifying the alternate method.

(4) Proof of service of the notice shall be filed with the transit district.

(5) If a person contests a notice of prohibition order, the transit district shall proceed in accordance with subdivision (c). If the notice of prohibition order is not contested within 10 calendar days after delivery by personal service, the prohibition order shall be deemed final and shall go into effect, without further action by the transit district, for the period of time set forth in the order.

(6) All prohibition orders shall be subject to an automatic stay and shall not take effect until the latest of the following:

(A) Eleven calendar days after delivery of the prohibition order by personal service.

(B) If an initial review is timely requested under paragraph (1) of subdivision (c), 11 calendar days after delivery by personal service of the results of the review.

(C) If an administrative hearing is timely requested under paragraph ~~(1)~~ *(3)* of subdivision (c), the date the hearing officer's decision is delivered by personal service.

(c) (1) For a period of 10 calendar days from the delivery of the prohibition order by personal service, the person may request an initial review of the prohibition order by the transit district. The request may be made by telephone, in writing, or in person. There shall be no charge for this review. In conducting its review and reaching a determination, the transit district shall determine whether the prohibition order meets the requirements of subdivision (a) and, unless the person has been convicted of the offense or offenses, whether the offense or offenses for which the person was cited or arrested are proven by a preponderance of the evidence. If, following the initial review, based on these findings, the transit district determines that the prohibition order is not adequately supported or that extenuating circumstances make dismissal of the prohibition order appropriate in the interest of justice, the transit district shall cancel the notice. If, following the initial review, based on these findings, the transit district determines that the prohibition order should be upheld in whole or in part, the transit district shall issue a written statement to that effect, including any modification to the period or scope of the prohibition order. The transit district shall serve the results of the initial review to the person contesting the notice by personal service.

(2) The transit district may modify or cancel a prohibition order in the interest of justice. The transit district shall cancel a prohibition order if it determines that the person did not understand the nature and extent of his or her actions or did not have the ability to control his or her actions. If the person is dependent upon the transit system for trips of necessity, including, but not limited to, travel to or from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing, and necessary household items, the transit district shall modify a prohibition order to allow for those trips. A person requesting a cancellation or modification in the interest of justice shall have

the burden of establishing the qualifying circumstances by a preponderance of the evidence.

(3) If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the prohibition order no later than 10 calendar days after the results of the initial review are delivered by personal service. The request may be made by telephone, in writing, or in person. An administrative hearing shall be held within 30 calendar days after the receipt of a request for an administrative hearing. The person requesting the hearing may request one continuance, not to exceed seven calendar days.

(4) The administrative hearing process shall include all of the following:

(A) The person requesting the hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the transit district.

(B) The administrative hearing shall be conducted in accordance with written procedures established by the transit district and approved by the governing body or chief executive officer of the transit district. The hearing shall provide an independent, objective, fair, and impartial review of the prohibition order.

(C) The administrative review shall be conducted before a hearing officer designated to conduct the review by the transit district's governing body or chief executive officer. In addition to any other requirements, a hearing officer shall demonstrate the qualifications, training, and objectivity prescribed by the transit agency's governing body or chief executive officer as are necessary to fulfill and that are consistent with the duties and responsibilities set forth in this subdivision. The hearing officer's continued service, performance evaluation, compensation, and benefits, as applicable, shall not be directly or indirectly linked to the number of prohibition orders upheld by the hearing officer.

(D) The person who issued the notice of prohibition order shall not be required to participate in an administrative hearing, unless participation is requested by the person requesting the hearing. The request for participation must be made at least five calendar days prior to the date of the hearing and may be made by telephone, in writing, or in person. The notice of prohibition order, in proper form, shall be prima facie evidence of the violation or violations

pursuant to subdivision (a) establishing a rebuttable presumption affecting the burden of producing evidence.

(E) In issuing a decision, the hearing officer shall determine whether the prohibition order meets the requirements of subdivision (a) and, unless the person has been convicted of the offense or offenses, whether the offense or offenses for which the person was cited or arrested are proven by a preponderance of the evidence. Based upon these findings, the hearing officer may uphold the prohibition order in whole, determine that the prohibition order is not adequately supported, or cancel or modify the prohibition order in the interest of justice. The hearing officer shall cancel a prohibition order if he or she determines that the person did not understand the nature and extent of his or her actions or did not have the ability to control his or her actions. If the person is dependent upon the transit system for trips of necessity, including, but not limited to, travel to or from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing, and necessary household items, the transit district shall modify a prohibition order to allow for those trips. A person requesting a cancellation or modification in the interest of justice shall have the burden of establishing the qualifying circumstances by a preponderance of the evidence.

(F) The hearing officer's decision following the administrative hearing shall be delivered by personal service.

(G) A person aggrieved by the final decision of the hearing officer may seek judicial review of the decision within 90 days of the date of delivery of the decision by personal service, as provided by Section 1094.6 of the Code of Civil Procedure.

(d) A person issued a prohibition order under subdivision (a) may, within 10 calendar days of the date the order goes into effect under paragraph ~~(5)~~ *(6)* of subdivision (b), request a refund for any prepaid fare media rendered unusable in whole or in part by the prohibition order, including, but not limited to, monthly passes. If the fare media remain usable for one or more days outside the period of the prohibition order, the refund shall be prorated based on the number of days the fare media will be unusable. The issuance of a refund may be made contingent on surrender of the fare media.

(e) For purposes of this section "transit district" means the Sacramento Regional Transit District or the Fresno Area Express.

(f) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 165. Section 101223 of the Public Utilities Code is amended to read:

101223. The authority to incur indebtedness vested in the district by the provisions of this article shall be in addition to any right vested in it to receive a temporary transfer of funds pursuant to *the last paragraph of* Section ~~25~~ *26* of Article ~~XIII~~ *XVI* of the *California* Constitution ~~of the State of California~~.

SEC. 166. Section 103311 of the Public Utilities Code is amended to read:

103311. The district shall have the power to obtain temporary transfers of funds in accordance with the last paragraph of Section ~~25~~ *26* of Article ~~XIII~~ *XVI* of the California Constitution.

SEC. 167. Section 120508 of the Public Utilities Code is amended to read:

120508. (a) This article also applies to the employee relations of employees of a nonprofit entity that operates public mass transit services and that is solely owned by the board. For employee relations regarding these employees, ~~the term~~ "board," as used in this article, means the board and the board of directors of the nonprofit entity as the joint employer of the employees.

(b) The board may, at any time in its sole discretion, abolish any nonprofit entity or merge any nonprofit entity with another nonprofit entity or with the board.

(c) Upon abolishing or merging a nonprofit entity pursuant to subdivision (b), the board shall become the sole employer of the employees of the nonprofit entity and shall assume sole responsibility to observe all existing labor contracts established and maintained pursuant to this article.

(d) Except as may be agreed upon through the collective bargaining process, nothing in this section shall prohibit or limit the right of the board to contract with common carriers of persons operating under a franchise, license, or other agreement. Any provision in an existing collective bargaining agreement made applicable to the board in its capacity as a joint employer with a nonprofit entity pursuant to subdivision (a) or sole successor employer pursuant to subdivision (b) that is intended to prohibit or limit the right of a nonprofit entity to contract out covered

bargaining unit services to another common carrier of persons shall not be binding upon the board with respect to any contract for services entered into, renewed, or extended by the board prior to January 1, 2004, and thereafter shall apply only to contracts for bargaining unit services covered by an existing collective bargaining agreement assumed by or binding upon the board as a joint employer unless otherwise agreed upon through the collective bargaining process. The amendments to this subdivision made by ~~Senate Bill 959 of the 2005-06 Regular Session~~ *Chapter 557 of the Statutes of 2005* are ~~is~~ intended solely to clarify existing law and shall not be interpreted either to enlarge or contract the board's right to contract out for public transportation services.

SEC. 168. Section 130680 of the Public Utilities Code is amended to read:

130680. (a) The chief executive officer shall be responsible for ensuring the MTA has an independent professional procurement staff. The chief executive officer and designated procurement staff shall be responsible for ~~conducing~~ *conducting* an independent, autonomous procurement process in accordance with state and federal law.

(b) Board members shall use objective judgment in voting on a procurement award and base their decision on the criteria established in the procurement documents.

(c) Board members or their staff shall not attempt to influence contract awards.

(d) During any procurement process, board members or their staff shall not communicate with MTA staff regarding the procurement.

(e) Before the staff recommendation for an award is made public, board members or their staff shall ~~only~~ communicate *only* with the chief executive officer or his or her designee regarding the procurement. The chief executive officer shall keep a log of those communications and shall report those communications and responses in writing at the board meeting where action on the procurement is scheduled.

(f) Board members or their staff shall not attempt to obtain information about the recommendation of the award of a contract until the recommendation is made public.

(g) Board members shall not release information about the procurement to the public until the award recommendation is made public.

(h) If a board member attempts to communicate with MTA staff to influence the recommended award, this communication shall be reported by staff to the inspector general.

SEC. 169. Section 130720 of the Public Utilities Code is amended to read:

130720. *(a)* Board members shall file Statements of Economic Interest with the ethics officer pursuant to state law, within 30 days of assuming office, annually, and within 30 days of leaving office.

(b) Board members shall file an addendum to the statement required under subdivision (a), disclosing all financial interests both within and outside Los Angeles County, including those financial interests received during the reporting period by all entities in which the member is an officer, principal, partner, or major shareholder.

(c) Any amendments to the Statement of Economic Interest or addendum shall be filed within 30 days of the occurrence of the change.

SEC. 170. Section 240308 of the Public Utilities Code is amended to read:

240308. (a) If requested to do so by the commission in its resolution calling for an election, the board of supervisors, as part of the ballot proposition to approve the imposition of a retail transactions and use tax, may seek authorization to issue bonds for capital outlay expenditures as may be provided for in the ordinance expenditure plan payable from the proceeds of the tax.

(b) The maximum bonded indebtedness that may be outstanding at any one time shall be an amount equal to the sum of the principal of, and interest on, the bonds, but not to exceed the estimated proceeds of the tax, as determined by the plan. The amount of bonds outstanding at any one time does not include the amount of bonds, refunding bonds, or bond anticipation notes for which funds necessary for the payment thereof have been set aside for that purpose in a trust or escrow account.

(c) The proposition shall set forth each of the following:

(1) The actual percent of the tax.

(2) The duration of the tax if the plan specifies a time limit.

(3) The amount of bonds, if any, payable from the proceeds of the tax.

(4) The commission as the agency imposing the tax.

(5) The appropriations limit of the commission, pursuant to Section 4 of Article XIII B of the California Constitution.

~~(g)~~

(d) The sample ballot to be mailed to the voters, pursuant to Section 13303 of the Elections Code, shall be the full proposition, as set forth in the ordinance calling the election, and the voter information handbook shall include the entire ordinance expenditure plan.

SEC. 171. Section 7093.6 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 222 of the Statutes of 2008, is amended to read:

7093.6. (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the

transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final tax liability" means any of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected sales tax reimbursement or use tax from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5.

(B) A final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising under Article 7 (commencing with Section 6811) of Chapter 6.

(C) That part of a final tax liability for use tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5, against a taxpayer who is a consumer that is not required to hold a permit under Section 6066.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement that permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that the installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required sales and use tax returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file sales and use tax returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(k) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(*l*) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for ~~a~~ *at* least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(m) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record, or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(n) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(o) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity

owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(p) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 172. Section 7093.6 of the Revenue and Taxation Code, as added by Section 1.5 of Chapter 222 of the Statutes of 2008, is amended to read:

7093.6. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for ~~a~~ *at* least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality

provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record, or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(k) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(*l*) This section shall become operative on January 1, 2013.

SEC. 173. Section 18862 of the Revenue and Taxation Code is amended to read:

18862. There is hereby created in the State Treasury the California Cancer Research Fund to receive contributions made pursuant to Section 18861. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money ~~which~~ *that* taxpayers have designated pursuant to Section 18861 to be transferred to the California Cancer Research Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Cancer Research Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18861 for payment into that fund.

SEC. 174. Section 19551.5 of the Revenue and Taxation Code is amended to read:

19551.5. (a) Notwithstanding any other law, each city that assesses a city business tax or requires a city business license shall, upon the request of the Franchise Tax Board, annually submit to the Franchise Tax Board the information that is collected in the course of administration of the city's business tax program, as described in subdivision (b).

(b) Information, collected in the course of administration of the city's business tax program, shall be limited to the following:

(1) Name of the business, if the business is a corporation, partnership, or limited liability company, or the owner's name if the business is a sole proprietorship.

(2) Business mailing address.

(3) Federal employer identification number, if applicable, or the business owner's social security number.

(4) Standard Industrial Classification ~~Code~~ (SIC) *Code* or North American Industry Classification System (NAICS) Code.

(5) Business start date.

(6) Business cease date.

(7) City number.

(8) Ownership type.

(c) The reports required under this section shall be filed on magnetic media such as tapes or compact discs, through a secure electronic process, or in other machine-readable form, according to standards prescribed by regulations promulgated by the Franchise Tax Board.

(d) Cities that receive a request from the Franchise Tax Board shall begin providing to the Franchise Tax Board the information

required by this section as soon as economically feasible, but no later than December 31, 2009. The information shall be furnished annually at a time and in the form that the Franchise Tax Board may prescribe by regulation.

(e) The city data provided to the Franchise Tax Board under this section is subject to Section 19542, and may not be used for any purpose other than state tax enforcement or as otherwise authorized by law.

(f) If a city enters into a reciprocal agreement with the Franchise Tax Board pursuant to subdivision (a) of Section 19551.1, the city shall also waive reimbursement for costs incurred to provide information required under this section and shall be precluded from obtaining reimbursement as specified under Section 5 of ~~the act adding this subdivision~~ *Chapter 345 of the Statutes of 2008*. The reciprocal agreement shall specify that each party shall bear its own costs to furnish the data involved in the exchange authorized by Section 19551.1 and this section, and the Franchise Tax Board shall be precluded from obtaining reimbursement as specified under subdivision (c) of Section 19551.1.

(g) A city shall not be required to provide information to the Franchise Tax Board pursuant to this section if the Franchise Tax Board fails to provide tax information to the city pursuant to a reciprocal agreement entered into pursuant to subdivision (a) of Section ~~19551.5~~ *19551.1* for reasons other than concerns related to confidentiality of tax information provided to the city.

(h) This section shall remain in effect through and including December 31, 2013, and shall be repealed on January 1, 2014.

SEC. 175. Section 164.53 of the Streets and Highways Code is amended to read:

164.53. (a) A local agency may request authorization from the commission to make advance expenditures of funds, other than state or federal funds, for a project which is included in the priority list for the allocation of transit capital improvement funds pursuant to Section 99317 of the Public Utilities Code, or is included in the adopted state transportation improvement program, or is specifically authorized by Chapter 3 (commencing with Section ~~99600)~~ *99620)* of Part 11.5 of Division 10 of the Public Utilities Code.

(b) If the commission approves a request submitted pursuant to subdivision (a), the approved advance expenditures shall be

considered either part of the nonfederal share of project costs, or part of the match from public or private sources, for projects which are included in the transit capital improvement program pursuant to Section 99317 of the Public Utilities Code, or included in the state transportation improvement program, or which are authorized by Chapter 3 (commencing with Section ~~99600)~~ *99620)* of Part 11.5 of Division 10 of the Public Utilities Code.

(c) The commission's approval of a request pursuant to subdivision (b) does not, in and of itself, constitute an obligation to allocate state funds for the project.

(d) The commission, in consultation with the department and local transportation officials, shall develop and adopt guidelines to implement this section. The guidelines shall include a requirement that the advance expenditure of funds will result in the completion of an operable segment of a transportation project. The ~~acquistion~~ *acquisition* of right-of-way needed either for a usable urban or commuter rail project or an operable segment of an urban or commuter rail project meets that requirement.

(e) The commission shall prepare a report on the progress and impact of the advance expenditure program authorized by this section and shall include the report as an element of the annual report to the Legislature required pursuant to Sections 14535 and 14536 of the Government Code.

SEC. 176. Section 1967.10 of the Streets and Highways Code is amended to read:

1967.10. Not later than three years and no sooner than one year after the transportation management agency first collects revenues from the congestion pricing fees authorized under Section 1967.5, the authority shall conduct a public opinion survey regarding the congestion pricing demonstration program and provide a report to the Assembly Committee on Transportation and the Senate Committee on Transportation and Housing ~~Committee~~ on its findings, conclusions, and recommendations concerning the congestion pricing demonstration program authorized by this act. The report shall include an analysis of the success of the congestion pricing demonstration program on minimizing vehicle miles traveled and motor vehicle trips on the San Francisco-Oakland Bay Bridge and increasing public transit use, as well as an economic analysis of the program's impact on funding public transportation improvements and operations.

SEC. 177. Section 30914 of the Streets and Highways Code is amended to read:

30914. (a) In addition to any other authorized expenditures of toll bridge revenues, the following major projects may be funded from toll revenues of all bridges:

(1) Dumbarton Bridge: Improvement of the western approaches from Route 101 if affected local governments are involved in the planning.

(2) San Mateo-Hayward Bridge and approaches: Widening of the bridge to six lanes, construction of rail transit capital improvements on the bridge structure, and improvements to the Route 92/Route 880 interchange.

(3) Construction of West Grand connector or an alternate project designed to provide comparable benefit by reducing vehicular traffic congestion on the eastern approaches to the San Francisco-Oakland Bay Bridge. Affected local governments shall be involved in the planning.

(4) Not less than 90 percent of the revenues determined by the authority as derived from the toll increase approved in 1988 for class I vehicles on the San Francisco-Oakland Bay Bridge authorized by Section 30917 shall be used exclusively for rail transit capital improvements designed to reduce vehicular traffic congestion on that bridge. This amount shall be calculated as 21 percent of the revenue generated each year by the collection of the base toll at the level established by the 1988 increase on the San Francisco-Oakland Bay Bridge.

(b) Notwithstanding any funding request for the transbay bus terminal pursuant to Section 31015, the Metropolitan Transportation Commission shall allocate toll bridge revenues in an annual amount not to exceed three million dollars ($3,000,000), plus a 3.5-percent annual increase, to the department or to the Transbay Joint Powers Authority after the department transfers the title of the Transbay Terminal Building to that entity, for operation and maintenance expenditures. This allocation shall be payable from funds transferred by the Bay Area Toll Authority. This transfer of funds is subordinate to any obligations of the authority, now or hereafter existing, having a statutory or first priority lien against the toll bridge revenues. The first annual 3.5-percent increase shall be made on July 1, 2004. The transfer is further subject to annual certification by the department or the

Transbay Joint Powers Authority that the total Transbay Terminal Building operating revenue is insufficient to pay the cost of operation and maintenance without the requested funding.

(c) If the voters approve a toll increase in 2004 pursuant to Section 30921, the authority shall, consistent with the provisions of subdivisions (d) and (f), fund the projects described in this subdivision and in subdivision (d) that shall collectively be known as the Regional Traffic Relief Plan by bonding or transfers to the Metropolitan Transportation Commission. These projects have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors, from toll revenues of all bridges:

(1) BART/MUNI Connection at Embarcadero and Civic Center Stations. Provide direct access from the BART platform to the MUNI platform at the above stations and equip new fare gates that are TransLink ready. Three million dollars ($3,000,000). The project sponsor is BART.

(2) MUNI Metro Third Street Light Rail Line. Provide funding for the surface and light rail transit and maintenance facility to support MUNI Metro Third Street Light Rail service connecting to Caltrain stations and the E-Line waterfront line. Thirty million dollars ($30,000,000). The project sponsor is MUNI.

(3) MUNI Waterfront Historic Streetcar Expansion. Provide funding to rehabilitate historic streetcars and construct trackage and terminal facilities to support service from the Caltrain Terminal, the Transbay Terminal, and the Ferry Building, and connecting the Fisherman's Wharf and northern waterfront. Ten million dollars ($10,000,000). The project sponsor is MUNI.

(4) East to West Bay Commuter Rail Service over the Dumbarton Rail Bridge. Provide funding for the necessary track and station improvements and rolling stock to interconnect the BART and Capitol Corridor at Union City with Caltrain service over the Dumbarton Rail Bridge, and interconnect and provide track improvements for the ACE line with the same Caltrain service at Centerville. Provide a new station at Sun Microsystems in Menlo Park. One hundred thirty-five million dollars ($135,000,000). The project is jointly sponsored by the San Mateo County Transportation Authority, Capitol Corridor, the Alameda County Congestion Management Agency, and the Alameda County Transportation Improvement Authority.

(5) Vallejo Station. Construct intermodal transportation hub for bus and ferry service, including parking structure, at site of Vallejo's current ferry terminal. Twenty-eight million dollars ($28,000,000). The project sponsor is the City of Vallejo.

(6) Solano County Express Bus Intermodal Facilities. Provide competitive grant fund source, to be administered by the Metropolitan Transportation Commission. Eligible projects are Curtola Park and Ride, Benicia Intermodal Facility, Fairfield Transportation Center, and Vacaville Intermodal Station. Priority to be given to projects that are fully funded, ready for construction, and serving transit service that operates primarily on existing or fully funded high-occupancy vehicle lanes. Twenty million dollars ($20,000,000). The project sponsor is *the* Solano Transportation Authority.

(7) Solano County Corridor Improvements near Interstate 80/Interstate 680 Interchange. Provide funding for improved mobility in corridor based on recommendations of joint study conducted by the Department of Transportation and the Solano Transportation Authority. Cost-effective transit infrastructure investment or service identified in the study shall be considered a high priority. One hundred million dollars ($100,000,000). The project sponsor is *the* Solano Transportation Authority.

(8) Interstate 80: Eastbound High-Occupancy Vehicle (HOV) Lane Extension from Route 4 to Carquinez Bridge. Construct HOV-lane extension. Fifty million dollars ($50,000,000). The project sponsor is the Department of Transportation.

(9) Richmond Parkway Transit Center. Construct parking structure and associated improvements to expand bus capacity. Sixteen million dollars ($16,000,000). The project sponsor is *the* Alameda-Contra Costa Transit District, in coordination with West Contra Costa Transportation Advisory Committee, Western Contra Costa Transit Authority, City of Richmond, and the Department of Transportation.

(10) Sonoma-Marin Area Rail Transit District (SMART) Extension to Larkspur or San Quentin. Extend rail line from San Rafael to a ferry terminal at Larkspur or San Quentin. Thirty-five million dollars ($35,000,000). Up to five million dollars ($5,000,000) may be used to study, in collaboration with the Water Transit Authority, the potential use of San Quentin property as an intermodal water transit terminal. The project sponsor is SMART.

(11) Greenbrae Interchange/Larkspur Ferry Access Improvements. Provide enhanced regional and local access around the Greenbrae Interchange to reduce traffic congestion and provide multimodal access to the Richmond-San Rafael Bridge and Larkspur Ferry Terminal by constructing a new full service diamond interchange at Wornum Drive south of the Greenbrae Interchange, extending a multiuse pathway from the new interchange at Wornum Drive to East Sir Francis Drake Boulevard and the Cal Park Hill rail right-of-way, adding a new lane to East Sir Francis Drake Boulevard and rehabilitating the Cal Park Hill Rail Tunnel and right-of-way approaches for bicycle and pedestrian access to connect the San Rafael Transit Center with the Larkspur Ferry Terminal. Sixty-five million dollars ($65,000,000). The project sponsor is *the* Marin County Congestion Management Agency.

(12) Direct High-Occupancy Vehicle (HOV) lane connector from Interstate 680 to the Pleasant Hill or Walnut Creek BART stations or in close proximity to either station or as an extension of the southbound Interstate 680 High-Occupancy Vehicle Lane through the Interstate 680/State Highway Route 4 interchange from North Main in Walnut Creek to Livorna Road. The County Connection shall utilize up to one million dollars ($1,000,000) of the funds described in this paragraph to develop options and recommendations for providing express bus service on the Interstate 680 High-Occupancy Vehicle Lane south of the Benicia Bridge in order to connect to BART. Upon completion of the plan, the Contra Costa Transportation Authority shall adopt a preferred alternative provided by the County Connection plan for future funding. Following adoption of the preferred alternative, the remaining funds may be expended either to fund the preferred alternative or to extend the high-occupancy vehicle lane as described in this paragraph. Fifteen million dollars ($15,000,000). The project is sponsored by the Contra Costa Transportation Authority.

(13) Rail Extension to East Contra Costa/E-BART. Extend BART from Pittsburg/Bay Point Station to Byron in East Contra Costa County. Ninety-six million dollars ($96,000,000). Project funds may only be used if the project is in compliance with adopted BART policies with respect to appropriate land use zoning in

vicinity of proposed stations. The project is jointly sponsored by BART and *the* Contra Costa Transportation Authority.

(14) Capitol Corridor Improvements in Interstate 80/Interstate 680 Corridor. Fund track and station improvements, including the Suisun Third Main Track and new Fairfield Station. Twenty-five million dollars ($25,000,000). The project sponsor is *the* Capitol Corridor Joint Powers Authority and the Solano Transportation Authority.

(15) Central Contra Costa Bay Area Rapid Transit (BART) Crossover. Add new track before Pleasant Hill BART Station to permit BART trains to cross to return track towards San Francisco. Twenty-five million dollars ($25,000,000). The project sponsor is BART.

(16) Benicia-Martinez Bridge: New Span. Provide partial funding for completion of new five-lane span between Benicia and Martinez to significantly increase capacity in the I-680 corridor. Fifty million dollars ($50,000,000). The project sponsor is the Bay Area Toll Authority.

(17) Regional Express Bus North. Competitive grant program for bus service in Richmond-San Rafael Bridge, Carquinez, Benicia-Martinez, and Antioch Bridge corridors. Provide funding for park and ride lots, infrastructure improvements, and rolling stock. Eligible recipients include *the* Golden Gate Bridge Highway and Transportation District, Vallejo Transit, Napa VINE, Fairfield-Suisun Transit, Western Contra Costa Transit Authority, Eastern Contra Costa Transit Authority, and Central Contra Costa Transit Authority. The Golden Gate Bridge Highway and Transportation District shall receive a minimum of one million six hundred thousand dollars ($1,600,000). Napa VINE shall receive a minimum of two million four hundred thousand dollars ($2,400,000). Twenty million dollars ($20,000,000). The project sponsor is the Metropolitan Transportation Commission.

(18) TransLink. Integrate the bay area's regional smart card technology, TransLink, with operator fare collection equipment and expand system to new transit services. Twenty-two million dollars ($22,000,000). The project sponsor is the Metropolitan Transportation Commission.

(19) Real-Time Transit Information. Provide a competitive grant program for transit operators for assistance with implementation of high-technology systems to provide real-time transit information

to riders at transit stops or via telephone, wireless, or Internet communication. Priority shall be given to projects identified in the commission's connectivity plan adopted pursuant to subdivision (d) of Section 30914.5. Twenty million dollars ($20,000,000). The funds shall be administered by the Metropolitan Transportation Commission.

(20) Safe Routes to Transit: Plan and construct bicycle and pedestrian access improvements in close proximity to transit facilities. Priority shall be given to those projects that best provide access to regional transit services. Twenty-two million five hundred thousand dollars ($22,500,000). City Car Share shall receive two million five hundred thousand dollars ($2,500,000) to expand its program within approximately one-quarter mile of transbay regional transit terminals or stations. The City Car Share project is sponsored by City Car Share and the Safe Routes to Transit project is jointly sponsored by the East Bay Bicycle Coalition and the Transportation and Land Use Coalition. These sponsors must identify a public agency cosponsor for purposes of specific project fund allocations.

(21) BART Tube Seismic Strengthening. Add seismic capacity to existing BART tube connecting the ~~east bay~~ *East Bay* with San Francisco. One hundred forty-three million dollars ($143,000,000). The project sponsor is BART.

(22) Transbay Terminal/Downtown Caltrain Extension. A new Transbay Terminal at First and Mission Streets in San Francisco providing added capacity for transbay, regional, local, and intercity bus services, the extension of Caltrain rail services into the terminal, and accommodation of a future high-speed passenger rail line to the terminal and eventual rail connection to the east bay. Eligible expenses include project planning, design and engineering, construction of a new terminal and its associated ramps and tunnels, demolition of existing structures, design and development of a temporary terminal, property and right-of-way acquisitions required for the project, and associated project-related administrative expenses. A bus- and train-ready terminal facility, including purchase and acquisition of necessary rights-of-way for the terminal, ramps, and rail extension, is the first priority for toll funds for the Transbay Terminal/Downtown Caltrain Extension Project. The temporary terminal operation shall not exceed five

years. One hundred fifty million dollars ($150,000,000). The project sponsor is the Transbay Joint Powers Authority.

(23) Oakland Airport Connector. New transit connection to link BART, Capitol Corridor, and AC Transit with Oakland Airport. The Port of Oakland shall provide a full funding plan for the connector. Thirty million dollars ($30,000,000). The project sponsors are the Port of Oakland and BART.

(24) AC Transit Enhanced Bus-Phase 1 on Telegraph Avenue, International Boulevard, and East 14th Street (Berkeley-Oakland-San Leandro). Develop enhanced bus service on these corridors, including bus bulbs, signal prioritization, new buses, and other improvements. Priority of investment shall improve the AC connection to BART on these corridors. Sixty-five million dollars ($65,000,000). The project sponsor is AC Transit.

(25) Transbay Commute Ferry Service. Purchase two vessels for transbay ferry services. Second vessel funds to be released upon demonstration of appropriate terminal locations, new transit-oriented development, adequate parking, and sufficient landside feeder connections to support ridership projections. Twelve million dollars ($12,000,000). The project sponsor is San Francisco Bay Area Water Emergency Transportation Authority. If the San Francisco Bay Area Water Emergency Transportation Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements or for consolidation of existing ferry operations.

(26) Commute Ferry Service for Berkeley/Albany. Purchase two vessels for ferry services between the Berkeley/Albany Terminal and San Francisco. Parking access and landside feeder connections must be sufficient to support ridership projections. Twelve million dollars ($12,000,000). The project sponsor is the San Francisco Bay Area Water Emergency Transportation Authority. If the San Francisco Bay Area Water Emergency Transportation Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements. If the San Francisco Bay Area Water Emergency Transportation Authority does not have an entitled terminal site within the Berkeley/Albany catchment

area by 2010 that meets its requirements, the funds described in this paragraph and the operating funds described in paragraph (7) of subdivision (d) shall be transferred to another site in the East Bay. The City of Richmond shall be given first priority to receive this transfer of funds if it has met the planning milestones identified in its special study developed pursuant to paragraph (28).

(27) Commute Ferry Service for South San Francisco. Purchase two vessels for ferry services to the Peninsula. Parking access and landside feeder connections must be sufficient to support ridership projections. Twelve million dollars ($12,000,000). The project sponsor is the San Francisco Bay Area Water Emergency Transportation Authority. If the San Francisco Bay Area Water Emergency Transportation Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements.

(28) Water Transit Facility Improvements, Spare Vessels, and Environmental Review Costs. Provide two backup vessels for water transit services, expand berthing capacity at the Port of San Francisco, and expand environmental studies and design for eligible locations. Forty-eight million dollars ($48,000,000). The project sponsor is *the* San Francisco Bay Area Water Emergency Transportation Authority. Up to one million dollars ($1,000,000) of the funds described in this paragraph shall be made available for the San Francisco Bay Area Water Emergency Transportation Authority to study accelerating development and other milestones that would potentially increase ridership at the City of Richmond ferry terminal.

(29) Regional Express Bus Service for San Mateo, Dumbarton, and Bay Bridge Corridors. Expand park and ride lots, improve HOV access, construct ramp improvements, and purchase rolling stock. Twenty-two million dollars ($22,000,000). The project sponsors are AC Transit and Alameda County Congestion Management Agency.

(30) I-880 North Safety Improvements. Reconfigure various ramps on I-880 and provide appropriate mitigations between 29th Avenue and 16th Avenue. Ten million dollars ($10,000,000). The project sponsors are *the* Alameda County Congestion Management Agency, City of Oakland, and ~~the~~ Department of Transportation.

(31) BART Warm Springs Extension. Extension of the existing BART system from Fremont to Warm Springs in southern Alameda County. Ninety-five million dollars ($95,000,000). Up to ten million dollars ($10,000,000) shall be used for grade separation work in the City of Fremont necessary to extend BART. The project would facilitate a future rail service extension to the Silicon Valley. The project sponsor is BART.

(32) I-580 (Tri Valley) Rapid Transit Corridor Improvements. Provide rail or High-Occupancy Vehicle lane direct connector to Dublin BART and other improvements on I-580 in Alameda County for use by express buses. Sixty-five million dollars ($65,000,000). The project sponsor is *the* Alameda County Congestion Management Agency.

(33) Regional Rail Master Plan. Provide planning funds for integrated regional rail study pursuant to subdivision (f) of Section 30914.5. Six million five hundred thousand dollars ($6,500,000). The project sponsors are Caltrain and BART.

(34) Integrated Fare Structure Program. Provide planning funds for the development of zonal monthly transit passes pursuant to subdivision (e) of Section 30914.5. One million five hundred thousand dollars ($1,500,000). The project sponsor is the Translink Consortium.

(35) Transit Commuter Benefits Promotion. Marketing program to promote tax-saving opportunities for employers and employees as specified in Section 132(f)(3) or 162(a) of the Internal Revenue Code. Goal is to increase the participation rate of employers offering employees a tax-free benefit to commute to work by transit. The project sponsor is the Metropolitan Transportation Commission. Five million dollars ($5,000,000).

(36) Caldecott Tunnel Improvements. Provide funds to plan and construct a fourth bore at the Caldecott Tunnel between Contra Costa and Alameda Counties. The fourth bore will be a two-lane bore with a shoulder or shoulders north of the current three bores. The County Connection shall study all feasible alternatives to increase transit capacity in the westbound corridor of State Highway Route 24 between State Highway Route 680 and the Caldecott Tunnel, including the study of the use of an express lane, high-occupancy vehicle lane, and an auxiliary lane. The cost of the study shall not exceed five hundred thousand dollars ($500,000) and shall be completed not later than January 15, 2006. Fifty

million five hundred thousand dollars ($50,500,000). The project sponsor is the Contra Costa Transportation Authority.

(d) Not more than 38 percent of the revenues generated from the toll increase shall be made available annually for the purpose of providing operating assistance for transit services as set forth in the authority's annual budget resolution. The funds shall be made available to the provider of the transit services subject to the performance measures described in Section 30914.5. If the funds cannot be obligated for operating assistance consistent with the performance measures, these funds shall be obligated for other operations consistent with this chapter.

Except for operating programs that do not have planned funding increases and subject to the 38-percent limit on total operating cost funding in any single year, following the first year of scheduled operations, an escalation factor, not to exceed 1.5 percent per year, shall be added to the operating cost funding through ~~fiscal year~~ *the* 2015–16 *fiscal year*, to partially offset increased operating costs. The escalation factors shall be contained in the operating agreements described in Section 30914.5. Subject to the limitations of this paragraph, the Metropolitan Transportation Commission may annually fund the following operating programs as another component of the Regional Traffic Relief Plan:

(1) Golden Gate Express Bus Service over the Richmond Bridge (Route 40). Two million one hundred thousand dollars ($2,100,000).

(2) Napa ~~Vine~~ *VINE* Service terminating at the Vallejo Intermodal Terminal. Three hundred ninety thousand dollars ($390,000).

(3) Regional Express Bus North Pool serving the Carquinez and Benicia Bridge Corridors. Three million four hundred thousand dollars ($3,400,000).

(4) Regional Express Bus South Pool serving the Bay Bridge, San Mateo Bridge, and Dumbarton Bridge Corridors. Six million five hundred thousand dollars ($6,500,000).

(5) Dumbarton Rail. Five million five hundred thousand dollars ($5,500,000).

(6) San Francisco Bay Area Water Emergency Transportation Authority, Alameda/Oakland/Harbor Bay, Berkeley/Albany, South San Francisco, Vallejo, or other transbay ferry service. A portion of the operating funds may be dedicated to landside transit

operations. Fifteen million three hundred thousand dollars ($15,300,000). Funds historically made available to the City of Vallejo or the City of Alameda shall continue to be allocated to those cities until the date specified in the adopted transition plan developed by the San Francisco Bay Area Water Emergency *Transportation* Authority pursuant to subdivision (b) of Section 66540.32 of the Government Code. The authority may use up to six hundred thousand dollars ($600,000) to support development of the transition plan and for transition-related costs, including, but not limited to, reasonable administrative costs incurred by the authority and transferring agencies on or after July 1, 2008, in accordance with subdivision (e) of Section 66540.11 of the Government Code, upon a determination by the Metropolitan Transportation Commission that these costs are reasonable and substantially the result of the transition. After adoption of the transition plan and after formal agreement by the Cities of Alameda and Vallejo to transition their ferry services to the authority in accordance with the transition plan, the authority may use additional funds, above the limits previously referenced in this paragraph, for transition and transition-related activities, incurred before or after the actual transfer of services, as ~~defined~~ *specified* in the transition plan and approved by the Metropolitan Transportation Commission. The authority may utilize funds from this section for operation of the services transferred from the City of Vallejo or the City of Alameda if approved by the Metropolitan Transportation Commission.

(7) Owl Bus Service on BART Corridor. One million eight hundred thousand dollars ($1,800,000).

(8) MUNI Metro Third Street Light Rail Line. Two million five hundred thousand dollars ($2,500,000) without escalation.

(9) AC Transit Enhanced Bus Service on Telegraph Avenue, International Boulevard, and East 14th Street in Berkeley-Oakland-San Leandro. Three million dollars ($3,000,000) without escalation.

(10) TransLink, three-year operating program. Twenty million dollars ($20,000,000) without escalation.

(11) San Francisco Bay Area Water Emergency Transportation Authority, regional planning and operations. Three million dollars ($3,000,000) without escalation.

(e) For all projects authorized under subdivision (c), the project sponsor shall submit an initial project report to the Metropolitan Transportation Commission before July 1, 2004. This report shall include all information required to describe the project in detail, including the status of any environmental documents relevant to the project, additional funds required to fully fund the project, the amount, if any, of funds expended to date, and a summary of any impediments to the completion of the project. This report, or an updated report, shall include a detailed financial plan and shall notify the commission if the project sponsor will request toll revenue within the subsequent 12 months. The project sponsor shall update this report as needed or requested by the commission. No funds shall be allocated by the commission for any project authorized by subdivision (c) until the project sponsor submits the initial project report, and the report is reviewed and approved by the commission.

If multiple project sponsors are listed for projects listed in subdivision (c), the commission shall identify a lead sponsor in coordination with all identified sponsors, for purposes of allocating funds. For any projects authorized under subdivision (c), the commission shall have the option of requiring a memorandum of understanding between itself and the project sponsor or sponsors that shall include any specific requirements that must be met prior to the allocation of funds provided under subdivision (c).

(f) The Metropolitan Transportation Commission shall annually assess the status of programs and projects and shall allocate a portion of funding made available under Section 30921 or 30958 for public information and advertising to support the services and projects identified in subdivisions (c) and (d). If a program or project identified in subdivision (c) has cost savings after completion, taking into account construction costs and an estimate of future settlement claims, or cannot be completed or cannot continue due to delivery or financing obstacles making the completion or continuation of the program or project unrealistic, the commission shall consult with the program or project sponsor. After consulting with the sponsor, the commission shall hold a public hearing concerning the program or project. After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, or reassign some or all of the funds to another project within the same bridge corridor. If a

program or project identified in subdivision (c) is to be implemented with other funds not derived from tolls, the commission shall follow the same consultation and hearing process described above and may vote thereafter to reassign the funds to another project consistent with the intent of this chapter. If an operating program or project as identified in subdivision (d) cannot achieve its performance objectives described in subdivision (a) of Section 30914.5 or cannot continue due to delivery or financing obstacles making the completion or continuation of the program or project unrealistic, the commission shall consult with the program or the project sponsor. After consulting with the sponsor, the commission shall hold a public hearing concerning the program or project. After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, or to reassign some or all of the funds to another or an additional regional transit program or project within the same corridor. If a program or project does not meet the required performance measures, the commission shall give the sponsor a time certain to achieve the performance measures before reassigning its funding.

(g) If the voters approve a toll increase pursuant to Section 30921, the authority shall within 24 months of the election date, include the projects in a long-range plan that are consistent with the commission's findings required by this section and Section 30914.5. The authority shall update its long-range plan as required to maintain its viability as a strategic plan for funding projects authorized by this section. The authority shall by January 1, 2007, submit its updated long-range plan to the transportation policy committee of each house of the Legislature for review.

(h) If the voters approve a toll increase pursuant to Section 30921, and if additional funds from this toll increase are available following the funding obligations of subdivisions (c) and (d), the authority may set aside a reserve to fund future rolling stock replacement to enhance the sustainability of the services enumerated in subdivision (d). The authority shall, by January 1, 2020, submit a 20-year toll bridge expenditure plan to the Legislature for adoption. This expenditure plan shall have, as its highest priority, replacement of transit vehicles purchased pursuant to subdivision (c).

SEC. 178. Section 1808.4 of the Vehicle Code is amended to read:

1808.4. (a) For all of the following persons, his or her home address that appears in a record of the department~~,~~ is confidential if the person requests the confidentiality of that information:

(1) Attorney General.

(2) State ~~public defender~~ *Public Defender*.

(3) A Member of the Legislature.

(4) A judge or court commissioner.

(5) A district attorney.

(6) A public defender.

(7) An attorney employed by the Department of Justice, the office of the State Public Defender, or a county office of the district attorney or public defender.

(8) A city attorney and an attorney who submits verification from his or her public employer that the attorney represents the city in matters that routinely place the attorney in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts, if that attorney is employed by a city attorney.

(9) A nonsworn police dispatcher.

(10) A child abuse investigator or social worker, working in child protective services within a social services department.

(11) An active or retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(12) An employee of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or the Prison Industry Authority specified in Sections 20403 and 20405 of the Government Code.

(13) A nonsworn employee of a city police department, a county sheriff's office, the Department of the California Highway Patrol, a federal, state, or local detention facility, or a local juvenile hall, camp, ranch, or home, who submits agency verification that, in the normal course of his or her employment, he or she controls or supervises inmates or is required to have a prisoner in his or her care or custody.

(14) A county counsel assigned to child abuse cases.

(15) An investigator employed by the Department of Justice, a county district attorney, or a county public defender.

(16) A member of a city council.

(17) A member of a board of supervisors.

(18) A federal prosecutor, criminal investigator, or National Park Service Ranger working in this state.

(19) An active or retired city enforcement officer engaged in the enforcement of the Vehicle Code or municipal parking ordinances.

(20) An employee of a trial court.

(21) A psychiatric social worker employed by a county.

(22) A police or sheriff department employee designated by the Chief of Police of the department or the sheriff of the county as being in a sensitive position. A designation pursuant to this paragraph shall, for purposes of this section, remain in effect for three years subject to additional designations that, for purposes of this section, shall remain in effect for additional three-year periods.

(23) A state employee in one of the following classifications:

(A) Licensing Registration Examiner, Department of Motor Vehicles.

(B) Motor Carrier Specialist 1, *Department of the* California Highway Patrol.

(C) Museum Security Officer and Supervising Museum Security Officer.

(24) (A) The spouse or child of a person listed in paragraphs (1) to (23), inclusive, regardless of the spouse's or child's place of residence.

(B) The surviving spouse or child of a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, if the peace officer died in the line of duty.

(b) The confidential home address of a person listed in subdivision (a) shall not be disclosed, except to any of the following:

(1) A court.

(2) A law enforcement agency.

(3) The State Board of Equalization.

(4) An attorney in a civil or criminal action that demonstrates to a court the need for the home address, if the disclosure is made pursuant to a subpoena.

(5) A governmental agency to which, under any provision of law, information is required to be furnished from records maintained by the department.

(c) (1) A record of the department containing a confidential home address shall be open to public inspection, as provided in

Section 1808, if the address is completely obliterated or otherwise removed from the record.

(2) Following termination of office or employment, a confidential home address shall be withheld from public inspection for three years, unless the termination is the result of conviction of a criminal offense. If the termination or separation is the result of the filing of a criminal complaint, a confidential home address shall be withheld from public inspection during the time in which the terminated individual may file an appeal from termination, while an appeal from termination is ongoing, and until the appeal process is exhausted, after which confidentiality shall be at the discretion of the employing agency if the termination or separation is upheld. Upon reinstatement to an office or employment, the protections of this section are available.

(3) With respect to a retired peace officer, his or her home address shall be withheld from public inspection permanently upon request of confidentiality at the time the information would otherwise be opened. The home address of the surviving spouse or child listed in subparagraph (B) of paragraph (24) of subdivision (a) shall be withheld from public inspection for three years following the death of the peace officer.

(4) The department shall inform a person who requests a confidential home address what agency the individual whose address was requested is employed by or the court at which the judge or court commissioner presides.

(d) A violation of subdivision (a) by the disclosure of the confidential home address of a peace officer, as specified in paragraph (11) of subdivision (a), a nonsworn employee of the city police department or county sheriff's office, or the spouses or children of these persons, including, but not limited to, the surviving spouse or child listed in subparagraph (B) of paragraph (24) of subdivision (a), that results in bodily injury to the peace officer, employee of the city police department or county sheriff's office, or the spouses or children of these persons is a felony.

SEC. 179. Section 4156 of the Vehicle Code is amended to read:

4156. (a) ~~Other provisions~~ *Notwithstanding any other provision* of this code ~~notwithstanding~~, and except as provided in subdivision (b), the department in its discretion may issue a temporary permit to operate a vehicle when a payment of fees has been accepted in

an amount to be determined by, and paid to the department, by the owner or other person in lawful possession of the vehicle. The permit shall be subject to the terms and conditions, and shall be valid for the period of time, that the department shall deem appropriate under the circumstances.

(b) (1) The department shall not issue a temporary permit pursuant to subdivision (a) to operate a vehicle for which a certificate of compliance is required pursuant to Section 4000.3, and for which that certificate of compliance has not been issued, unless the department is presented with sufficient evidence, as determined by the department, that the vehicle has failed its most recent smog check inspection.

(2) Not more than one temporary permit may be issued pursuant to this subdivision to a vehicle owner in a two-year period.

(3) A temporary permit issued pursuant to paragraph (1) is valid for either 60 days after the expiration of the registration of the vehicle or 60 days after the date that vehicle is removed from nonoperation, whichever is applicable at the time that the temporary permit is issued.

(4) A temporary permit issued pursuant to paragraph (1) is subject to Section 9257.5.

SEC. 180. Section 22651 of the Vehicle Code is amended to read:

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

(a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a

complaint has been filed and a warrant thereon is issued charging that the vehicle ~~is~~ *was* embezzled.

(d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When a vehicle, except highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.

(i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violations, or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may

be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which

the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) Wherever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility under the following circumstances:

(A) With a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility.

(B) Displaying in, or upon, the vehicle, a registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit that was not issued for that vehicle, or is not otherwise lawfully used on that vehicle under this code.

(C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or falsified registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit.

(2) When a vehicle described in paragraph (1) is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle.

(3) For the purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(4) As used in this subdivision, "offstreet parking facility" means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and a privately owned facility for offstreet parking if a fee is not charged for the privilege to park and it is held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to

the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by paragraph (1) of subdivision (a) of Section 22658 *of this code*, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When a vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When a vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle that is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) Notwithstanding paragraph (1), when a commercial motor vehicle, as defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or left standing for more than 10 hours within a roadside rest area or viewpoint.

(3) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

(u) When a peace officer issues a citation for a violation of Section 11700 and the vehicle is being offered for sale.

SEC. 181. Section 26708 of the Vehicle Code is amended to read:

26708. (a) (1) A person shall not drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied upon the windshield or side or rear windows.

(2) A person shall not drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied in or upon the vehicle that obstructs or reduces the driver's clear view through the windshield or side windows.

(3) This subdivision applies to a person driving a motor vehicle with the driver's clear vision through the windshield, or side or rear windows, obstructed by snow or ice.

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

(1) Rearview mirrors.

(2) Adjustable nontransparent sunvisors that are mounted forward of the side windows and are not attached to the glass.

(3) Signs, stickers, or other materials that are displayed in a 7-inch square in the lower corner of the windshield farthest removed from the driver, signs, stickers, or other materials that are displayed in a 7-inch square in the lower corner of the rear window farthest removed from the driver, or signs, stickers, or other materials that are displayed in a 5-inch square in the lower corner of the windshield nearest the driver.

(4) Side windows that are to the rear of the driver.

(5) Direction, destination, or ~~termini~~ *terminus* signs upon a passenger common carrier motor vehicle or a schoolbus, if those signs do not interfere with the driver's clear view of approaching traffic.

(6) Rear window wiper motor.

(7) Rear trunk lid handle or hinges.

(8) The rear window or windows, if the motor vehicle is equipped with outside mirrors on both the left- and right-hand sides of the vehicle that are so located as to reflect to the driver a view of the highway through each mirror for a distance of at least 200 feet to the rear of the vehicle.

(9) A clear, transparent lens affixed to the side window opposite the driver on a vehicle greater than 80 inches in width and that occupies an area not exceeding 50 square inches of the lowest corner toward the rear of that window and that provides the driver with a wide-angle view through the lens.

(10) Sun screening devices meeting the requirements of Section 26708.2 installed on the side windows on either side of the

vehicle's front seat, if the driver or a passenger in the front seat has in his or her possession a letter or other document signed by a licensed physician and surgeon certifying that the person must be shaded from the sun due to a medical condition, or has in his or her possession a letter or other document signed by a licensed optometrist certifying that the person must be shaded from the sun due to a visual condition. The devices authorized by this paragraph shall not be used during darkness.

(11) An electronic communication device affixed to the center uppermost portion of the interior of a windshield within an area that is not greater than 5 inches square, if the device provides either of the following:

(A) The capability for enforcement facilities of the Department of the California Highway Patrol to communicate with a vehicle equipped with the device.

(B) The capability for electronic toll and traffic management on public or private roads or facilities.

(12) A portable Global Positioning System (GPS), which may be mounted in a 7-inch square in the lower corner of the windshield farthest removed from the driver or in a 5-inch square in the lower corner of the windshield nearest to the driver *and outside of an airbag deployment zone*, if the system is used only for door-to-door navigation while the motor vehicle is being operated ~~and outside of an airbag deployment zone~~.

(c) Notwithstanding subdivision (a), transparent material may be installed, affixed, or applied to the topmost portion of the windshield if the following conditions apply:

(1) The bottom edge of the material is at least 29 inches above the undepressed driver's seat when measured from a point 5 inches in front of the bottom of the backrest with the driver's seat in its rearmost and lowermost position with the vehicle on a level surface.

(2) The material is not red or amber in color.

(3) There is no opaque lettering on the material and any other lettering does not affect primary colors or distort vision through the windshield.

(4) The material does not reflect sunlight or headlight glare into the eyes of occupants of oncoming or following vehicles to any greater extent than the windshield without the material.

(d) Notwithstanding subdivision (a), clear, colorless, and transparent material may be installed, affixed, or applied to the front side windows, located to the immediate left and right of the front seat if the following conditions are met:

(1) The material has a minimum visible light transmittance of 88 percent.

(2) The window glazing with the material applied meets all requirements of Federal Motor Vehicle Safety Standard No. 205 (49 C.F.R. 571.205), including the specified minimum light transmittance of 70 percent and the abrasion resistance of AS-14 glazing, as specified in that federal standard.

(3) The material is designed and manufactured to enhance the ability of the existing window glass to block the sun's harmful ultraviolet A rays.

(4) The driver has in his or her possession, or within the vehicle, a certificate signed by the installing company certifying that the windows with the material installed meet the requirements of this subdivision and *the certificate* identifies the installing company and the material's manufacturer by full name and street address, or, if the material was installed by the vehicle owner, a certificate signed by the material's manufacturer certifying that the windows with the material installed according to manufacturer's instructions ~~meets~~ *meet* the requirements of this subdivision and *the certificate* identifies the material's manufacturer by full name and street address.

(5) If the material described in this subdivision tears or bubbles, or is otherwise worn to prohibit clear vision, it shall be removed or replaced.

SEC. 182. Section 35521 of the Water Code is amended to read:

35521. (a) Notwithstanding any other provision of law, the Hot Spring Valley Irrigation District in the County of Modoc is dissolved, and the Hot Spring Valley Water District is hereby formed in that county.

(b) The Hot Spring Valley Water District is declared to be, and shall be deemed, a water district as if the district had been formed pursuant to this division. The exterior boundary of the Hot Spring Valley Water District shall be the exterior boundary of the former Hot Spring Valley Irrigation District.

(c) The Hot Spring Valley Water District succeeds to, and is vested with, all of the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the former Hot Spring Valley Irrigation District.

(d) The status, position, and rights of any officer or employee of the former Hot Spring Valley Irrigation District shall not be affected by the transfer and shall be retained by the person as an officer or employee of the Hot Spring Valley Water District.

(e) The Hot Spring Valley Water District shall have ownership, possession, and control of all of the books, records, papers, offices, equipment, supplies, moneys, funds, appropriations, licenses, permits, entitlements, agreements, contracts, claims, judgments, land, and other assets and property, real or personal, owned or leased by, connected with the administration of, or held for the benefit or use~~,~~ of the former Hot Spring Valley Irrigation District.

(f) The unexpended balance of any funds available for use by the former Hot Spring Valley Irrigation District shall be available for use by the Hot Spring Valley Water District.

(g) No payment for the use, or right of use, of any property, real or personal, acquired or constructed by the former Hot Spring Valley Irrigation District shall be required by reason of the succession pursuant to this act~~;~~, nor shall any payment for the Hot Spring Valley Water District's acquisition of the powers, duties, responsibilities, obligations, liabilities, and jurisdiction be required by reason of that succession.

(h) All ordinances, rules, and regulations adopted by the former Hot Spring Valley Irrigation District in effect immediately preceding January 1, 2009, shall remain in effect and shall be fully enforceable unless readopted, amended, or repealed by the Hot Spring Valley Water District, or until they expire by their own terms. Any statute, law, rule, or regulation now in force, or that may hereafter be enacted or adopted with reference to the former Hot Spring Valley Irrigation District, shall mean the Hot Spring Valley Water District.

(i) Any action by or against the former Hot Spring Valley Irrigation District shall not abate, but shall continue in the name of the Hot Spring Valley Water District, and the Hot Spring Valley Water District shall be substituted for the former Hot Spring Valley Irrigation District by the court in which the action is pending. The

substitution shall not in any way affect the rights of the parties to the action.

(j) No contract, lease, license, permit, entitlement, bond, or any other agreement to which the former Hot Spring Valley Irrigation District is a party shall be void or voidable by reason of this act, but shall continue in effect, with the Hot Spring Valley Water District assuming all of the rights, obligations, liabilities, and duties of the former Hot Spring Valley Irrigation District. Bonds issued by the former Hot Spring Valley Irrigation District shall become the indebtedness of the Hot Spring Valley Water District. Any continuing obligations or responsibilities of the former Hot Spring Valley Irrigation District for managing and maintaining bond issuances shall be transferred to the Hot Spring Valley Water District without impairment to any security contained in the bond instrument.

(k) (1) Notwithstanding Section 35003, each voter*, as defined by Section 34027*, of the Hot Spring Valley Water District~~, as defined by Section 34027,~~ shall be entitled to cast only one vote, regardless of the value, acreage, or number of parcels of the voter's land within the district.

(2) Voting in the Hot Spring Valley Water District shall be by electoral divisions in accordance with Article 2 (commencing with Section 35025) of Chapter 1 of Part 4. The Hot Spring Valley Water District shall be divided into the same electoral divisions, with the same division boundaries, as those established within the former Hot Spring Valley Irrigation District. Members of the former Hot Spring Valley Irrigation District Board of Directors who are serving on January 1, 2009, may continue to serve the balance of their current terms of office, representing the same electoral divisions, as members of the Board of Directors of the Hot Spring Valley Water District.

SEC. 183. Section 79441 of the Water Code is amended to read:

79441. (a) The department, the Department of Fish and Game, and the United States Army Corps of Engineers are the implementing agencies for the levee program element.

(b) The state board, the United States Environmental Protection Agency, and the State Department of *Public* Health~~ Services~~ are the implementing agencies for the water quality program element.

(c) The Department of Fish and Game, the United States Fish and Wildlife Service, and the United States National Marine Fisheries Service are the implementing agencies for the ecosystem restoration program element. If interests in land, water, or other real property are acquired, those interests shall be acquired from willing sellers by means of entering into voluntary agreements.

(d) The department and the United States Bureau of Reclamation are the implementing agencies for the water supply reliability, storage, and conveyance elements of the program.

(e) The department, the state board, and the United States Bureau of Reclamation are the implementing agencies for the water use efficiency and water transfer program elements.

(f) The *Natural* Resources Agency, the state board, the department, the Department of Fish and Game, the Department of Conservation, the United States Natural Resources Conservation Service, the United States Environmental Protection Agency, and the United States Fish and Wildlife Service are the implementing agencies for the watershed program element.

(g) The *Natural* Resources Agency is the implementing agency for the science program element.

(h) The department, the Department of Fish and Game, the United States Bureau of Reclamation, the United States Fish and Wildlife Service, and the United States National Marine Fisheries Service are the implementing agencies for the environmental water account program element.

SEC. 184. Section 83002 of the Water Code is amended to read:

83002. The sum of eight hundred twenty million nine hundred seventy-three thousand dollars ($820,973,000) is hereby appropriated in accordance with the following schedule:

(a) Of the funds made available pursuant to Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code, the sum of two hundred eighty-five million dollars ($285,000,000) is hereby appropriated as follows:

(1) Pursuant to subdivision (c) of Section 5096.821 of the Public Resources Code, the sum of one hundred thirty-five million dollars ($135,000,000) to the department for the acquisition, design, and construction of essential emergency preparedness supplies and projects. Prior to the design or construction of any project funded pursuant to this paragraph, the California Bay-Delta Authority, or

its successor, shall approve the specific project or program. Preference shall be given to projects that protect and improve Delta water quality and drinking water supplies. Of the amount made available pursuant to this paragraph, not less than thirty-five million dollars ($35,000,000) shall be expended by the department for projects to reinforce those sections of the levees that have the highest potential to suffer breaches or failure and cause harm to municipal and industrial water supply aqueducts that cross the Delta and which are vulnerable to flood damage, including the installation of scour protection on the supports of the aqueducts in those areas located adjacent to the sections of the levees that have been identified as the highest risk of breaches or failure.

(2) Pursuant to Section 5096.827 of the Public Resources Code, the sum of one hundred fifty million dollars ($150,000,000) to the department for grants for stormwater flood management projects that reduce flood damage and provide other benefits, including groundwater recharge, water quality improvement, and ecosystem restoration. Not less than one hundred million dollars ($100,000,000) of this amount shall be available for projects that address immediate public health and safety needs~~,~~ *and* strengthen existing flood control facilities to address seismic safety issues. Twenty million dollars ($20,000,000) shall be available for local agencies to meet immediate water quality needs related to combined municipal sewer and stormwater systems to prevent sewage discharges into state waters. Twenty million dollars ($20,000,000) shall be available for urban stream stormwater flood management projects to reduce the frequency and impacts of flooding in watersheds that drain to the San Francisco Bay.

(b) Of the funds made available pursuant to Division 43 (commencing with Section 75001) of the Public Resources Code, the sum of five hundred twenty-six million four hundred ninety-one thousand dollars ($526,491,000) is hereby appropriated as follows:

(1) Pursuant to Section 75022 of the Public Resources Code, the sum of fifty million dollars ($50,000,000) to the State Department of Public Health for grants for small community drinking water system infrastructure improvements and related action to meet safe drinking water standards. First priority for these funds shall be given to disadvantaged or severely disadvantaged communities lacking resources to provide safe drinking water to residents. Small community drinking water systems that are

dependent on surface water and are under orders from the State Department of Public Health to boil water from existing treatment systems for parasites, viruses, or giardia shall be eligible for grants for drinking water system infrastructure improvements.

(2) Pursuant to Section 75025 of the Public Resources Code, the sum of fifty million four hundred thousand dollars ($50,400,000) to the State Department of Public Health for grants for projects to prevent or reduce the contamination of groundwater that serves as a source of drinking water. Funds appropriated by this paragraph shall be available for immediate projects needed to protect public health by preventing or reducing the contamination of groundwater that serves as a major source of drinking water for a community.

(A) The State Department of Public Health shall prioritize project funding based on the following criteria:

(i) The threat posed by groundwater contamination to the affected community's overall drinking water supplies, including the need for the treatment or construction of alternative supplies if groundwater is not available due to contamination.

(ii) The potential for groundwater contamination to spread and reduce drinking water supply and water storage capacity for major population areas.

(iii) The potential of the project, if fully implemented, to enhance local water supply reliability.

(iv) The potential of the project to increase opportunities for groundwater recharge and optimization of groundwater supplies.

(B) The State Department of Public Health shall give additional consideration to projects that meet any of the following criteria:

(i) The project is implemented pursuant to a comprehensive basinwide groundwater quality management and remediation plan or is necessary to develop a comprehensive groundwater plan.

(ii) Affected groundwater provides a local supply that, if contaminated, will require the importation of additional water from the Sacramento-San Joaquin Delta or the Colorado River.

(iii) The project will serve an economically disadvantaged community.

(iv) Multiple contaminants affect more than one-third of the well capacity of a local water system.

(C) Of the amount made available by this paragraph, up to ten million dollars ($10,000,000) shall be allocated for projects that

meet the criteria of this paragraph and both of the following criteria:

(i) The project has the potential to leverage funds.

(ii) The project addresses contamination at a site on the list maintained by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code or a site listed on the National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(D) Of the funds made available by this paragraph, two million dollars ($2,000,000) shall be allocated to the State Department of Public Health to contract with the State Water Resources Control Board for the purposes of Section 83002.5.

(3) (A) Pursuant to Section 75026 of the Public Resources Code, the sum of one hundred eighty-one million seven hundred ninety-one thousand dollars ($181,791,000) to the department for integrated regional water management activities as follows:

(i) One hundred million dollars ($100,000,000) for implementation grants.

(ii) Thirty-nine million dollars ($39,000,000) for planning grants, local groundwater assistance grants, and CALFED scientific research grants.

(iii) Twenty-two million ninety-one thousand dollars ($22,091,000) for projects with interregional or statewide benefits.

Of the amount made available pursuant to this paragraph, not less than ten million dollars ($10,000,000) shall be made available for expenditure to interconnect municipal and industrial water supply aqueducts that cross the Delta and that are vulnerable to flood damage, including the design and construction of interties among aqueducts that provide at least 90 percent of a regional water supply that would be threatened in the event of levee failure or other disaster, and that support an integrated regional emergency water supply system.

(iv) Twenty million seven hundred thousand dollars ($20,700,000) for program delivery costs.

(B) An implementation grant pursuant to clause (i) of subparagraph (A) shall be available only for projects included in an integrated regional water management plan that meets one of the following conditions:

(i) The plan complies with Part 2.2 (commencing with Section 10530) of Division 6.

(ii) For a plan adopted before the date on which this section is enacted, both of the following apply:

(I) The regional water management group that prepared the plan enters into a binding agreement with the department to update the plan to comply with Part 2.2 (commencing with Section 10530) of Division 6 within two years of the date on which the agreement was entered into.

(II) The regional water management group undertakes all reasonable and feasible efforts to take into account water-related needs of disadvantaged communities in the area within the boundaries of the plan.

(C) Of the funds described in clauses (i) and (ii) of subparagraph (A), the department shall allocate not less than 10 percent to facilitate and support the participation of disadvantaged communities in integrated regional water management planning and for projects that address critical water supply or water quality needs for disadvantaged communities.

(D) Of the funds described in clause (iii) of subparagraph (A), the department shall allocate two million dollars ($2,000,000) to Tulare County for development of an integrated water quality and wastewater treatment program plan to address the drinking water and wastewater needs of disadvantaged communities in the Tulare Lake Basin. Funds allocated pursuant to this paragraph shall be available for assessment and feasibility studies necessary to develop the plan, and the plan shall include recommendations for planning, infrastructure, and other water management actions, and shall include specific recommendations for regional drinking water treatment facilities, regional wastewater treatment facilities, conjunctive use sites and groundwater recharge, groundwater for surface water exchanges, related infrastructure, and cost-sharing mechanisms. Tulare County shall consult with appropriate stakeholders, including representatives of disadvantaged communities, when preparing the plan. The department, in consultation with the State Department of Public Health, shall submit the plan to the Legislature by January 1, 2011.

(E) Of the funds described in clause (i) of subparagraph (A), the department shall allocate not less than twenty million dollars ($20,000,000) to support urban and agricultural water conservation

projects necessary to meet a 20-percent reduction in per capita water use by the year 2020.

(4) Pursuant to Section 75029 of the Public Resources Code, the sum of ninety million dollars (90,000,000) to the department for the implementation of Delta water quality improvement projects that protect drinking water supplies as follows:

(A) Pursuant to subdivision (d) of Section 75029 of the Public Resources Code, the sum of fifty million dollars ($50,000,000) for drinking water intake facility projects to improve the quality of drinking water supply from the Sacramento-San Joaquin Delta that are identified in the June 2005 Delta Region Drinking Water Quality Management Plan. Funding shall be made available for environmental review, design, and construction. Project proponents seeking funding for construction shall meet all of the following criteria:

(i) Have completed documentation required under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and a notice of determination has been filed prior to June 30, 2008.

(ii) Have demonstrated multiple benefits in conveyance and Delta operation to achieve protection or improvement to Delta pelagic fisheries, as well as drinking water quality improvement and public health protection.

(iii) Are able to complete design and commence construction before June 30, 2009.

(iv) Have local or federal cost-sharing funds immediately available.

(B) The sum of forty million dollars ($40,000,000) for projects consistent with subdivision (c) of Section 75029 of the Public Resources Code.

(5) Pursuant to Section 75033 of the Public Resources Code, the sum of one hundred million dollars ($100,000,000) to the department for the acquisition, preservation, protection, and restoration of Sacramento-San Joaquin Delta resources in accordance with Section 75033 of the Public Resources Code. The department shall expend these funds pursuant to priorities that reflect the value of the resources and land uses protected by the levees to the state as a whole, consistent with the Delta Vision Strategic Plan. Projects shall be selected to improve the stability of the Delta levee system, reduce subsidence, and assist in restoring

the ecosystem of the Delta. Priority shall be given to projects that improve conditions for Delta smelt and other native fish. Up to five million dollars ($5,000,000) made available pursuant to this paragraph shall be available as grants and direct expenditures for emergency communications equipment to improve emergency response preparedness.

(6) Pursuant to Chapter 4 (commencing with Section 75041) of Division 43 of the Public Resources Code, the sum of thirty-seven million dollars ($37,000,000) to the department as follows:

(A) (i) Twelve million dollars ($12,000,000) to complete the planning and feasibility studies associated with new surface storage under the California Bay-Delta Program.

(ii) The planning and feasibility studies shall include the following information:

(I) The identification of specific construction and operation conditions proposed for each surface storage facility, including consideration of climate change, an estimated schedule for the construction and completion of each project funded under Section 75041 *of the Public Resources Code*, and the total costs of constructing each project.

(II) A description of the estimated total costs to construct each project and an allocation of the costs to public and private beneficiaries.

(iii) Any feasibility study conducted by or funded by the state for new surface storage under the California Bay-Delta Program shall evaluate funded projects consistent with all statutory and other legally established requirements for protection of environmental and natural resources, including protections for the McCloud River pursuant to Section 5093.542 of the Public Resources Code.

(iv) The feasibility studies shall be prepared and submitted to the Governor and the Legislature no later than December 31, 2009.

(B) (i) Fifteen million dollars ($15,000,000) for planning and feasibility studies to identify potential options for the reoperation of the state's flood protection and water supply systems that will optimize the use of existing facilities and groundwater storage capacity.

(ii) The studies shall incorporate appropriate climate change scenarios and be designed to determine the potential to achieve the following objectives:

(I) Integration of flood protection and water supply systems to increase water supply reliability and flood protection, improve water quality, and provide for ecosystem protection and restoration.

(II) Reoperation of existing reservoirs, flood facilities, and other water facilities in conjunction with groundwater storage to improve water supply reliability, flood control, and ecosystem protection and to reduce groundwater overdraft.

(III) Promotion of more effective groundwater management and protection and greater integration of groundwater and surface water resource uses.

(IV) Improvement of existing water conveyance systems to increase water supply reliability, improve water quality, expand flood protection, and protect and restore ecosystems.

(C) Ten million dollars ($10,000,000) to update the California Water Plan, including evaluation of climate change impacts, the development of strategies to adapt to climate change impacts, technical assistance to local agencies that incorporate climate change into their studies, reports, and plans, and the identification of strategies to reduce greenhouse gas emissions related to the storage, conveyance, and distribution of water.

(D) Of the money made available pursuant to subparagraphs (A), (B), and (C), up to two million dollars ($2,000,000) may be expended for planning and feasibility studies necessary to implement the Delta Vision Strategic Plan, developed pursuant to Executive Order No. S-17-06, dated September 28, 2006, establishing the Delta Vision process.

(7) Pursuant to Section 75050 of the Public Resources Code, the sum of seventeen million three hundred thousand dollars ($17,300,000) for the protection and restoration of rivers and streams as follows:

(A) Ten million dollars ($10,000,000) to the State Coastal Conservancy for the purposes of subdivision (i) of Section 75050 of the Public Resources Code.

(B) Seven million three hundred thousand dollars ($7,300,000) to the department for the purposes of subdivision (e) of Section 75050 of the Public Resources Code.

(c) Of the funds made available pursuant to subdivision (a) of Section 79550, the sum of three million seven hundred sixty thousand dollars ($3,760,000) is hereby appropriated to the

department for planning and feasibility studies associated with surface storage under the California Bay-Delta Program.

(d) (1) Of the funds available pursuant to Section ~~79101.4~~ *79101*, the sum of two million two hundred seventy-two thousand dollars ($2,272,000) is appropriated to the department for the Sacramento River Hamilton City Area Flood Damage Reduction Project.

(2) Of the funds available pursuant to subdivision (c) of Section 79196.5, the sum of three million four hundred fifty thousand dollars ($3,450,000) is appropriated to the department for the Franks Tract Pilot Project under the CALFED Drinking Water Quality Program.

SEC. 185. Section 223.1 of the Welfare and Institutions Code is amended to read:

223.1. (a) (1) At least one individual who is a parent, guardian, or designated emergency contact of a person in the custody of the Division of Juvenile Facilities, if the individual can reasonably be located, shall be successfully notified within 24 hours by the public officer responsible for the well-being of that person, of any suicide attempt by the person, or any serious injury or serious offense committed against the person. In consultation with division staff, as appropriate, and with concurrence of the public officer responsible for the well-being of that person, the person may designate other persons who should be notified in addition to, or in lieu of, parents or guardians, of any suicide attempt by the person, or any serious injury or serious offense committed against the person.

(2) This section shall not apply if either of the following conditions is met:

(A) A minor requests that his or her parents, guardians, or other persons not be notified, and the director of the division facility, as appropriate, determines it would be in the best interest of the minor not to notify the parents, guardians, or other persons.

(B) A person 18 years of age or older does not consent to the notification.

(b) Upon intake of a person into a division facility, and again upon attaining 18 years of age while in the custody of the division, an appropriate staff person shall explain, using language clearly understandable to the person, all of the provisions of this section, including that the person has the right to (1) request that the

information described in paragraph (1) of subdivision (a) not be provided to a parent or guardian, and (2) request that another person or persons in addition to, or in lieu of, a parent or guardian be notified. The division shall provide the person with forms and any information necessary to provide informed consent as to who shall be notified. Any designation made pursuant to paragraph (1) of subdivision (a), the consent to notify parents, guardians, or other persons, and the withholding of that consent, may be amended or revoked by the person, and shall be transferable among facilities.

(c) Staff of the division shall enter the following information into the ward's record, as appropriate, upon its occurrence:

(1) A minor's request that his or her parents, guardians, or other persons not be notified of an emergency pursuant to this section, and the determination of the relevant public officer on that request.

(2) The designation of persons who are emergency contacts, in lieu of parents or guardians, who may be notified pursuant to this section.

(3) The revocation or amendment of a designation or consent made pursuant to this section.

(4) A person's consent, or withholding thereof, to notify parents, guardians, or other persons pursuant to this section.

(d) For purposes of this section, *the following terms have the following meanings*:

(1) "Serious offense" means any offense that is chargeable as a felony and that involves violence against another person.

(2) "Serious injury" means any illness or injury that requires hospitalization, requires an evaluation for involuntary treatment for a mental health disorder or grave disability under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division ~~5 of the Welfare and Institutions Code)~~ *5)*, is potentially life threatening, or that potentially will permanently impair the use of a major body organ, appendage, or limb.

(3) "Suicide attempt" means a self-inflicted destructive act committed with explicit or inferred intent to die.

SEC. 186. Section 241.1 of the Welfare and Institutions Code is amended to read:

241.1. (a) Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described

in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(b) The probation department and the child welfare services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor described in subdivision (a), and the development of recommendations by these departments for consideration by the juvenile court. These protocols shall require, ~~which requirements shall~~ *but* not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies that have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child welfare services departments regarding the need for dependency or ward status and provisions for determining the circumstances under which a new petition should be filed to change the minor's status.

(c) Whenever a minor who is under the jurisdiction of the juvenile court of a county pursuant to Section 300, 601, or 602 is alleged to come within the description of Section 300, 601, or 602 by another county, the county probation department or child welfare services department in the county that has jurisdiction under Section 300, 601, or 602 and the county probation department or child welfare services department of the county alleging the minor to be within one of those sections shall initially determine which status will best serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court in which the petition is filed on behalf of the minor, and the court shall

determine which status is appropriate for the minor. In making their recommendation to the juvenile court, the departments shall conduct an assessment consistent with the requirements of subdivision (b). Any other juvenile court having jurisdiction over the minor shall receive notice from the court in which the petition is filed within five calendar days of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(d) Except as provided in subdivision (e), nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court.

(e) Notwithstanding subdivision (d), the probation department and the child welfare services department, in consultation with the presiding judge of the juvenile court, in any county may create a jointly written protocol to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court. This protocol shall be signed by the chief probation officer, the director of the county social services agency, and the presiding judge of the juvenile court prior to its implementation. No juvenile court may order that a child is simultaneously a dependent child and a ward of the court pursuant to this subdivision unless and until the required protocol has been created and entered into. This protocol shall include *all of the following*:

(1) A description of the process to be used to determine whether the child is eligible to be designated as a dual status child.

(2) A description of the procedure by which the probation department and the child welfare services department will assess the necessity for dual status for specified children and the process to make joint recommendations for the court's consideration prior to making a determination under this section. These recommendations shall ensure a seamless transition from wardship to dependency jurisdiction, as appropriate, so that services to the child are not disrupted upon termination of the wardship.

(3) A provision for ensuring communication between the judges who hear petitions concerning children for whom dependency

jurisdiction has been suspended while they are within the jurisdiction of the juvenile court pursuant to Section 601 or 602. A judge may communicate by providing a copy of any reports filed pursuant to Section 727.2 concerning a ward to a court that has jurisdiction over dependency proceedings concerning the child.

(4) A plan to collect data in order to evaluate the protocol pursuant to Section 241.2.

(5) Counties that exercise the option provided for in this subdivision shall adopt either an "on-hold" system as described in subparagraph (A) or a "lead court/lead agency" system as described in subparagraph (B). In no case shall there be any simultaneous or duplicative case management or services provided by both the county probation department and the child welfare services department. It is the intent of the Legislature that judges, in cases in which more than one judge is involved, shall not issue conflicting orders.

(A) In counties in which an on-hold system is adopted, the dependency jurisdiction shall be suspended or put on hold while the child is subject to jurisdiction as a ward of the court. When it appears that termination of the court's jurisdiction, as established pursuant to Section 601 or 602, is likely and that reunification of the child with his or her parent or guardian would be detrimental to the child, the county probation department and the child welfare services department shall jointly assess and produce a recommendation for the court regarding whether the court's dependency jurisdiction shall be resumed.

(B) In counties in which a lead court/lead agency system is adopted, the protocol shall include a method for identifying which court or agency will be the lead court/lead agency. That court or agency shall be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports.

SEC. 187. Section 391 of the Welfare and Institutions Code is amended to read:

391. (a) At any hearing to terminate jurisdiction over a dependent child who has reached the age of majority, the county welfare department shall do all of the following:

(1) Ensure that the child is present in court, unless the child does not wish to appear in court, or document efforts by the county welfare department to locate the child when the child is not available.

(2) Submit a report verifying that the following information, documents, and services have been provided to the child:

(A) Written information concerning the child's dependency case, including any known information regarding the child's Indian heritage or tribal connections, if applicable, his or her family history and placement history, any photographs of the child or his or her family in the possession of the county welfare department, other than forensic photographs, the whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of the sibling, directions on how to access the documents the child is entitled to inspect under Section 827, and the date on which the jurisdiction of the juvenile court would be terminated.

(B) The following documents:

(i) Social security card.

(ii) Certified birth certificate.

(iii) Health and education summary, as described in subdivision (a) of Section 16010.

(iv) Driver's license, as described in Section 12500 of the Vehicle Code, or identification card, as described in Section 13000 of the Vehicle Code.

(v) A letter prepared by the county welfare department that includes the following information:

(I) The child's name and date of birth.

(II) The dates during which the child was within the jurisdiction of the juvenile court.

(III) A statement that the child was a foster youth in compliance with state and federal financial aid documentation requirements.

(vi) If applicable, the death certificate of the parent or parents.

(vii) If applicable, proof of the child's citizenship or legal residence.

(C) Assistance in completing an application for Medi-Cal or assistance in obtaining other health insurance; referral to transitional housing, if available, or assistance in securing other housing; and assistance in obtaining employment or other financial support.

(D) Assistance in applying for admission to college or to a vocational training program or other educational institution and in obtaining financial aid, where appropriate.

(E) Assistance in maintaining relationships with individuals who are important to a child who has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, based on the child's best interests.

~~(3)~~

(b) The court may continue jurisdiction if it finds that the county welfare department has not met the requirements of paragraph (2) of subdivision (a) and that termination of jurisdiction would be harmful to the best interests of the child. If the court determines that continued jurisdiction is warranted pursuant to this section, the continuation shall only be ordered for that period of time necessary for the county welfare department to meet the requirements of paragraph (2) of subdivision (a). This section shall not be construed to limit the discretion of the juvenile court to continue jurisdiction for other reasons. The court may terminate jurisdiction if the county welfare department has offered the required services, and the child either has refused the services or, after reasonable efforts by the county welfare department, cannot be located.

~~(b)~~

(c) The Judicial Council shall develop and implement standards, and develop and adopt appropriate forms, necessary to implement this section.

SEC. 188. Section 618.5 of the Welfare and Institutions Code is amended and renumbered to read:

~~618.5.~~

681.5 If a prosecuting attorney has appeared on behalf of the people of the State of California in any juvenile court hearing which is based upon a petition that alleges that a minor is a person within the description of Section 602, neither that prosecuting attorney nor any attorney from the office of that prosecuting attorney shall represent the minor in a juvenile court proceeding alleging that a minor is a person described in Section 300.

SEC. 189. Section 903.1 of the Welfare and Institutions Code is amended to read:

903.1. (a) The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the cost to the county of legal services rendered to the minor by the public defender or other public attorney pursuant to an order of the juvenile court, or for

the cost to the county for the legal services rendered to the minor by an attorney in private practice appointed pursuant to an order of the juvenile court. The father, mother, spouse, or other person liable for the support of a minor and the estate of that person shall also be liable for any cost to the county of legal services rendered directly to the father, mother, or spouse~~,~~ of the minor, or any other person liable for the support of the minor, in a dependency proceeding by the public defender or other public attorney appointed pursuant to an order of the juvenile court, or by an attorney in private practice appointed pursuant to order of the juvenile court. The liability of those persons (in this article called relatives) and estates shall be a joint and several liability.

(b) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the estate of that person, or the estate of the minor, shall not be liable for the costs of any of the legal services provided to any person described in this section if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing.

SEC. 190. Section 4688.6 of the Welfare and Institutions Code is amended to read:

4688.6. (a) Notwithstanding any other provision of law to the contrary, the department may receive and approve a proposal or proposals by any regional center to provide for, secure, or ~~assure~~ *ensure* the full payment of a lease or leases on housing based on the availability for occupancy in each home. These proposals shall not include an adult residential facility for persons with special health care needs, as defined in Section 1567.50 of the Health and Safety Code. Proposals submitted by regional centers shall meet all of the following conditions:

(1) The acquired or developed real property is available for occupancy by individuals eligible for regional center services and is integrated with other housing in the community for people without disabilities.

(2) The regional center has submitted documents demonstrating the appropriate credentials and terms of the project and has approved the proposed nonprofit ownership entity, management entity, and developer or development entity for each project.

(3) The costs associated with the proposal are reasonable and maximize the receipt of federal Medicaid funding. The department

shall only approve proposals that include a process for the regional center to review recent sales of comparable properties to ensure the purchase price is within the range of fair market value and, if significant renovations of a home will be undertaken after the home is purchased, competing bids for that renovation work to ensure that the cost of the work is reasonable. For purposes of this subdivision, "significant renovations" means renovations that exceed 5 percent of the purchase price of the home.

(4) The proposal includes a plan for a transfer at a time certain of the real property's ownership to a nonprofit entity to be approved by the regional center.

(5) The regional center has submitted, with the proposal, the nonrefundable developer fee established in subdivision (d).

(b) Prior to approving a regional center proposal pursuant to subdivision (a), the department may contract or consult with a public or private sector entity that has appropriate experience in structuring complex real estate financial transactions, but is not otherwise involved in any lending related to the project to review any of the following:

(1) The terms and conditions of the financing structure for acquisition or development of the real property.

(2) Any and all agreements that govern the real property's ownership, occupancy, maintenance, management, and operation, to ensure that the use of the property is maintained for the benefit of persons with developmental disabilities.

(c) The department may impose a limit on the number of proposals considered pursuant to subdivision (a). If a limit is imposed, the department shall notify the Association of Regional Center Agencies.

(d) (1) The department shall charge the developer of the housing described in the regional center proposal a reasonable, nonrefundable fee for each proposal submitted. The fee shall be for the purpose of reimbursing the department's costs associated with conducting the review and approval required by subdivision (b). The fee shall be set by the department within 30 days of the effective date of the act that added this section, and shall be adjusted annually, as necessary, to ensure the payment of the costs incurred by the department.

(2) Fees collected shall be deposited in the Developmental Disabilities Services Account established pursuant to Section

14672.9 of the Government Code and shall be used solely for the purpose of conducting the review and approval required by subdivision (b), upon appropriation by the Legislature. Interest and dividends on moneys collected pursuant to this section shall, notwithstanding Section 16305.7 of the Government Code, be retained in the account for purposes of this section. Moneys deposited in the Developmental Disabilities Services Account pursuant to this subdivision shall not be subject to the requirements of subdivision (i) of Section 14672.9 of the Government Code.

(3) Notwithstanding paragraph (2), for the 2008–09 fiscal year, the Director of Finance may approve an expenditure of up to seventy-five thousand dollars ($75,000) by the department from moneys deposited in the account for the purposes specified in subdivision (b). In the 2009–10 fiscal year and each fiscal year thereafter, moneys shall be available to the department upon appropriation by the Legislature.

(e) No sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, exchange, or transfer in any other form of the real property, or of any of its interest therein, shall occur without the prior written approval of the department and the regional center.

(f) Notice of the restrictions pursuant to this section shall be recorded against the acquired or developed real property subject to this section.

(g) At least 30 days prior to granting approval under subdivision (e), the department shall provide notice to the ~~chairs~~ *chairpersons* and vice ~~chairs~~ *chairpersons* of the fiscal committees of the Assembly and the Senate and the Director of Finance.

(h) The regional center shall not be eligible to acquire or develop real property for the purpose of residential housing.

(i) Unless otherwise authorized by law, a regional center shall not use purchase of service funds to implement this section.

(j) With the exception of funds authorized in paragraph (3) of subdivision (d), this section shall be implemented within the department's annual budget. This subdivision shall not preclude the receipt or use of federal, state non-General Fund, or private funds to implement this section.

(k) The department shall establish guidelines and procedures for the administration of this section.

SEC. 191. Section 4691 of the Welfare and Institutions Code is amended to read:

4691. (a) The Legislature reaffirms its intent that community-based day programs be planned and provided as part of a continuum of services to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. The Legislature further intends that standards be developed to ensure ~~high quality~~ *high-quality* services, and that equitable ratesetting procedures based upon those standards be established, maintained, and revised, as necessary. The Legislature intends that ratesetting procedures be developed for all community-based day programs, which include adult development centers, activity centers, infant day programs, behavior management programs, social recreational programs, and independent living programs.

(b) For the purpose of ensuring that regional centers may secure high quality services for persons with developmental disabilities, the State Department of ~~Departmental~~ *Developmental* Services shall promulgate regulations establishing program standards and an equitable process for setting rates of state payment for community-based day programs. These regulations shall include, but are not limited to, *all of the following*:

(1) The standards and requirements related to the operation of the program including, but not limited to, staff qualifications, staff-to-client ratios, client entrance and exit criteria, program design, program evaluation, program and client records and documentation, client placement, and personnel requirements and functions.

(2) The allowable cost components of the program including salary and wages, staff benefits, operating expenses, and management organization costs where two or more programs are operated by a separate and distinct corporation or entity.

(3) The rate determination processes for establishing rates, based on the allowable costs of the allowable cost components. Different rate determination processes may be developed for establishing rates for new and existing programs, and for the initial and subsequent years of implementation of the regulations. The processes shall include, but are not limited to, *all of the following*:

(A) The procedure for identification and grouping of programs by type of day program and approved staff-to-client ratio.

(B) The requirements for an identification of the program, cost, and other information, if any, which the program is required to submit to the department or the regional center, the consequences, if any, for failure to do so, and the timeframes and format for submission and review.

(C) The ratesetting methodology.

(D) A procedure for adjusting rates as a result of anticipated and unanticipated program changes and fiscal audits of the program and a procedure for appealing rates, including the timeframes for the program to request an adjustment or appeal, and for the department to respond.

(E) A procedure for increasing established rates and the allowable range of rates due to cost-of-living adjustments.

(F) A procedure for increasing established rates as a result of Budget Act appropriations made pursuant to the ratesetting methodology established pursuant to Section 4691.5 and subdivision (c) *of this section*.

The department shall develop these regulations in consultation with representatives from organizations representing the developmental services system as determined by the department. The State Council on Developmental Disabilities, and other organizations representing regional centers, providers, and clients shall have an opportunity to review and comment upon the proposed regulations prior to their promulgation. The department shall promulgate these regulations for all community-based day programs by July 1, 1990.

(c) Upon the promulgation of regulations pursuant to subdivision (b), and pursuant to Section 4691.5, and by September 1 of each year thereafter, the department shall establish rates pursuant to the regulations. Rate increases during ~~fiscal years~~ *the* 1990–91 and 1991–92 *fiscal years* shall be limited to those specified in subdivision (b). For ~~fiscal year~~ *the* 1992–93 *fiscal year* and all succeeding fiscal years, any increases proposed during those years in the rates of reimbursement established pursuant to the regulations, except for rate increases due to rate appeals and rate adjustments based on unanticipated program changes, shall be subject to the appropriation of sufficient funds in the Budget Act, for those purposes, to fully provide the proposed increase to all eligible programs for the entire fiscal year. If the funds appropriated in the Budget Act are not sufficient to fully provide for the

proposed increase in the rates of reimbursement for all eligible programs for the entire fiscal year, the proposed increase shall be limited to the level of funds appropriated. The increases proposed in the rates of reimbursement shall be reduced equitably among all eligible providers in accordance with funds appropriated and the eligible programs shall be reimbursed at the reduced amount for the entire fiscal year.

(d) Using the reported costs of day programs reimbursed at a permanent rate and the standards and ratesetting processes promulgated pursuant to subdivision (b) as a basis, the department shall report to the Legislature as follows:

(1) By April 15, 1993, and every odd year thereafter, the difference between permanent rates for existing programs and the rates of those programs based upon their allowable costs and client attendance, submitted pursuant to the regulations specified in subdivision (b). In reporting the difference, the department shall also identify the amount of the difference associated with programs whose rates are above the allowable range of rates, which is available for increasing the rates of programs whose rates are below the allowable range, to within the allowable range, and any other pertinent cost or rate information which the department deems necessary.

(2) By April 15, 1994, and every even year thereafter, the level of funding, if any, which was not appropriated to reimburse providers at the proposed rates reported the prior fiscal year pursuant to paragraph (1), and any other pertinent cost or rate information which the department deems necessary.

(3) The April 15, 1996, report pursuant to paragraph (2) shall be prepared jointly by the department and organizations representing community-based day program providers, as determined by the department. That report shall also include a review of the ratesetting process and recommendations, if any, for its modification.

(e) Rates established by the department pursuant to subdivision (b) are exempt from the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The department shall ensure that the regional centers monitor compliance with program standards.

SEC. 192. Section 4783 of the Welfare and Institutions Code is amended to read:

4783. (a) (1) The Family Cost Participation Program is hereby created in the State Department of Developmental Services for the purpose of assessing a cost participation to parents, as defined in Section 50215 of Title 17 of the California Code of Regulations, who have a child to whom all of the following applies:

(A) The child has a developmental disability or is eligible for services under the California Early Intervention Services Act *(Title 14 (commencing with Section 95000) of the Government Code)*.

(B) The child is zero years of age ~~through~~ *to* 17 years of age.

(C) The child lives in the parents' home.

(D) The child receives services and supports purchased through the regional center.

(E) The child is not eligible for Medi-Cal.

(2) Notwithstanding any other provision of law, a parent described in subdivision (a) shall participate in the Family Cost Participation Program established pursuant to this section.

(3) Application of this section to children zero ~~through~~ *to* two years of age, inclusive, shall be contingent upon approval by the United States Department of Education.

(b) (1) The department shall develop and establish a Family Cost Participation Schedule that shall be used by regional centers to assess the parents' cost participation. The schedule shall consist of a sliding scale for families with an annual gross income not less than 400 percent of the federal poverty guideline, and be adjusted for the level of annual gross income and the number of persons living in the family home.

(2) The schedule established pursuant to this section shall be exempt from the rulemaking provisions of ~~Chapter~~ *the Administrative Procedure Act (Chapter* 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government ~~Code~~ *Code)*.

(c) Family cost participation assessments shall only be applied to respite, day care, and camping services that are included in the child's individual program plan or individualized family service plan for children zero ~~through~~ *to* two years of age, *inclusive*.

(d) If there is more than one minor child living in the parents' home and receiving services or supports paid for by the regional center, or living in a 24-hour out-of-home facility, including a

developmental center, the assessed amount shall be adjusted as follows:

(1) A parent that meets the criteria specified in subdivision (b) with two children shall be assessed at 75 percent of the respite, day care, and camping services in each child's individual program plan or individualized family service plan for each child living at home.

(2) A parent that meets the criteria specified in subdivision (b) with three children shall be assessed at 50 percent of the respite, day care, and camping services included in each child's individual program plan or individualized family service plan for each child living at home.

(3) A parent that meets the criteria specified in subdivision (b) with four children shall be assessed 25 percent of the respite, day care, and camping services included in each child's individual program plan or individualized family service plan for each child living at home.

(4) A parent that meets the criteria specified in subdivision (b) with more than four children shall be exempt from participation in the Family Cost Participation Program.

(e) For each child, the amount of cost participation shall be less than the amount of the parental fee that the parent would pay if the child lived in a 24-hour, out-of-home facility.

(f) Commencing January 1, 2005, each regional center shall be responsible for administering the Family Cost Participation Program.

(g) Family cost participation assessments or reassessments shall be conducted as follows:

(1) (A) A regional center shall assess the cost participation for all parents of current consumers who meet the criteria specified in this section. A regional center shall use the most recent individual program plan or individualized family service plan for this purpose.

(B) A regional center shall assess the cost participation for parents of newly identified consumers at the time of the initial individual program plan or the individualized family service plan.

(C) Reassessments for cost participation shall be conducted as part of the individual program plan or individual family service plan review pursuant to subdivision (b) of Section 4646 *of this code* or subdivision (f) of Section 95020 of the Government Code.

(D) The parents are responsible for notifying the regional center when a change in family income occurs that would result in a change in the assessed amount of cost participation.

(2) Parents shall self-certify their gross annual income to the regional center by providing copies of W-2 Wage Earners Statements, payroll stubs, a copy of the prior year's state income tax return, or other documents and proof of other income.

(3) A regional center shall notify parents of the parents' assessed cost participation within 10 working days of receipt of the parents' complete income documentation.

(4) Parents who have not provided copies of income documentation pursuant to paragraph (2) shall be assessed the maximum cost participation based on the highest income level adjusted for family size until such time as the appropriate income documentation is provided. Parents who subsequently provide income documentation that results in a reduction in their cost participation shall be reimbursed for the actual cost difference incurred for services identified in the individual program plan or individualized family service plan for respite, day care, and camping services, for 90 calendar days preceding the reassessment. The actual cost difference is the difference between the maximum cost participation originally assessed and the reassessed amount using the parents' complete income documentation, that is substantiated with receipts showing that the services have been purchased by the parents.

(5) The executive director of the regional center may grant a cost participation adjustment for parents who incur an unavoidable and uninsured catastrophic loss with direct economic impact on the family or who substantiate, with receipts, significant unreimbursed medical costs associated with care for a child who is a regional center consumer. A redetermination of the cost participation adjustment shall be made at least annually.

(h) A provider of respite, day care, or camping services shall not charge a rate for the parents' share of cost that is higher than the rate paid by the regional center for its share of cost.

(i) The department shall develop, and regional centers shall use, all forms and documents necessary to administer the program established pursuant to this section. The forms and documents shall be posted on the department's *Internet* Web site. A regional center shall provide appropriate materials to parents at the initial

individual program plan or individualized family service plan meeting and subsequent individual program plan or individualized family service plan review meetings. These materials shall include a description of the Family Cost Participation Program.

(j) The department shall include an audit of the Family Cost Participation Program during its audit of a regional center.

(k) (1) Parents of children ages three ~~through~~ *to* 17 years of age, *inclusive*, may appeal an error in the amount of the parents' cost participation to the executive director of the regional center within 30 days of notification of the amount of the assessed cost participation. The parents may appeal to the Director of Developmental Services, or his or her designee, any decision by the executive director made pursuant to this subdivision within 15 days of receipt of the written decision of the executive director.

(2) Parents of children ages three ~~through~~ *to* 17 years of age, *inclusive*, who dispute the decision of the executive director pursuant to paragraph (5) of subdivision (g) shall have a right to a fair hearing as described in, and the regional center shall provide notice pursuant to, Chapter 7 (commencing with Section 4700). This paragraph shall become inoperative on July 1, 2006.

(3) On and after July 1, 2006, a parent described in paragraph (2) shall have the right to appeal the decision of the executive director to the Director of Developmental Services, or his or her designee, within 15 days of receipt of the written decision of the executive director.

(*l*) For parents of children ages zero ~~through~~ *to* two years of age, inclusive, the complaint, mediation, and due process procedures set forth in Sections 52170 to 52174, inclusive, of Title 17 of the California Code of Regulations shall be used to resolve disputes regarding this section.

(m) The department may adopt emergency regulations to implement this section. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action. A certificate of compliance for these implementing regulations shall be filed within

24 months following the adoption of the first emergency regulations filed pursuant to this subdivision.

(n) By April 1, 2005, and annually thereafter, the department shall report to the appropriate fiscal and policy committees of the Legislature on the status of the implementation of the Family Cost Participation Program established under this section. On and after April 1, 2006, the report shall contain all of the following:

(1) The annual total purchase of services savings attributable to the program per regional center.

(2) The annual costs to the department and each regional center to administer the program.

(3) The number of families assessed a cost participation per regional center.

(4) The number of cost participation adjustments granted pursuant to paragraph (5) of subdivision (g) per regional center.

(5) The number of appeals filed pursuant to subdivision (k) and the number of those appeals granted, modified, or denied.

SEC. 193. Section 4860 of the Welfare and Institutions Code is amended to read:

4860. (a) (1) The hourly rate for supported employment services provided to consumers receiving individualized services shall be thirty dollars and eighty-two cents ($30.82).

(2) Job coach hours spent in travel to consumer worksites may be reimbursable for individualized services only when the job coach travels from the vendor's headquarters to the consumer's worksite or from one consumer's worksite to another, and only when the travel is one way.

(b) The hourly rate for group services shall be thirty dollars and eighty-two cents ($30.82), regardless of the number of consumers served in the group. Consumers in a group shall be scheduled to start and end work at the same time, unless an exception that takes into consideration the consumer's compensated work schedule is approved in advance by the regional center. The department, in consultation with stakeholders, shall adopt regulations to define the appropriate grounds for granting these exceptions. When the number of consumers in a supported employment placement group drops to fewer than the minimum required in subdivision (r) of Section 4851, the regional center may terminate funding for the group services in that group, unless, within 90 days, the program provider adds one or more regional ~~center~~ *centers*, or Department

of ~~Rehabilitation funded~~ *Rehabilitation-funded* supported employment consumers to the group.

(c) Job coaching hours for group services shall be allocated on a prorated basis between a regional center and the Department of Rehabilitation when regional center and Department of Rehabilitation consumers are served in the same group.

(d) When Section 4855 applies, fees shall be authorized for the following:

(1) A three-hundred-sixty-dollar ($360) fee shall be paid to the program provider upon intake of a consumer into a supported employment program. No fee shall be paid if that consumer completed a supported employment intake process with that same supported employment program within the previous 12 months.

(2) A seven-hundred-twenty-dollar ($720) fee shall be paid upon placement of a consumer in an integrated job, except that no fee shall be paid if that consumer is placed with another consumer or consumers assigned to the same job coach during the same hours of employment.

(3) A seven-hundred-twenty-dollar ($720) fee shall be paid after a 90-day retention of a consumer in a job, except that no fee shall be paid if that consumer has been placed with another consumer or consumers, assigned to the same job coach during the same hours of employment.

(e) Notwithstanding paragraph (4) of subdivision (a) of Section 4648 the regional center shall pay the supported employment program rates established by this section.

SEC. 194. Section 5777 of the Welfare and Institutions Code is amended to read:

5777. (a) (1) Except as otherwise specified in this part, a contract entered into pursuant to this part shall include a provision that the mental health plan contractor shall bear the financial risk for the cost of providing medically necessary mental health services to Medi-Cal beneficiaries irrespective of whether the cost of those services exceeds the payment set forth in the contract. If the expenditures for services do not exceed the payment set forth in the contract, the mental health plan contractor shall report the unexpended amount to the department, but shall not be required to return the excess to the department.

(2) If the mental health plan is not the county's, the mental health plan may not transfer the obligation for any mental health

services to Medi-Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall establish mutually agreed-upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non-Medi-Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed-upon protocols with the county for the conditions of transfer of beneficiaries who have lost Medi-Cal eligibility to the county for care under Part 2 (commencing with Section 5600), Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850).

(3) The mental health plan shall be financially responsible for ensuring access and a minimum required scope of benefits, consistent with state and federal requirements, to the services to the Medi-Cal beneficiaries of that county regardless of where the beneficiary resides. The department shall require that the definition of medical necessity used, and the minimum scope of benefits offered, by each mental health contractor be the same, except to the extent that any variations receive prior federal approval and are consistent with state and federal statutes and regulations.

(b) Any contract entered into pursuant to this part may be renewed if the plan continues to meet the requirements of this part, regulations promulgated pursuant thereto, and the terms and conditions of the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually ~~agreed upon~~ *agreed-upon* plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract. At the discretion of the department, each contract may be renewed for a period not to exceed three years.

(c) (1) The obligations of the mental health plan shall be changed only by contract or contract amendment.

(2) A change may be made during a contract term or at the time of contract renewal, where there is a change in obligations required by federal or state law or when required by a change in the interpretation or implementation of any law or regulation. To the extent permitted by federal law and except as provided under ~~subdivision (r)~~ *paragraph (10) of subdivision (c)* of Section 5778, if any change in obligations occurs that affects the cost to the

mental health plan of performing under the terms of its contract, the department may reopen contracts to negotiate the state General Fund allocation to the mental health plan under Section 5778, if the mental health plan is reimbursed through a fee-for-service payment system, or the capitation rate to the mental health plan under Section 5779, if the mental health plan is reimbursed through a capitated rate payment system. During the time period required to redetermine the allocation or rate, payment to the mental health plan of the allocation or rate in effect at the time the change occurred shall be considered interim payments and shall be subject to increase or decrease, as the case may be, effective as of the date on which the change is effective.

(3) To the extent permitted by federal law, either the department or the mental health plan may request that contract negotiations be reopened during the course of a contract due to substantial changes in the cost of covered benefits that result from an unanticipated event.

(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification of affected beneficiaries. The plan may request a public hearing by the Office of Administrative Hearings.

(e) A plan may terminate its contract in accordance with the provisions in the contract. The plan shall provide written notice to the department at least 180 days prior to the termination or nonrenewal of the contract.

(f) Upon the request of the Director of Mental Health, the Director of ~~the Department of~~ Managed Health Care may exempt a mental health plan contractor or a capitated rate contract from the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). These exemptions may be subject to conditions the director deems appropriate. Nothing in this part shall be construed to impair or diminish the authority of the Director of ~~the Department of~~ Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in this part be construed to reduce or otherwise limit the obligation of a mental health plan contractor licensed as a health care service plan

to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of ~~the Department of~~ Managed Health Care promulgated thereunder. The Director of Mental Health, in consultation with the Director of ~~the Department of~~ Managed Health Care, shall analyze the appropriateness of licensure or application of applicable standards of the Knox-Keene Health Care Service Plan Act of 1975.

(g) (1) The department, pursuant to an agreement with the State Department of Health Care Services, shall provide oversight to the mental health plans to ensure quality, access, and cost efficiency. At a minimum, the department shall, through a method independent of any agency of the mental health plan contractor, monitor the level and quality of services provided, expenditures pursuant to the contract, and conformity with federal and state law.

(2) (A) Commencing July 1, 2008, county mental health plans, in collaboration with the department, the federally required external review organization, providers, and other stakeholders, shall establish an advisory statewide performance improvement project (PIP) to increase the coordination, quality, effectiveness, and efficiency of service delivery to children who are either receiving at least three thousand dollars ($3,000) per month in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program services or children identified in the top 5 percent of the county EPSDT cost, whichever is lowest. The statewide PIP shall replace one of the two required PIPs that mental health plans must perform under federal regulations outlined in the mental health plan contract.

(B) The federally required external quality review organization shall provide independent oversight and reviews with recommendations and findings or summaries of findings, as appropriate, from a statewide perspective. This information shall be accessible to county mental health plans, the department, county welfare directors, providers, and other interested stakeholders in a manner that both facilitates, and allows for, a comprehensive quality improvement process for the EPSDT Program.

(C) Each July, the department, in consultation with the federally required external quality review organization and the county mental health plans, shall determine the average monthly cost threshold for counties to use to identify children to be reviewed who are currently receiving EPSDT services. The department shall consult

with representatives of county mental health directors, county welfare directors, providers, and the federally required external quality review organization in setting the annual average monthly cost threshold and in implementing the statewide PIP. The department shall provide an annual update to the Legislature on the results of this statewide PIP by October 1 of each year for the prior fiscal year.

(D) It is the intent of the Legislature for the EPSDT PIP to increase the coordination, quality, effectiveness, and efficiency of service delivery to children receiving EPSDT services and to facilitate evidence-based practices within the program, and other high-quality practices consistent with the values of the public mental health system within the program to ensure that children are receiving appropriate mental health services for their mental health wellness.

(E) This paragraph shall become inoperative on September 1, 2011.

(h) County employees implementing or administering a mental health plan act in a discretionary capacity when they determine whether or not to admit a person for care or to provide any level of care pursuant to this part.

(i) If a county chooses to discontinue operations as the local mental health plan, the new plan shall give reasonable consideration to affiliation with nonprofit community mental health agencies that were under contract with the county and that meet the mental health plan's quality and cost efficiency standards.

(j) Nothing in this part shall be construed to modify, alter, or increase the obligations of counties as otherwise limited and defined in Chapter 3 (commencing with Section 5700) of Part 2. The county's maximum obligation for services to persons not eligible for Medi-Cal shall be no more than the amount of funds remaining in the mental health subaccount pursuant to Sections 17600, 17601, 17604, 17605, 17606, and 17609 after fulfilling the Medi-Cal contract obligations.

SEC. 195. Section 11402.6 of the Welfare and Institutions Code is amended to read:

11402.6. (a) The federal government has provided the state with the option of including in its state plan children placed in a private facility operated on a for-profit basis.

(b) For children for whom the county placing agency has exhausted all other placement options, notwithstanding subdivision (h) of Section 11400 and subject to Section 15200.5, a child who is otherwise eligible for federal financial participation in the AFDC-FC payment shall be eligible for aid under this chapter when the child is placed in a for-profit child care institution and meets all of the following criteria, which shall be clearly documented in the county welfare department case file:

(1) The child has extraordinary and unusual special behavioral or medical needs that make the child difficult to place, including, but not limited to, being medically fragile, brittle diabetic, having severe head injuries, a dual diagnosis of mental illness and substance abuse or a dual diagnosis of developmental delay and mental illness.

(2) No other comparable private nonprofit facility or public licensed residential care home exists in the state that is willing to accept placement and is capable of meeting the child's extraordinary special needs.

(3) The county placing agency has demonstrated that no other alternate placement option exists for the child.

(4) The child has a developmental disability and is eligible for both federal AFDC-FC payments and for regional center services.

(c) Federal financial participation shall be provided pursuant to Section 11402 for children described in subdivision (a) subject to all of the following conditions, which shall be clearly documented in the county welfare department case file.

(1) The county placing agency enters into a ~~performance based~~ *performance-based* placement agreement with the for-profit facility to ensure the facility is providing services to improve the safety, permanency, and well-being outcomes of the placed children pursuant to Section 10601.2.

(2) The county placing agency will require the facility to ensure placement in the child's community to the degree possible to enhance ongoing connections with the child's family and to promote the establishment of lifelong connections with committed adults.

(3) The county placing agency monitors and reviews the facility's outcome performance indicators every six months.

(4) In no event shall federal financial participation in this placement exceed a 12-month period.

(5) Payments made under this section shall not be made on behalf of any more than five children in a county at any one time.

(6) Payments made under this section shall be made pursuant to Sections 4684 and 11464, and only to a group home that is an approved vendor of a regional center.

(d) This section shall be implemented only during a federal fiscal year in which the department determines that no restriction on federal matching AFDC-FC payment exists.

(e) As used in this section, "child care institution" means a nondetention facility that has been licensed in accordance with the California Community Care Facilities Act~~, Chapter~~ *(Chapter* 3 (commencing with Section 1500) of Division 2 of the Health and Safety ~~Code~~ *Code)*, and that has a licensed capacity not exceeding 25 children.

(f) The county placing agency shall review and report to the juvenile court at every six-month case plan update if this placement remains appropriate and necessary and what the plan is for discharge to a less restrictive placement.

(g) Notwithstanding subdivision (d) or any other provision of law, this section shall not be implemented before July 1, 2010.

SEC. 196. Section 12315 of the Welfare and Institutions Code is amended to read:

12315. (a) (1) Commencing January 1, 2009, a pilot project shall be established in five consenting counties that provides severely impaired recipients who receive in-home supportive services under this article through the public authority, as described in Section 12301.6, with a choice of receiving services through the public authority or receiving services through a voluntary nonprofit or ~~propriety~~ *proprietary* agency pursuant to Section 12302. The pilot project shall be developed to provide services to severely impaired recipients, as described in Section 12303.4.

(2) To accomplish this end, the five consenting counties shall administer the In-Home Supportive Services (IHSS) program through a public authority pursuant to Section 12301.6.

(3) (A) Following the submission of input and recommendations of the IHSS advisory committee for the county, each participating county, with the consent of the public authority in that county, or the public authority, with the consent of the participating county, shall contract with a voluntary nonprofit or proprietary agency, pursuant to Section 12302.

(B) Severely impaired recipients in each participating county may continue to receive supportive services through the county's public authority, or may choose to receive services through the voluntary nonprofit or proprietary agency, pursuant to paragraph (1). Recipients who choose to receive services through the voluntary nonprofit or proprietary agency shall be compensated only for those services described in the recipients' ~~then existing~~ *then-existing* care plan, as approved by the county social worker.

(4) Administrative costs of the pilot project, including the cost of developing guidelines other than the guidelines in this section and the cost of administering the project and providing oversight, shall not be paid by the state. Instead, an estimate of administrative costs shall be included in the county request for proposal for each contract with the voluntary nonprofit or proprietary agency and administrative costs shall then be paid by the agency up to the amount estimated unless the county and agency reach an alternative cost-sharing agreement in the contract that does not involve state participation.

(b) (1) (A) For purposes of this section, to the extent possible, all providers employed by the voluntary nonprofit or proprietary agency shall be persons previously listed on the public authority's registry. The agency shall, pursuant to the contract, continually recruit and provide the public authority with names of new workers for the registry.

(B) The voluntary nonprofit or proprietary agency in each participating county shall provide for training for all providers recruited pursuant to this paragraph. A public authority may retain the voluntary nonprofit or proprietary agency to provide these services for and under the direction of the public authority. A public authority shall not be eligible to receive reimbursement for any costs associated with administering the pilot project. This shall not prohibit any public authority from using the funding it receives pursuant to paragraph (4) of subdivision (a) for newsletters and other means of communication about training opportunities available through the voluntary nonprofit or proprietary agency.

(C) All providers employed by the voluntary nonprofit or proprietary agency shall be paid no less than the wages and benefits provided for in the public authority's collective bargaining agreement, provided that this provision shall not obligate the state to participate in a contract rate higher than the maximum allowable

contract rate. However, providers employed by the voluntary nonprofit or proprietary agency are not covered by any existing collective bargaining agreements with the public authority.

(2) A voluntary nonprofit or proprietary agency that contracts with a participating county pursuant to subdivision (a) shall perform all of the following duties:

(A) Maintain a live, on-call emergency service response system that is available 24 hours a day, seven days a week.

(B) Replace or supplement providers for a recipient who needs immediate service for the sake of preserving his or her health or safety within two hours of notification.

(C) To the extent possible, employ the recipient's preferred provider or providers.

(D) If required by the county, provide emergency backup services to severely impaired IHSS recipients when there is an unexpected interruption in services.

(E) Maintain a list of its providers with the public authority.

(F) Establish and maintain an upskilling program, based on practices in existing agency contracts, wherein employees may have the opportunity to use work experience and training toward upward movement on a long-term care career ladder. Any costs associated with the development and maintenance of the upskilling program shall be paid solely by the voluntary nonprofit or proprietary agency.

(G) Be liable for any fraud, waste, or abuse for which it is responsible.

(3) For the duration of the pilot project, supportive services not provided in any month due to hospitalization, illness, refusal, or other cause not within the control of the provider shall not be made up in a subsequent period without case worker approval.

(c) (1) In each participating county, the ~~in-home supportive services~~ *IHSS* advisory committee, as described in Section 12301.3, shall monitor the pilot program.

(2) Each participating county shall not be eligible to receive state reimbursement of administrative costs associated with monitoring the pilot program. Any administrative costs incurred by a public authority for monitoring the pilot project shall be paid to the public authority pursuant to paragraph (4) of subdivision (a). Any advisory committee expenses incurred as a result of this

pilot project, if determined to be reimbursable to the county, shall be reimbursed with the current advisory committee allocation.

(3) Each county pilot project shall continue for four years, provided that if a county takes action to terminate a contract for cause, as defined in the contract, it may then terminate its participation in the pilot project. By the end of the third year, each participating county shall provide for an independent evaluation to assess the success of the pilot program, based on all of the following criteria:

(A) Consumer satisfaction.

(B) Cost-effectiveness.

(C) Average turnover of providers.

(D) The effect of the pilot project on non-IHSS vendors, workers, and referral agencies.

(E) Worker satisfaction.

(F) The extent to which counties identify, refer to, and work with appropriate agencies in investigation, administrative action, or prosecution of instances of fraud, as defined in subdivision (a) of Section 12305.8, in the provision of supportive services.

(d) All costs associated with the independent evaluation shall be paid solely by the voluntary nonprofit or proprietary agency.

(e) The independent evaluation shall be sent directly to the appropriate policy and fiscal committees of the Legislature.

(f) County social workers shall continue to establish eligibility, needs, and frequency of service and serve as recipient advocates, as appropriate.

SEC. 197. Section 14005.25 of the Welfare and Institutions Code, as amended by Section 27 of Chapter 758 of the Statutes of 2008, is amended to read:

14005.25. (a) To the extent federal financial participation is available, the department shall exercise the option under Section 1902(e)(12) of the federal Social Security Act (42 U.S.C. Sec. 1396a(e)(12)) to extend continuous eligibility to children 19 years of age and younger. A child shall remain eligible pursuant to this subdivision from the date of a determination of eligibility for Medi-Cal benefits until the earlier of either:

(1) The end of a 12-month period following the eligibility determination.

(2) The date the individual exceeds the age of 19 years.

(b) This section shall be implemented only if, and to the extent that, federal financial participation is available.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall, without taking regulatory action, implement this section by means of ~~all county~~ *all-county* letters or similar instructions. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) In order to implement changes in the level of funding for health care services, commencing on the first day of the month following 90 days after the operative date of ~~amendments to this section that added this subdivision~~ *Chapter 758 of the Statutes of 2008*, the continuous eligibility time period provided in paragraph (1) of subdivision (a) shall be reduced to six months.

(e) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 198. Section 14005.25 of the Welfare and Institutions Code, as added by Section 28 of Chapter 758 of the Statutes of 2008, is amended to read:

14005.25. (a) To the extent federal financial participation is available, the department shall exercise the option under Section 1902(e)(12) of the federal Social Security Act (42 U.S.C. Sec. 1396a(e)(12)) to extend continuous eligibility to children 19 years of age and younger. A child shall remain eligible pursuant to this subdivision from the date of a determination of eligibility for Medi-Cal benefits until the earlier of either:

(1) The end of a 12-month period following the eligibility determination.

(2) The date the individual exceeds the age of 19 years.

(b) This section shall be implemented only if, and to the extent that, federal financial participation is available.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall, without taking regulatory action, implement this section by means of ~~all county~~ *all-county* letters or similar instructions. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing

with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) This section shall become operative on January 1, 2012.

SEC. 199. Section 14007.9 of the Welfare and Institutions Code is amended to read:

14007.9. (a) The department shall adopt the option made available under Section 1902(a)(10)(A)(ii)(XIII) of the federal Social Security Act (42 U.S.C. Sec. 1396a(a)(10)(A)(ii)(XIII)). In order to be eligible for benefits under this section, an individual shall be required to meet all of the following requirements:

(1) His or her net countable income is less than 250 percent of the federal poverty level for one person or, if the deeming of spousal income applies to the individual, his or her net countable income is less than 250 percent of the federal poverty level for two persons.

(2) He or she is disabled under Title II of the Social Security Act ~~(Subch. 2 (commencing with Sec. 401), Ch. 7, Title 42 U.S.C.)~~ *(42 U.S.C. Sec. 401 et seq.)*, Title XVI of the Social Security Act ~~(Subch. 16 (commencing with Sec. 1381), Ch. 7, Title 42, U.S.C.)~~ *(42 U.S.C. Sec. 1381 et seq.)*, or Section 1902(v) of the Social Security Act (42 U.S.C. Sec. 1396a(v)). An individual shall be determined to be eligible under this section without regard to his or her ability to engage in, or actual engagement in, substantial gainful activity, as defined in Section 223(d)(4) of the Social Security Act (42 U.S.C. Sec. 423(d)(4)).

(3) Except as otherwise provided in this section, his or her net nonexempt resources, which shall be determined in accordance with the methodology used under Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.), are not in excess of the limits provided for under those provisions.

(b) (1) Countable income shall be determined under Section 1612 of the federal Social Security Act (42 U.S.C. Sec. 1382a), except that the individual's disability income, including all federal and state disability benefits and private disability insurance, shall be exempted. Resources excluded under Section 1613 of the federal Social Security Act (42 U.S.C. Sec. 1382b) shall be disregarded.

(2) Resources in the form of employer or individual retirement arrangements authorized under the Internal Revenue Code shall be exempted as authorized by Section 1902(r) of the federal Social Security Act (42 U.S.C. Sec. 1396a(r)).

(c) Medi-Cal benefits provided under this chapter pursuant to this section shall be available in the same amount, duration, and scope as those benefits are available for persons who are eligible for Medi-Cal benefits as categorically needy persons and as specified in Section 14007.5.

(d) Individuals eligible for Medi-Cal benefits under this section shall be subject to the payment of premiums determined under this subdivision. The department shall establish sliding-scale premiums that are based on countable income, with a minimum premium of twenty dollars ($20) per month and a maximum premium of two hundred fifty dollars ($250) per month, and shall, by regulations, annually adjust the premiums. Prior to adjustment of any premiums pursuant to this subdivision, the department shall submit a report of proposed premium adjustments to the appropriate committees of the Legislature as part of the annual budget ~~act~~ process.

(e) The department shall adopt regulations specifying the process for discontinuance of eligibility under this section for nonpayment of premiums for more than two months by a beneficiary.

(f) In order to implement the collection of premiums under this section, the department may develop and execute a contract with a public or private entity to collect premiums, or may amend any existing or future premium-collection contract that it has executed. Notwithstanding any other provision of law, any contract developed and executed or amended pursuant to this subdivision is exempt from the approval of the Director of General Services and from the Public Contract Code.

(g) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement, without taking any regulatory action, this section by means of an all-county letter or similar instruction. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) Notwithstanding any other provision of law, this section shall be implemented only if, and to the extent that, the department determines that federal financial participation is available pursuant to Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(i) Subject to subdivision (h), this section shall be implemented commencing April 1, 2000.

SEC. 200. Section 14011.16 of the Welfare and Institutions Code is amended to read:

14011.16. (a) Commencing August 1, 2003, the department shall implement a requirement for beneficiaries to file semiannual status reports as part of the department's procedures to ensure that beneficiaries make timely and accurate reports of any change in circumstance that may affect their eligibility. The department shall develop a simplified form to be used for this purpose. The department shall explore the feasibility of using a form that allows a beneficiary who has not had any changes to so indicate by checking a box and signing and returning the form.

(b) Beneficiaries who have been granted continuous eligibility under Section 14005.25 shall not be required to submit semiannual status reports. To the extent federal financial participation is available, all children under 19 years of age shall be exempt from the requirement to submit semiannual status reports.

(c) For any period of time that the continuous eligibility period described in paragraph (1) of subdivision (a) of Section 14005.25 is reduced to six months, subdivision (b) shall become inoperative, and all children under 19 years of age shall be required to file semiannual status reports.

(d) Beneficiaries whose eligibility is based on a determination of disability or on their status as aged or blind shall be exempt from the semiannual status report requirement described in subdivision (a). The department may exempt other groups from the semiannual status report requirement as necessary for simplicity of administration.

(e) When a beneficiary has completed, signed, and filed a semiannual status report that indicated a change in circumstance, eligibility shall be redetermined.

(f) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of ~~all county~~ *all-county* letters or similar instructions without taking regulatory action. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) This section shall be implemented only if and to the extent federal financial participation is available.

SEC. 201. Section 14091.3 of the Welfare and Institutions Code is amended to read:

14091.3. (a) For purposes of this section, the following definitions shall apply:

(1) "Medi-Cal managed care plan contracts" means those contracts entered into with the department by any individual, organization, or entity pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.91 (commencing with Section 14089), or Article 1 (commencing with Section 14200) or Article 7 (commencing with Section 14490) of Chapter 8, or Chapter 8.75 (commencing with Section 14590).

(2) "Medi-Cal managed care health plan" means an individual, organization, or entity operating under a Medi-Cal managed care plan contract with the department under this chapter, Chapter 8 (commencing with Section 14200), or Chapter 8.75 (commencing with Section 14590).

(b) The department shall take all appropriate steps to amend the Medicaid State Plan, if necessary, to carry out this section. This section shall be implemented only to the extent that federal financial participation is available. The department shall adopt rules and regulations to carry out this section. Until January 1, 2010, any rules and regulations adopted pursuant to this subdivision may be adopted as emergency regulations in accordance with the Administrative ~~Procedures~~ *Procedure* Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(c) Any hospital that does not have in effect a contract with a Medi-Cal managed care health plan, as defined in paragraph (2) of subdivision (a), that establishes payment amounts for services furnished to a beneficiary enrolled in that plan shall accept as payment in full, from all these plans, the following amounts:

(1) For outpatient services, the Medi-Cal Fee-For-Service (FFS) payment amounts.

(2) For emergency inpatient services, the average per diem contract rate specified in paragraph (2) of subdivision (b) of Section 14166.245, except that the payment amount shall not be reduced by 5 percent. For the purposes of this paragraph, this payment amount shall apply to all hospitals, including hospitals that contract with the department under the Medi-Cal Selective Provider Contracting Program described in Article ~~2.7~~ *2.6* (commencing with Section 14081), and small and rural hospitals specified in Section 124840 of the Health and Safety Code.

(3) For poststabilization services following an emergency admission, payment amounts shall be consistent with subdivision (e) of Section 438.114 of Title 42 of the Code of Federal Regulations. This paragraph shall only be implemented to the extent that contract amendment language providing for these payments is approved by CMS. For purposes of this paragraph, this payment amount shall apply to all hospitals, including hospitals that contract with the department under the Medi-Cal Selective Provider Contracting Program pursuant to Article 2.6 (commencing with Section 14081).

(d) Medi-Cal managed care health plans that, pursuant to the department's encouragement in All Plan Letter 07003, have been paying out-of-network hospitals the most recent California Medical Assistance Commission regional average per diem rate as a temporary rate for purposes of Section 1932(b)(2)(D) of the Social Security Act (SSA), which became effective January 1, 2007, shall make reconciliations and adjustments for all hospital payments made since January 1, 2007, based upon rates published by the department pursuant to Section 1932(b)(2)(D) of the SSA and effective January 1, 2007, ~~through~~ *to* June 30, 2008, *inclusive,* and, if applicable, provide supplemental payments to hospitals as necessary to make payments that conform with Section 1932(b)(2)(D) of the SSA. In order to provide managed care health plans with 60 working days to make any necessary supplemental payments to hospitals prior to these payments becoming subject to the payment of interest, Section 1300.71 of Title 28 of the California Code of Regulations shall not apply to these supplemental payments until 30 working days following the publication by the department of the rates.

(e) (1) The department shall provide a written report to the policy and fiscal committees of the Legislature on October 1, 2009,

and May 1, 2010, on the implementation and impact made by this section, including the impact of these changes on access to hospitals by managed care enrollees and on contracting between hospitals and managed care health plans, including the increase or decrease in the number of these contracts.

(2) Not later than August 1, 2010, the department shall report to the Legislature on the implementation of this section. The report shall include, but not be limited to, information and analyses addressing managed care enrollee access to hospital services, the impact of ~~the~~ *this* section on managed care health plan capitation rates, the impact of this section on the extent of contracting between managed care health plans and hospitals, and fiscal impact on the state.

(3) For the purposes of preparing the annual status reports and the final evaluation report required pursuant to this subdivision, Medi-Cal managed care health plans shall provide the department with all data and documentation, including contracts with providers, including hospitals, as deemed necessary by the department to evaluate the impact of the implementation of this section. In order to ensure the confidentiality of managed care health plan proprietary information, and thereby enable the department to have access to all of the data necessary to provide the Legislature with accurate and meaningful information regarding the impact of this section, all information and documentation provided to the department pursuant to this section shall be considered proprietary and shall be exempt from disclosure as official information pursuant to subdivision (k) of Section 6254 of the Government Code as contained in the California Public Records Act *(Division 7 (commencing with Section 6250) of Title 1 of the Government Code)*.

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

SEC. 202. Section 14105.19 of the Welfare and Institutions Code is amended to read:

14105.19. (a) Notwithstanding any other provision of law, in order to implement changes in the level of funding for health care services, the director shall reduce provider payments as specified in this section.

(b) (1) Except as provided in subdivision (c), payments shall be reduced by 10 percent for Medi-Cal fee-for-service benefits for dates of service on and after July 1, 2008, through and including dates of service on February 28, 2009.

(2) Except as provided in subdivision (c), payments shall be reduced by 10 percent for non-Medi-Cal programs described in Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, and Section 14105.18 *of this code*, for dates of service on and after July 1, 2008, through and including dates of service on February 28, 2009.

(3) For managed health care plans that contract with the department pursuant to this chapter, Chapter 8 (commencing with Section 14200), and Chapter 8.75 (commencing with Section 14590), payments shall be reduced by the actuarial equivalent amount of the payment reduction specified in this subdivision pursuant to contract amendments or change orders effective on July 1, 2008.

(4) Notwithstanding paragraphs (1) and (2), payment reductions set forth in this subdivision shall apply to small and rural hospitals, as defined in Section 124840 of the Health and Safety Code, for dates of service on and after July 1, 2008, through and including October 31, 2008.

(c) The services listed in this subdivision shall be exempt from the payment reductions specified in subdivision (b):

(1) Acute hospital inpatient services, except for payments to hospitals not under contract with the State Department of Health Care Services, as provided in Section 14166.245.

(2) Federally qualified health center services, including those facilities deemed to have federally qualified health center status pursuant to a waiver under subdivision (a) of Section 1315 of Title 42 of the United States Code.

(3) Rural health clinic services.

(4) All of the following facilities:

(A) A skilled nursing facility *licensed* pursuant to subdivision (c) of Section 1250 of the Health and Safety Code, except a skilled nursing facility that is a distinct part of a general acute care hospital. For purposes of this paragraph, “distinct part” has the same meaning as defined in Section 72041 of Title 22 of the California Code of Regulations.

(B) An intermediate care facility for the developmentally disabled *licensed* pursuant to subdivision (e), (g), or (h) of Section 1250 of the Health and Safety Code, or a facility providing continuous skilled nursing care to developmentally disabled individuals pursuant to the pilot project established by Section 14495.10.

(C) A subacute care unit, as defined in Section 51215.5 of Title 22 of the California Code of Regulations.

(5) Payments to facilities owned or operated by the State Department of Mental Health or the State Department of Developmental Services.

(6) Hospice.

(7) Contract services as designated by the director pursuant to subdivision (e).

(8) Payments to providers to the extent that the payments are funded by means of a certified public expenditure or an intergovernmental transfer pursuant to Section 433.51 of Title 42 of the Code of Federal Regulations.

(9) Services pursuant to local assistance contracts and interagency agreements to the extent the funding is not included in the funds appropriated to the department in the annual Budget Act.

(10) Payments to Medi-Cal managed care plans pursuant to Section 4474.5 for services to consumers transitioning from Agnews Developmental Center into Alameda, San Mateo, and Santa Clara Counties pursuant to the Plan for the Closure of Agnews Developmental Center.

(11) Breast and cervical cancer treatment provided pursuant to Section 14007.71.

(12) The Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program pursuant to Section 14105.18.

(d) Subject to the exception for services listed in subdivision (c), the payment reductions required by subdivision (b) shall apply to the services rendered by any provider who may be authorized to bill for the service, including, but not limited to, physicians, podiatrists, nurse practitioners, certified ~~nurse midwives~~ *nurse-midwives*, nurse anesthetists, and organized outpatient clinics.

(e) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

the department may implement this section by means of a provider bulletin, or similar instruction, without taking regulatory action.

(f) The reductions described in this section shall apply only to payments for services when the General Fund share of the payment is paid with funds directly appropriated to the department in the annual Budget Act and shall not apply to payments for services paid with funds appropriated to other departments or agencies.

(g) The department shall promptly seek any necessary federal approvals for the implementation of this section.

SEC. 203. Section 14105.191 of the Welfare and Institutions Code is amended to read:

14105.191. (a) Notwithstanding any other provision of law, in order to implement changes in the level of funding for health care services, the director shall reduce provider payments, as specified in this section.

(b) (1) Except as otherwise provided in this section, payments shall be reduced by 1 percent for Medi-Cal fee-for-service benefits for dates of service on and after March 1, 2009.

(2) Except as provided in subdivision (d), for dates of service on and after March 1, 2009, payments to the following classes of providers shall be reduced by 5 percent for Medi-Cal fee-for-service benefits:

(A) Intermediate care facilities, excluding those facilities identified in paragraph (5) of subdivision (d). For purposes of this section, “intermediate care facility” has the same meaning as defined in Section 51118 of Title 22 of the California Code of Regulations.

(B) Skilled nursing facilities that are distinct parts of general acute care hospitals. For purposes of this section, “distinct part” has the same meaning as defined in Section 72041 of Title 22 of the California Code of Regulations.

(C) Rural swing-bed facilities.

(D) Subacute care units that are, or are parts of, distinct parts of general acute care hospitals. For purposes of this subparagraph, “subacute care unit” has the same meaning as defined in Section 51215.5 of Title 22 of the California Code of Regulations.

(E) Pediatric subacute care units that are, or are parts of, distinct parts of general acute care hospitals. For purposes of this subparagraph, “pediatric subacute care unit” has the same meaning

as defined in Section 51215.8 of Title 22 of the California Code of Regulations.

(F) Adult day health care centers.

(3) Except as provided in subdivision (d), for dates of service on and after March 1, 2009, Medi-Cal fee-for-service payments to pharmacies shall be reduced by 5 percent.

(4) Except as provided in subdivision (d), payments shall be reduced by 1 percent for non-Medi-Cal programs described in Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, and Section 14105.18 *of this code*, for dates of service on and after March 1, 2009.

(5) For managed health care plans that contract with the department pursuant to this chapter, Chapter 8 (commencing with Section 14200), and Chapter 8.75 (commencing with Section 14590), payments shall be reduced by the actuarial equivalent amount of the payment reductions specified in this subdivision pursuant to contract amendments or change orders effective on July 1, 2008, or thereafter.

(c) Notwithstanding any other provision of this section, payments to hospitals that are not under contract with the State Department of Health Care Services pursuant to Article 2.6 (commencing with Section 14081) for inpatient hospital services provided to Medi-Cal beneficiaries and that are subject to Section 14166.245 shall be governed by that section.

(d) To the extent applicable, the services, facilities, and payments listed in this subdivision shall be exempt from the payment reductions specified in subdivision (b):

(1) Acute hospital inpatient services that are paid under contracts pursuant to Article 2.6 (commencing with Section 14081).

(2) Federally qualified health center services, including those facilities deemed to have federally qualified health center status pursuant to a waiver pursuant to subsection (a) of Section 1115 of the federal Social Security Act (42 U.S.C. Sec. 1315(a)).

(3) Rural health clinic services.

(4) Skilled nursing facilities licensed pursuant to subdivision (c) of Section 1250 of the Health and Safety Code other than those specified in paragraph (2) of subdivision (b).

(5) Intermediate care facilities for the developmentally disabled licensed pursuant to subdivision (e), (g), or (h) of Section 1250 of

the Health and Safety Code, or facilities providing continuous skilled nursing care to developmentally disabled individuals pursuant to the pilot project established by Section 14495.10.

(6) Payments to facilities owned or operated by the State Department of Mental Health or the State Department of Developmental Services.

(7) Hospice services.

(8) Contract services, as designated by the director pursuant to subdivision (f).

(9) Payments to providers to the extent that the payments are funded by means of a certified public expenditure or an intergovernmental transfer pursuant to Section 433.51 of Title 42 of the Code of Federal Regulations.

(10) Services pursuant to local assistance contracts and interagency agreements to the extent the funding is not included in the funds appropriated to the department in the annual Budget Act.

(11) Payments to Medi-Cal managed care plans pursuant to Section 4474.5 for services to consumers transitioning from Agnews Developmental Center into the Counties of Alameda, San Mateo, and Santa Clara pursuant to the Plan for the Closure of Agnews Developmental Center.

(12) Breast and cervical cancer treatment provided pursuant to Section 14007.71 and as described in paragraph (3) of subdivision (a) of Section 14105.18 or Article 1.5 (commencing with Section 104160) of Chapter 2 of Part 1 of Division 103 of the Health and Safety Code.

(13) The Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program pursuant to Section 14105.18.

(14) Small and rural hospitals, as defined in Section 124840 of the Health and Safety Code.

(e) Subject to the exemptions listed in subdivision (d), the payment reductions required by paragraph (1) of subdivision (b) shall apply to the benefits rendered by any provider who may be authorized to bill for provision of the benefit, including, but not limited to, physicians, podiatrists, nurse practitioners, certified ~~nurse midwives~~ *nurse-midwives*, nurse anesthetists, and organized outpatient clinics.

(f) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

the department may implement and administer this section by means of provider bulletins, or similar instructions, without taking regulatory action.

(g) The reductions described in this section shall apply only to payments for benefits when the General Fund share of the payment is paid with funds directly appropriated to the department in the annual Budget Act, and shall not apply to payments for benefits paid with funds appropriated to other departments or agencies.

(h) The department shall promptly seek any necessary federal approvals for the implementation of this section. To the extent that federal financial participation is not available with respect to any payment that is reduced pursuant to this section, the director may elect not to implement such reduction.

SEC. 204. Section 14105.3 of the Welfare and Institutions Code is amended to read:

14105.3. (a) The department is considered to be the purchaser, but not the dispenser or distributor, of prescribed drugs under the Medi-Cal program for the purpose of enabling the department to obtain from manufacturers of prescribed drugs the most favorable price for those drugs furnished by one or more manufacturers, based upon the large quantity of the drugs purchased under the Medi-Cal program, and to enable the department, notwithstanding any other provision of state law, to obtain from the manufacturers discounts, rebates, or refunds based on the quantities purchased under the program, insofar as may be permissible under federal law. Nothing in this section shall interfere with usual and customary distribution practices in the drug industry.

(b) The department may enter into exclusive or nonexclusive contracts on a bid or negotiated basis with manufacturers, distributors, dispensers, or suppliers of appliances, durable medical equipment, medical supplies, and other product-type health care services and with laboratories for clinical laboratory services for the purpose of obtaining the most favorable prices to the state and to assure adequate quality of the product or service. Except as provided in subdivision (f), this subdivision shall not apply to prescribed drugs dispensed by pharmacies licensed pursuant to Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code.

(c) Notwithstanding subdivision (b), the department may not enter into a contract with a clinical laboratory unless the clinical

laboratory operates in conformity with Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code and the regulations adopted thereunder, and Section 263a of Title 42 of the United States Code and the regulations adopted thereunder.

(d) The department shall contract with manufacturers of single-source drugs on a negotiated basis, and with manufacturers of multisource drugs on a bid or negotiated basis.

(e) In order to ensure and improve access by Medi-Cal beneficiaries to both hearing aid appliances and provider services, and to ensure that the state obtains the most favorable prices, the department, by June 30, 2008, shall enter into exclusive or nonexclusive contracts, on a bid or negotiated basis, for purchasing hearing aid appliances.

(f) In order to provide specialized care in the distribution of specialized drugs, as identified by the department and that include, but are not limited to, blood factors and immunizations, the department may enter into contracts with providers licensed to dispense dangerous drugs or devices pursuant to ~~Division 2~~ *Chapter 9* (commencing with Section 4000) of *Division 2 of* the Business and Professions Code, for programs that qualify for federal funding pursuant to the ~~Medicaid~~ *medicaid* state plan, or waivers and the programs authorized by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of, and Article 1 (commencing with Section 125125) of Chapter 2 of Part 5 of, Division 106 of the Health and Safety Code, in accordance with this subdivision.

(1) The department shall, for purposes of ensuring proper patient care, consult current standards of practice when executing a provider contract.

(2) The department shall, for purposes of ensuring quality of care to people with unique conditions requiring specialty drugs, contract with a nonexclusive number of providers that meets the needs of the affected population, covers all geographic regions in California, and reflects the distribution of the specialty drug in the community. The department may use a single provider in the event the product manufacturer designates a ~~sole source~~ *sole-source* delivery mechanism. The department shall consult with interested parties and appropriate stakeholders in implementing this section with respect to all of the following:

(A) Notifying stakeholder representatives of the potential inclusion or exclusion of drugs in the specialty pharmacy program.

(B) Allowing for written input regarding the potential inclusion or exclusion of drugs into the specialty pharmacy program.

(C) Scheduling at least one public meeting regarding the potential inclusion or exclusion of drugs into the specialty pharmacy program.

(D) Obtaining a recommendation from the Medi-Cal Drug Utilization Review Advisory Committee, established pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8), on the inclusion or exclusion of drugs into the specialty pharmacy program distribution based on clinical best practices related to each drug considered.

(3) For purposes of this subdivision, the definition of "blood factors" has the same meaning as that term is defined in Section 14105.86.

(4) The department shall make every reasonable effort to ensure all medically necessary clotting factor therapies are available for the treatment of people with bleeding disorders.

(5) The department shall generate an annual report, published publicly six months after the end of the first and second years after implementation, which shall include, but not be limited to, all of the following information:

(A) The number and geographic distribution of participating providers.

(B) The number and geographic distribution of beneficiaries receiving specialty drugs, including on a ~~per provider~~ *per-provider* basis.

(C) A summary of problems and complaints received regarding the specialty pharmacy program.

(D) An evaluation of hospital and emergency services before and after implementation for the targeted patient population.

(E) Results of patient satisfaction surveys.

(F) The cost-effectiveness of the program.

(6) This subdivision shall become inoperative three years after the date of implementation, as provided pursuant to a notice to the public issued by the department, or until July 1, 2013, whichever is earlier.

(g) The department may contract with an intermediary to establish provider contracts pursuant to this section for programs

that qualify for federal funding pursuant to the ~~Medicaid~~ *medicaid* state plan or waivers and the programs authorized by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of ~~Division 106 of~~, and Article 1 (commencing with Section 125125) of Chapter 2 of Part 5 of, Division 106 of the Health and Safety Code.

(h) In carrying out contracting activity for this or any section associated with the Medi-Cal list of contract drugs, notwithstanding Section 19130 of the Government Code, the department may contract, either directly or through the fiscal intermediary, for pharmacy consultant staff necessary to accomplish the contracting process or treatment authorization request reviews. The fiscal intermediary contract, including any contract amendment, system change pursuant to a change order, and project or systems development notice shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code~~,~~ ~~Chapter 7 (commencing with Section 11700) of Part 1 of Division 3 of Title 2 of the Government Code,~~ and any policies, procedures, or regulations authorized by these provisions.

(i) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Therefore contracts under this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(j) For purposes of implementing the contracting provisions specified in this section, the department shall do all of the following:

(1) Ensure adequate access for Medi-Cal patients to quality laboratory testing services in the geographic regions of the state where contracting occurs.

(2) Consult with the statewide association of clinical laboratories and other appropriate stakeholders on the implementation of the contracting provisions specified in this section to ensure maximum access for Medi-Cal patients consistent with the savings targets projected by the 2002–03 Budget Conference Committee for clinical laboratory services provided under the Medi-Cal program.

(3) Consider which types of laboratories are appropriate for implementing the contracting provisions specified in this section, including independent laboratories, outreach laboratory programs

of ~~hospital based~~ *hospital-based* laboratories, clinic laboratories, physician office laboratories, and group practice laboratories.

SEC. 205. Section 14105.86 of the Welfare and Institutions Code is amended to read:

14105.86. (a) For the purposes of this section, the following definitions apply:

(1) (A) "Average sales price" means the price reported to the *federal* Centers for Medicare and Medicaid Services by the manufacturer pursuant to Section 1847A of the federal Social Security Act (42 U.S.C. Sec. 1395w-3a).

(B) "Average manufacturer price" means the price reported to the *federal* Centers for Medicare and Medicaid Services pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8).

(2) "Blood factors" means plasma protein therapies and their recombinant analogs. Blood factors include, but are not limited to, all of the following:

(A) Coagulation factors, including:

(i) Factor VIII, nonrecombinant.

(ii) Factor VIII, porcine.

(iii) Factor VIII, recombinant.

(iv) Factor IX, nonrecombinant.

(v) Factor IX, complex.

(vi) Factor IX, recombinant.

(vii) Antithrombin III.

(viii) Anti-inhibitor factor.

(ix) Von Willebrand factor.

(x) Factor VIIa, recombinant.

(B) Immune Globulin Intravenous.

(C) Alpha-1 Proteinase Inhibitor.

(b) The reimbursement for blood factors shall be by national drug code number and shall not exceed 120 percent of the average sales price of the last quarter reported.

(c) The average sales price for blood factors of manufacturers or distributors that do not report an average sales price pursuant to subdivision (a) shall be identical to the average manufacturer price. The average sales price for new products that do not have a calculable average sales price or average manufacturer price shall be equal to a projected sales price, as reported by the manufacturer to the department. Manufacturers reporting a

projected sales price for a new product shall report the first monthly average manufacturer price reported to the *federal* Centers for Medicare and Medicaid Services. The reporting of an average sales price that does not meet the requirement of this subdivision shall result in that blood factor no longer being considered a covered benefit.

(d) The average sales price shall be reported at the national drug code level to the department on a quarterly basis.

(e) (1) Effective July 1, 2008, the department shall collect a state rebate, in addition to rebates pursuant to other provisions of state or federal law, for blood factors reimbursed pursuant to this section by programs that qualify for federal drug rebates pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8) or otherwise qualify for federal funds under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) pursuant to the ~~Medicaid~~ *medicaid* state plan or waivers and the programs authorized by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of ~~Division 106 of~~, and Article 1 (commencing with Section 125125) *of Chapter 2* of Part 5 ~~of Chapter 2~~ of, Division 106 of the Health and Safety Code. The state rebate shall be negotiated as necessary between the department and the manufacturer. Manufacturers~~,~~ who do not execute an agreement to pay additional rebates pursuant to this section~~,~~ shall have their blood factors available only through an approved treatment or service authorization request. All blood factors that meet the definition of a covered outpatient drug pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8) shall remain a benefit subject to the utilization controls provided for in this section.

(2) In reviewing authorization requests, the department shall approve the lowest net cost product that meets the beneficiary's medical need. The review of medical need shall take into account a beneficiary's clinical history or the use of the blood factor pursuant to payment by another third party, or both.

(f) A beneficiary may obtain blood factors that require a treatment or service authorization request pursuant to subdivision (e) if the beneficiary qualifies for continuing care status. To be eligible for continuing care status, a beneficiary must be taking the blood factor and the department has reimbursed a claim for the blood factor with a date of service that is within 100 days prior

to the date the blood factor was placed on treatment authorization request status. A beneficiary may remain eligible for continuing care status, provided that a claim is submitted for the blood factor in question at least every 100 days and the date of service of the claim is within 100 days of the date of service of the last claim submitted for the same blood factor.

(g) Changes made to the list of covered blood factors under this or any other section shall be exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law.

SEC. 206. Section 14107.2 of the Welfare and Institutions Code is amended to read:

14107.2. (a) Any person who solicits or receives any remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind, either:

(1) In return for the referral, or promised referral, of any individual to a person for the furnishing or arranging for the furnishing of any service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200); or

(2) In return for the purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any goods, facility, service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200), is punishable upon a first conviction by imprisonment in a county jail for not longer than one year or state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.

(b) Any person who offers or pays any remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind, either:

(1) To refer any individual to a person for the furnishing or arranging for furnishing of any service or merchandise for which

payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200); or

(2) To purchase, lease, order, or arrange for or recommend the purchasing, leasing, or ordering of any goods, facility, service, or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200), is punishable upon a first conviction by imprisonment in a county jail for not longer than one year or state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.

(c) Subdivisions (a) and (b) shall not apply to the following:

(1) Any amount paid by an employer to an employee, who has a bona fide employment relationship with that employer, for employment with provision of covered items or services.

(2) A discount or other reduction in price obtained by a provider of services or other entity under this chapter or Chapter 8 (commencing with Section 14200), if the reduction in price is properly disclosed and reflected in the costs claimed or charges made by the provider or entity under this chapter or Chapter 8 (commencing with Section 14200). This paragraph shall not apply to consultant pharmaceutical services rendered to nursing facilities nor to all categories of intermediate care facilities for the developmentally disabled.

(3) The practices or transactions between a federally qualified health center, as defined in Section 1396d(*l*)(2)(B) of Title 42 of the United States Code, and any individual or entity shall be permitted only to the extent sanctioned or permitted by federal law.

(4) The provision of nonmonetary remuneration in the form of hardware, software, or information technology and training services, as described in subsections (x) and (y) of Section 1001.952 of Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the Federal Register (~~77~~ *(72* Fed. Reg. ~~56632~~ *56631*, 56644), and subsequently amended versions.

(d) For purposes of this section, “kickback” means a rebate or anything of value or advantage, present or prospective, or any promise or undertaking to give any rebate or thing of value or advantage, with a corrupt intent to unlawfully influence the person

to whom it is given in actions undertaken by that person in his or her public, professional, or official capacity.

(e) The enforcement remedies provided under this section are not exclusive and shall not preclude the use of any other criminal or civil remedy.

SEC. 207. Section 14126.033 of the Welfare and Institutions Code is amended to read:

14126.033. (a) This article, including Section 14126.031, shall be funded as follows:

(1) General Fund moneys appropriated for purposes of this article pursuant to Section 6 of the act adding this section shall be used for increasing rates, except as provided in Section 14126.031, for freestanding skilled nursing facilities, and shall be consistent with the approved methodology required to be submitted to the *federal* Centers for Medicare and Medicaid Services pursuant to Article 7.6 (commencing with Section 1324.20) of Chapter 2 of Division 2 of the Health and Safety Code.

(2) (A) Notwithstanding Section 14126.023, for the 2005–06 rate year, the maximum annual increase in the weighted average Medi-Cal rate required for purposes of this article shall not exceed 8 percent of the weighted average Medi-Cal reimbursement rate for the 2004–05 rate year as adjusted for the change in the cost to the facility to comply with the nursing facility quality assurance fee for the 2005–06 rate year, as required under subdivision (b) of Section 1324.21 of the Health and Safety Code, plus the total projected Medi-Cal cost to the facility of complying with new state or federal mandates.

(B) Beginning with the 2006–07 rate year, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as adjusted for the projected cost of complying with new state or federal mandates.

(C) Beginning with the 2007–08 rate year and continuing through the 2008–09 rate year, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5.5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as adjusted for the projected cost of complying with new state or federal mandates.

(D) For the 2009–10 and 2010–11 rate years, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as adjusted for the projected cost of complying with new state or federal mandates.

(E) To the extent that new rates are projected to exceed the adjusted limits calculated pursuant to ~~subparagraph~~ *subparagraphs* (A) to (D), inclusive, as applicable, the department shall adjust the increase to each skilled nursing facility's projected rate for the applicable rate year by an equal percentage.

(b) The rate methodology shall cease to be implemented on and after July 31, 2011.

(c) (1) It is the intent of the Legislature that the implementation of this article result in individual access to appropriate long-term care services, quality resident care, decent wages and benefits for nursing home workers, a stable workforce, provider compliance with all applicable state and federal requirements, and administrative efficiency.

(2) Not later than December 1, 2006, the Bureau of State Audits shall conduct an accountability evaluation of the department's progress toward implementing a facility-specific reimbursement system, including a review of data to ensure that the new system is appropriately reimbursing facilities within specified cost categories and a review of the fiscal impact of the new system on the General Fund.

(3) Not later than January 1, 2007, to the extent information is available for the three years immediately preceding the implementation of this article, the department shall provide baseline information in a report to the Legislature on all of the following:

(A) The number and percent of freestanding skilled nursing facilities that complied with minimum staffing requirements.

(B) The staffing levels prior to the implementation of this article.

(C) The staffing retention rates prior to the implementation of this article.

(D) The numbers and percentage of freestanding skilled nursing facilities with findings of immediate jeopardy, substandard quality of care, or actual harm, as determined by the certification survey of each freestanding skilled nursing facility conducted prior to the implementation of this article.

(E) The number of freestanding skilled nursing facilities that received state citations and the number and class of citations issued during calendar year 2004.

(F) The average wage and benefits for employees prior to the implementation of this article.

(4) Not later than January 1, 2009, the department shall provide a report to the Legislature that does both of the following:

(A) Compares the information required in paragraph (2) to that same information two years after the implementation of this article.

(B) Reports on the extent to which residents who had expressed a preference to return to the community, as provided in Section 1418.81 of the Health and Safety Code, were able to return to the community.

(5) The department may contract for the reports required under this subdivision.

(d) This section shall become inoperative on July 31, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 208. Section 14126.034 of the Welfare and Institutions Code is amended to read:

14126.034. (a) (1) The department shall convene a workgroup of interested stakeholders to make recommendations to the department to ensure compliance with the intent of this article, as provided in subdivision (a) of Section 14126.02.

(2) (A) Interested stakeholders shall include consumers or their representatives, or both, including current or former skilled nursing facility residents, and family members of current or former skilled nursing facility residents, or both, seniors or their representatives, or both, skilled nursing facility representatives, labor representatives, and people with disabilities and disability rights advocates.

(B) A stakeholder workgroup of 18 members shall be convened representing interested stakeholders from the groups listed in subparagraph (A), with six members selected from each of the following areas of interest:

(i) Consumers.

(ii) Skilled nursing facility labor.

(iii) Skilled nursing facilities.

(C) Interested stakeholders within each of the areas of interest in subparagraph (B) shall nominate and select six members within their area of interest to serve on the stakeholder workgroup to represent their interests.

(D) The stakeholder workgroup shall also include representatives from the department, the Office of the State Long-Term Care Ombudsman, the State Department of Public Health, the Office of Statewide Health Planning and Development, with members appointed by their respective directors, or their designee, and may also include legislative staff, academics, and other state department representatives, including, but not limited to, representatives from the California Department of Aging and the State Department of Developmental Services.

(b) (1) Each stakeholder workgroup meeting shall be chaired by a facilitator from an organization independent of the department and any of the stakeholder groups, to the extent that foundation funding is made available for this purpose. If no funds are made available for this purpose, the department shall facilitate the stakeholder workgroup meetings.

(2) The consumers, skilled nursing facility labor, and skilled nursing facility stakeholder workgroup members shall each select one representative who will meet with the department and the facilitator to develop meeting agendas after having solicited input from each representative's respective stakeholder group.

(3) To the extent that foundation funding is made available, stakeholder workgroup members shall receive reimbursement for any actual, necessary, and reasonable expenses incurred in connection with their duties as members of the workgroup.

(c) The department shall assign staff as needed to assist the stakeholder workgroup in carrying out its responsibilities.

(d) In developing recommendations, the stakeholder workgroup shall consider the structure of, and potential changes to, the facility-specific ratesetting system, developed pursuant to Section 14126.023, that may improve the quality of resident care. The stakeholder workgroup members may take into consideration the following factors, or any other factors deemed relevant to ensure the quality of resident care:

(1) Skilled nursing facility staffing levels, including, but not limited to, compliance with existing staffing requirements.

(2) Skilled nursing facility staff wages and benefits, including, but not limited to, geographic disparities in wages and benefits.

(3) Skilled nursing facility staff turnover and retention.

(4) Deficiency reports issued as a result of both surveys and complaint investigations, to the extent that they may be disclosed as public records, and the enforcement actions taken under federal certification and state licensing laws and regulations.

(5) Skilled nursing facility compliance with assessments required to ascertain residents' preference for, and ability to return to, the community as required by Section 1418.81 of the Health and Safety Code, including necessary ~~follow through~~ *followthrough* to assure care necessary for a resident to transition out of skilled nursing facility care and into the community.

(6) The extent to which this article encourages compliance with the United States Supreme Court decision in Olmstead v. L.C. ex rel. Zimring (1999) 527 U.S. 581, including using the ratesetting system to increase Olmstead compliance.

(7) Health care efficiency.

(8) Health care safety.

(9) The extent to which a pay-for-performance program may contribute to improving the quality of resident care and appropriate performance measures for a pay-for-performance program.

(10) Preventable emergency room visits and rehospitalizations.

(11) Resident and family satisfaction with care and resident's quality of life, including improvements on ways to measure satisfaction.

(12) Recommendations for methods to evaluate the effectiveness of the facility-specific ratesetting system, defined in Section 14126.023, in meeting the intent of this article, pursuant to Section 14126.02.

(13) Additional quality measures, ~~included~~ *including*, but not limited to, adequate nutrition and ready availability of durable medical equipment.

(e) The department shall convene the stakeholder workgroup no later than one month following the effective date of this section. The stakeholder workgroup shall meet a minimum of six times through December 31, 2008. Subcommittees may be convened and meet as necessary.

(f) In addition to recommendations provided during stakeholder workgroup meetings, individual members of the stakeholder

workgroup and any other interested stakeholders may provide to the department any additional written recommendations on the items considered in the stakeholder workgroup meetings.

(g) The department shall provide technical assistance to the stakeholder workgroup to evaluate the feasibility of its recommendations so that the stakeholder workgroup will have the benefit of the department's analysis when discussing and reviewing proposed recommendations.

(h) The department shall review and analyze all recommendations from the stakeholder workgroup, individual workgroup members, and any other interested stakeholders, and, no later than March 1, 2009, the department shall deliver to the Legislature, both of the following:

(1) The complete recommendations of the stakeholder workgroup, individual workgroup members, and any other interested stakeholders.

(2) The department's analysis of the feasibility to implement the proposed recommendations.

(i) (1) The stakeholder workgroup may continue to meet to carry out its responsibilities pursuant to subdivision (d) for an extension period of up to one year. During this extension period, the stakeholder workgroup shall meet at least quarterly as agreed by the department and those members selected pursuant to paragraph (2) of subdivision (a).

(2) During the extension period the stakeholder workgroup's activities may include assisting the department or Legislature, or both, to enact improvements to the ratesetting system.

(j) The department shall seek partnership with one or more independent, nonprofit groups or foundations, academic institutions, or governmental entities providing grants for health-related activities, to support stakeholder workgroup efforts.

(k) The department shall seek necessary legislative changes to implement the stakeholder workgroup's recommendations that the department determines are feasible to implement as part of the reauthorization of this section.

(*l*) The department may meet the intent of this article, as stated in subdivision (a) of Section 14126.02, by using the stakeholder workgroup's recommendations in order to design an evaluation of the effectiveness of the facility-specific ratesetting system established pursuant to Section 14126.023.

(m) Implementation and administration of this section is not dependent on the availability of foundation funding.

SEC. 209. Section 14132.725 of the Welfare and Institutions Code is amended to read:

14132.725. (a) Commencing July 1, 2006, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward. Services appropriately provided through the store and forward process are subject to billing and reimbursement policies developed by the department.

(b) For purposes of this section, "teleophthalmology and teledermatology by store and forward" means an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology, where the physician at the distant site reviews the medical information without the patient being present in real time. A patient receiving teleophthalmology or teledermatology by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician, and shall receive an interactive communication with the distant specialist physician, upon request. If requested, communication with the distant specialist physician may occur either at the time of the consultation, or within 30 days of the patient's notification of the results of the consultation.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this section by means of ~~all county~~ *all-county* letters, provider bulletins, and similar instructions.

(d) On or before January 1, 2008, the department shall report to the Legislature the number and type of services provided, and the payments made related to the application of store and forward telemedicine as provided, under this section as a Medi-Cal benefit.

(e) The health care provider shall comply with the informed consent provisions of subdivisions (c) to (g), inclusive, of, and subdivisions (i) and (j) of, Section 2290.5 of the Business and Professions Code when a patient receives teleophthalmology or teledermatology by store and forward.

(f) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 210. Section 14154 of the Welfare and Institutions Code is amended to read:

14154. (a) The department shall establish and maintain a plan whereby costs for county administration of the determination of eligibility for benefits under this chapter ~~will~~ *shall* be effectively controlled within the amounts annually appropriated for that administration. The plan, to be known as the County Administrative Cost Control Plan, shall establish standards and performance criteria, including workload, productivity, and support services standards, to which counties shall adhere. The plan shall include standards for controlling eligibility determination costs that are incurred by performing eligibility determinations at county hospitals, or that are incurred due to the outstationing of any other eligibility function. Except as provided in Section 14154.15, reimbursement to a county for outstationed eligibility functions shall be based solely on productivity standards applied to that county's welfare department office. The plan shall be part of a single state plan, jointly developed by the department and the State Department of Social Services, in conjunction with the counties, for administrative cost control for the California Work Opportunity and Responsibility to Kids (CalWORKs), Food Stamp, and Medical Assistance (Medi-Cal) programs. Allocations shall be made to each county and shall be limited by and determined based upon the County Administrative Cost Control Plan. In administering the plan to control county administrative costs, the department shall not allocate state funds to cover county cost overruns that result from county failure to meet requirements of the plan. The department and the State Department of Social Services shall budget, administer, and allocate state funds for county administration in a uniform and consistent manner.

(b) Nothing in this section, Section 15204.5, or Section 18906 shall be construed so as to limit the administrative or budgetary responsibilities of the department in a manner that would violate Section 14100.1, and thereby jeopardize federal financial participation under the Medi-Cal program.

(c) (1) The Legislature finds and declares that in order for counties to do the work that is expected of them, it is necessary

that they receive adequate funding, including adjustments for reasonable annual cost-of-doing-business increases. The Legislature further finds and declares that linking appropriate funding for county Medi-Cal administrative operations, including annual cost-of-doing-business adjustments, with performance standards will give counties the incentive to meet the performance standards and enable them to continue to do the work they do on behalf of the state. It is therefore the Legislature's intent to provide appropriate funding to the counties for the effective administration of the Medi-Cal program at the local level to ensure that counties can reasonably meet the purposes of the performance measures as contained in this section.

(2) It is the intent of the Legislature to not appropriate funds for the cost-of-doing-business adjustment for the 2008–09 fiscal year.

(d) The department is responsible for the Medi-Cal program in accordance with state and federal law. A county shall determine Medi-Cal eligibility in accordance with state and federal law. If in the course of its duties the department becomes aware of accuracy problems in any county, the department shall, within available resources, provide training and technical assistance as appropriate. Nothing in this section shall be interpreted to eliminate any remedy otherwise available to the department to enforce accurate county administration of the program. In administering the Medi-Cal eligibility process, each county shall meet the following performance standards each fiscal year:

(1) Complete eligibility determinations as follows:

(A) Ninety percent of the general applications without applicant errors and *that* are complete shall be completed within 45 days.

(B) Ninety percent of the applications for Medi-Cal based on disability shall be completed within 90 days, excluding delays by the state.

(2) (A) The department shall establish best-practice guidelines for expedited enrollment of newborns into the Medi-Cal program, preferably with the goal of enrolling newborns within 10 days after the county is informed of the birth. The department, in consultation with counties and other stakeholders, shall work to develop a process for expediting enrollment for all newborns, including those born to mothers receiving CalWORKs assistance.

(B) Upon the development and implementation of the best-practice guidelines and expedited processes, the department

and the counties may develop an expedited enrollment timeframe for newborns that is separate from the standards for all other applications, to the extent that the timeframe is consistent with these guidelines and processes.

(C) Notwithstanding the rulemaking procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by means of all-county letters or similar instructions, without further regulatory action.

(3) Perform timely annual redeterminations, as follows:

(A) Ninety percent of the annual redetermination forms shall be mailed to the recipient by the anniversary date.

(B) Ninety percent of the annual redeterminations shall be completed within 60 days of the recipient's annual redetermination date for those redeterminations based on forms that are complete and have been returned to the county by the recipient in a timely manner.

(C) Ninety percent of those annual redeterminations where the redetermination form has not been returned to the county by the recipient shall be completed by sending a notice of action to the recipient within 45 days after the date the form was due to the county.

(D) When a child is determined by the county to change from no share of cost to a share of cost and the child meets the eligibility criteria for the Healthy Families Program established under Section 12693.98 of the Insurance Code, the child shall be placed in the Medi-Cal-to-Healthy Families Bridge Benefits Program, and these cases shall be processed as follows:

(i) Ninety percent of the families of these children shall be sent a notice informing them of the Healthy Families Program within five working days from the determination of a share of cost.

(ii) Ninety percent of all annual redetermination forms for these children shall be sent to the Healthy Families Program within five working days from the determination of a share of cost if the parent has given consent to send this information to the Healthy Families Program.

(iii) Ninety percent of the families of these children placed in the Medi-Cal-to-Healthy Families Bridge Benefits Program who have not consented to sending the child's annual redetermination form to the Healthy Families Program shall be sent a request,

within five working days of the determination of a share of cost, to consent to send the information to the Healthy Families Program.

(E) Subparagraph (D) shall not be implemented until 60 days after the Medi-Cal and Joint Medi-Cal and Healthy Families applications and the Medi-Cal redetermination forms are revised to allow the parent of a child to consent to forward the child's information to the Healthy Families Program.

(e) The department shall develop procedures in collaboration with the counties and stakeholder groups for determining county review cycles, sampling methodology and procedures, and data reporting.

(f) On January 1 of each year, each applicable county, as determined by the department, shall report to the department on the county's results in meeting the performance standards specified in this section. The report shall be subject to verification by the department. County reports shall be provided to the public upon written request.

(g) If the department finds that a county is not in compliance with one or more of the standards set forth in this section, the county shall, within 60 days, submit a corrective action plan to the department for approval. The corrective action plan shall, at a minimum, include steps that the county shall take to improve its performance on the standard of standards with which the county is out of compliance. The plan shall establish interim benchmarks for improvement that shall be expected to be met by the county in order to avoid a sanction.

(h) (1) If a county does not meet the performance standards for completing eligibility determinations and redeterminations as specified in this section, the department may, at its sole discretion, reduce the allocation of funds to that county in the following year by 2 percent. Any funds so reduced may be restored by the department if, in the determination of the department, sufficient improvement has been made by the county in meeting the performance standards during the year for which the funds were reduced. If the county continues not to meet the performance standards, the department may reduce the allocation by an additional 2 percent for each year thereafter in which sufficient improvement has not been made to meet the performance standards.

(2) No reduction of the allocation of funds to a county shall be imposed pursuant to this subdivision for failure to meet

performance standards during any period of time in which the cost-of-doing-business increase is suspended.

(i) The department shall develop procedures, in collaboration with the counties and stakeholders, for developing instructions for the performance standards established under subparagraph (D) of paragraph (3) of subdivision (c), no later than September 1, 2005.

(j) No later than September 1, 2005, the department shall issue a revised annual redetermination form to allow a parent to indicate parental consent to forward the annual redetermination form to the Healthy Families Program if the child is determined to have a share of cost.

(k) The department, in coordination with the Managed Risk Medical Insurance Board, shall streamline the method of providing the Healthy Families Program with information necessary to determine Healthy Families eligibility for a child who is receiving services under the Medi-Cal-to-Healthy Families Bridge Benefits Program.

SEC. 211. Section 14154.5 of the Welfare and Institutions Code is amended to read:

14154.5. (a) Each county shall work, on a routine basis, any error alert from the department's Medi-Cal Eligibility Data System (MEDS). Any alert that affects eligibility or the share of cost that is received by the 10th working day of the month shall be processed in time for the change to be effective the beginning of the following month. Any alert that affects eligibility or the share of cost that is received after the 10th working day of the month shall be processed in time for the change to be effective the beginning of the month after the following month. The department shall consult with the County Welfare Directors Association to define those alerts that affect eligibility or the share of cost.

(b) The county shall submit reconciliation files of its Medi-Cal eligible population to the department every three months, based upon a schedule determined by the department and in a format prescribed by the department, to identify any discrepancies between eligibility files in the county records and eligibility as reflected in MEDS. Counties shall be notified of any changes to the standard format for submitting reconciliation files sufficiently in advance to allow for budgeting, scheduling, development, testing, and implementation of any required change in county automated eligibility systems.

(c) For those records that are on the county's files, but not on MEDS, the county shall receive worker alerts from the department that identify these cases, and the county shall fix any data discrepancies. Any worker alert received by the 10th working day of the month shall be processed in time for the change to be effective the beginning of the following month. Any worker alert received after the 10th working day of the month shall be processed in time for the change to be effective the beginning of the month after the following month.

(d) In regard to any record that is on MEDS but not on the county's file, the county shall either correct the county record or MEDS, whichever is appropriate, within the same timeframes specified in subdivision (c).

(e) The department shall terminate a ~~MEDS eligible~~ *MEDS-eligible* record if the person is not eligible on the county's file when there has been no eligibility update on the MEDS record for six months.

(f) (1) If the department finds that a county is not performing all of the following activities, the county shall, within 60 days, submit a corrective action plan to the department for approval~~.~~*:*

(A) Conducting reconciliations as required in subdivision (b).

(B) Processing 95 percent of worker alerts referred to in subdivisions (c) and (d), within the timeframes specified.

(C) Processing 90 percent of the error alerts referred to in subdivision (a) that affect eligibility or the share of cost, within the timeframes specified.

(2) The corrective action plan shall, at a minimum, include steps that the county shall take to improve its performance on the requirements with which the county is out of compliance. The plan shall establish interim benchmarks for improvement that shall be expected to be met by the county in order to avoid sanctions.

(g) (1) If the county does not meet the interim benchmarks for improvement standards, the department may, in its sole discretion, reduce the allocation of funds to that county in the following year by 2 percent. Any funds so reduced may be restored by the department if, in the determination of the department, sufficient improvement has been made by the county in meeting the performance standards during the year for which the funds were reduced.

(2) No reduction of the allocation of funds to a county shall be imposed pursuant to this subdivision for failure to meet performance standards during any period of time in which the cost-of-doing-business increase is suspended.

(h) The department, in consultation with the County Welfare Directors Association, shall investigate features that could be installed in MEDS to reduce the number of alerts and streamline the reconciliation process.

(i) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section by means of ~~all county~~ *all-county* letters, provider bulletins, or similar instructions. Thereafter, the department may adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 212. Section 14166.9 of the Welfare and Institutions Code is amended to read:

14166.9. (a) The department, in consultation with the designated public hospitals, shall determine the mix of sources of federal funds for payments to the designated public hospitals in a manner that provides baseline funding to hospitals and maximizes federal Medicaid funding to the state during the term of the demonstration project. Federal funds shall be claimed according to the following priorities:

(1) The certified public expenditures of the designated public hospitals for inpatient hospital services and physician and nonphysician practitioner services, as identified in subdivision (e) of Section 14166.4, rendered to Medi-Cal beneficiaries.

(2) Federal disproportionate share hospital allotment, subject to the ~~federal-hospital specific~~ *federal hospital-specific* limit, in the following order:

(A) Those hospital expenditures that are eligible for federal financial participation only from the federal disproportionate share hospital allotment.

(B) Payments funded with intergovernmental transfers, consistent with the requirements of the demonstration project, up to the hospital's baseline funding amount or adjusted baseline funding amount, as appropriate, for the project year.

(C) Any other certified public expenditures for hospital services that are eligible for federal financial participation from the federal disproportionate share hospital allotment.

(3) Safety net care pool funds, using the optimal combination of ~~hospital certified~~ *hospital-certified* public expenditures and certified public expenditures of a hospital, or governmental entity with which the hospital is affiliated, that operates nonhospital clinics or provides physician, nonphysician practitioner, or other health care services that are not identified as hospital services under the Special Terms and Conditions for the demonstration project, except that certified public expenditures reported by the County of Los Angeles or its designated public hospitals shall be the exclusive source of certified public expenditures for claiming those federal funds deposited in the South Los Angeles Medical Services Preservation Fund under Section 14166.25.

(4) Health care expenditures of the state that represent alternate state funding mechanisms approved by the federal Centers for Medicare and Medicaid Services under the demonstration project as set forth in Section 14166.22.

(b) The department shall implement these priorities, to the extent possible, in a manner that minimizes the redistribution of federal funds that are based on the certified public expenditures of the designated public hospitals.

(c) The department may adjust the claiming priorities to the extent that these adjustments result in additional federal ~~Medicaid~~ *medicaid* funding during the term of the demonstration project or facilitate the objectives of subdivision (b).

(d) There is hereby established in the State Treasury the "Demonstration Disproportionate Share Hospital Fund." All federal funds received by the department with respect to the certified public expenditures claimed pursuant to subparagraphs (A) and (C) of paragraph (2) of subdivision (a) shall be transferred to the fund. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to the department solely for the purposes specified in Section 14166.6.

(e) (1) Except as provided in Section 14166.25, all federal safety net care pool funds claimed and received by the department based on health care expenditures incurred by the designated public hospitals, or other governmental entities, shall be transferred to

the Health Care Support Fund, established pursuant to Section 14166.21.

(2) The department shall separately identify and account for federal safety net care pool funds claimed and received by the department under the health care coverage initiative program authorized under Part 3.5 (commencing with Section 15900) and under paragraphs 43 and 44 of the Special Terms and Conditions for the demonstration project.

(3) With respect to those funds identified under paragraph (2), the department shall separately identify and account for federal safety net care pool funds claimed and received for inpatient hospital services rendered under the health care coverage initiative, including services rendered to enrollees of a managed care organization, by designated public hospitals, nondesignated public hospitals, and project year private DSH hospitals.

SEC. 213. Section 14166.25 of the Welfare and Institutions Code is amended to read:

14166.25. (a) The Legislature finds and declares all of the following:

(1) In light of the closure of Los Angeles County Martin Luther King, Jr.-Harbor Hospital, there is a need to ensure adequate funding for continued health care services to the uninsured population of South Los Angeles, including, but not limited to, the Cities of Compton, Lynwood, South Gate, *and* Huntington Park, the southern and central portions of the Cities of Los Angeles, Inglewood, Gardena, and surrounding unincorporated communities.

(2) The state, the County of Los Angeles, and all health care providers in the South Los Angeles community must work together to meet the health care needs of the community until the critical hospital services previously provided by Los Angeles County Martin Luther King, Jr.-Harbor Hospital can be restored at this location.

(3) The Medi-Cal Hospital/Uninsured Care Demonstration Project provides a critical source of funding for services to low-income communities throughout the state that are provided by California's safety net hospital systems.

(4) The special funding provided in this section is predicated on the express intent of the County of Los Angeles to restore hospital services on the hospital campus, to be operated by either

a private or public entity. The county has undertaken a specific plan to do so as quickly as possible.

(5) The Legislature anticipates that demonstration project funds will be available to help fund the reopened hospital. The nature and amount of that funding cannot be determined until the new structure and operation of the hospital is known.

(6) As an interim response to the specific circumstances caused by the closure of this hospital, and until hospital services can be restored at this location, a special fund will be created to receive demonstration project funding to be available to the County of Los Angeles for expenditures to preserve health care services for the uninsured population of South Los Angeles, as defined above.

(b) The South Los Angeles Medical Services Preservation Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to the department for the purposes specified in this section.

(c) Subject to the conditions in this section, a maximum amount of one hundred million dollars ($100,000,000) of the safety net care pool funds claimed and received by the state that are based on the certified public expenditures of the County of Los Angeles or its designated public hospitals shall be transferred to the South Los Angeles Medical Services Preservation Fund for each of the three project years, 2007–08, 2008–09, and 2009–10.

(1) In the event that the director determines that any amount is due to the County of Los Angeles under the demonstration project for services rendered during the portion of a project year during which Los Angeles County Martin Luther King, Jr.-Harbor Hospital was operational, the amount deposited in the fund under this subdivision shall be reduced by a percentage determined by reducing 100 percent by the percentage reduction in the hospital's baseline as determined under subdivision (c) of Section 14166.5 for that project year.

(2) If, in the aggregate, the federal medical assistance percentage of the certified public expenditures reported by the County of Los Angeles and its designated public hospitals under Section 14166.8, excluding those certified public expenditures reported under paragraph (1) of subdivision (b) of Section 14166.8, in any project year do not exceed the amounts paid or payable to the county and its designated public hospitals in the aggregate under Section

14166.6, excluding disproportionate share payments funded with intergovernmental transfers, Section 14166.7, and subdivision (d) for the same project year, then the amount deposited in the fund under subdivision (c) shall be reduced by the amount of excess payments over the federal medical assistance percentage of certified public expenditures.

(d) Moneys in the South Los Angeles Medical Services Preservation Fund shall be distributed to the County of Los Angeles in amounts equal to the costs incurred by the county, including indirect costs associated with adequately maintaining the hospital building so that it can be reopened, in providing, or compensating other providers for, health services rendered to the uninsured population of South Los Angeles, including all of the following:

(1) Services provided in the multiservice ambulatory care center operating on the former Los Angeles County Martin Luther King, Jr.-Harbor Hospital campus.

(2) Services rendered to patients in beds at other designated public hospitals operated by the County of Los Angeles that have been opened specifically for the purpose of serving patients that would have been served by the former Los Angeles County Martin Luther King, Jr.-Harbor Hospital.

(3) Services rendered in the ~~county operated~~ *county-operated* health center and the comprehensive health center formerly operated under Los Angeles County Martin Luther King, Jr.-Harbor Hospital.

(4) Services rendered to the uninsured by other public or private health care providers for which the County of Los Angeles has agreed to pay under a contract with the provider as a result of the downsizing or closure of Los Angeles County Martin Luther King, Jr.-Harbor Hospital.

(e) As a condition for receiving distributions from the South Los Angeles Medical Services Preservation Fund in any project year, the County of Los Angeles shall assure the director that it will not reduce the county's ongoing, systemwide financial contribution to the county department of health services during that project year for health care services to the uninsured.

(f) No funds shall be available from the South Los Angeles Medical Services Preservation Fund for services rendered when a hospital on the former Los Angeles County Martin Luther King, Jr.-Harbor Hospital campus is certified for Medi-Cal participation.

(g) If the full amount of the South Los Angeles Medical Services Preservation Fund for any project year is not distributed to the County of Los Angeles, based on the cost of services identified in subdivision (d) that were rendered during that project year, any remaining amounts shall revert to the Health Care Support Fund established pursuant to Section 14166.21.

(h) To the extent that the County of Los Angeles receives distributions from the South Los Angeles Medical Services Preservation Fund based on the cost of services rendered by ~~county operated~~ *county-operated* providers, or based on payments made to private providers for services rendered to the uninsured population of South Los Angeles, the costs of the services rendered shall not be considered for purposes of any of the following determinations with respect to either the county or the private provider:

(1) Medi-Cal payments under the selective provider contracting program under Article 2.6 (commencing with Section 14081), including payments to distressed hospitals under Section 14166.23.

(2) Baseline amounts, or adjustments thereto, under Section 14166.5, 14166.13, or 14166.18.

(3) Any other payment under Medi-Cal or other health care program.

(i) This section shall be implemented only to the extent that the director determines that it will not result in the loss of federal funds under the demonstration project.

SEC. 214. Section 14199.2 of the Welfare and Institutions Code is amended to read:

14199.2. (a) The pilot program provided for under this article shall provide the necessary information to assess the effectiveness of pharmacist care in improving health outcomes for HIV/AIDS patients. If the department determines that the pilot program has shown that HIV/AIDS-related medication therapy management service is effective at improving the health outcomes of HIV/AIDS patients and is cost effective, then the department may seek federal authorization, through a state plan amendment or ~~Medicaid~~ *medicaid* waiver application, to receive federal financial participation for this service.

(b) The department shall implement an HIV/AIDS-related medication therapy management service pilot project in no more than 10 pharmacies.

(c) The selection of the pharmacy providers shall be based on all of the following:

(1) Percentage of HIV/AIDS patients serviced by the pharmacy. More than 90 percent of the total patients serviced by the pharmacy in the months of May, June, and July 2004, must have been HIV/AIDS patients.

(2) Ability of the pharmacy to immediately provide specialized services. The provider shall be required to establish specialized services with capability to implement all statutorily mandated services on the implementation date of the project. The pharmacy shall provide all the services listed in subdivision (e).

(3) All specialized services shall be rendered by a qualified pharmacist or other health care provider operating within his or her scope of practice. The department shall develop, in consultation with pharmacy providers, the appropriate professional qualifications needed by the pharmacists rendering services, including any continuing education requirements.

(d) The department shall select the first pharmacies that apply and meet the criteria specified in subdivision (c) for the pilot program.

(e) Pharmacies that participate in this pilot program shall provide the following services:

(1) Patient-specific and individualized services provided directly by a pharmacist to the patient~~,~~ or, in limited circumstances, the patient's caregiver. These services are distinct from generalized patient education and information activities already required by law and provided for in the professional fee for dispensing.

(2) Face-to-face interaction between the patient or caregiver and the pharmacist during delivery of medication therapy management services. When barriers to face-to-face communication exist, patients shall have equitable access to appropriate alternative delivery methods.

(3) Pharmacists and other qualified health care providers to identify patients who should receive medication therapy management services.

(f) The department shall consult with the pilot program pharmacies to establish appropriate outcome measures and the required timeframes for reporting those measures, which in no case shall be less than annually. The department shall retain the

ability to require additional outcome measures during the course of the project.

(g) The medication therapy management services shall be based on the individual patient's needs and may include, but are not limited to, the following:

(1) Performing or obtaining necessary assessments of the patient's health status.

(2) Formulating a medication treatment plan.

(3) Selecting, initiating, modifying, or administering medication therapy.

(4) Monitoring and evaluating the patient's response to therapy, including safety and effectiveness.

(5) Performing a comprehensive medication review to identify, resolve, and prevent medication-related problems, including adverse drug events.

(6) Documenting the care delivered and communicating essential information to the patient's other primary care providers.

(7) Providing verbal education and training, beyond what is already required by law, that is designed to enhance patient understanding and appropriate use of the patient's medications.

(8) Providing information, support services, and resources, such as compliance packaging, designed to enhance patient adherence to his or her therapeutic regimens.

(9) Coordinating and integrating medication therapy management services within the broader health care management services being provided to the patient.

(10) Home delivery of medications.

(h) Participants in this pilot program shall be paid an additional dispensing fee of nine dollars and fifty cents ($9.50) per prescription for drug products added to or maintained on the Medi-Cal List of Contract Drugs pursuant to Section 14105.43 for services rendered on or after July 1, 2008.

(i) Notwithstanding any other provision of law, the department shall not make any payments for services listed in subdivision (g) that were rendered during any time period in which subdivision (b) of Section 14105.45 has been enjoined by a court order or is otherwise not in effect.

(j) Pilot project contracts under this section may be executed on a noncompetitive bid basis and shall be exempt from the

requirements of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(k) Pharmacies shall maintain a sufficient quantity of HIV/AIDS medication in their inventories.

(*l*) Pharmacies shall purchase HIV medications from ~~state licensed~~ *state-licensed* wholesalers.

SEC. 215. Section 14301.1 of the Welfare and Institutions Code is amended to read:

14301.1. (a) For rates established on or after August 1, 2007, the department shall pay capitation rates to health plans participating in the Medi-Cal managed care program using actuarial methods and may establish ~~health plan~~ *health-plan-* and ~~county specific~~ *county-specific* rates. The department shall utilize a ~~county~~ *county-* and ~~model specific~~ *model-specific* rate methodology to develop Medi-Cal managed care capitation rates for contracts entered into between the department and any entity pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 that includes, but is not limited to, all of the following:

(1) ~~Health plan specific~~ *Health-plan-specific* encounter and claims data.

(2) Supplemental utilization and cost data submitted by the health plans.

(3) Fee-for-service data for the underlying county of operation or other appropriate counties as deemed necessary by the department.

(4) Department of Managed Health Care financial statement data specific to Medi-Cal operations.

(5) Other demographic factors, such as age, gender, or diagnostic-based risk adjustments, as the department deems appropriate.

(b) To the extent that the department is unable to obtain sufficient actual plan data, it may substitute plan model, similar plan, or ~~county specific~~ *county-specific* fee-for-service data.

(c) The department shall develop rates that include administrative costs, and may apply different administrative costs with respect to separate aid code groups.

(d) The department shall develop rates that shall include, but are not limited to, assumptions for underwriting, return on

investment, risk, contingencies, changes in policy, and a detailed review of health plan financial statements to validate and reconcile costs for use in developing rates.

(e) The department may develop rates that pay plans based on performance incentives, including quality indicators, access to care, and data submission.

(f) The department may develop and adopt condition-specific payment rates for health conditions, including, but not limited to, childbirth delivery.

(g) (1) Prior to finalizing Medi-Cal managed care capitation rates, the department shall provide health plans with information on how the rates were developed, including rate sheets for that specific health plan, and provide the plans with the opportunity to provide additional supplemental information.

(2) For contracts entered into between the department and any entity pursuant to Article 2.8 (commencing with Section 14087.5) of Chapter 7, the department, by June 30 of each year, or, if the budget has not passed by that date, no later than five working days after the budget is signed, shall provide preliminary rates for the upcoming fiscal year.

(h) For the purposes of developing capitation rates through implementation of this ratesetting methodology, Medi-Cal managed care health plans shall provide the department with financial and utilization data in a form and substance as deemed necessary by the department to establish rates. This data shall be considered proprietary and shall be exempt from disclosure as official information pursuant to subdivision (k) of Section 6254 of the Government Code as contained in the California Public Records Act *(Division 7 (commencing with Section 6250) of Title 1 of the Government Code)*.

(i) The department shall report, upon request, to the fiscal and policy committees of the respective houses of the Legislature regarding implementation of this section.

SEC. 216. Section 14526.1 of the Welfare and Institutions Code is amended to read:

14526.1. (a) Initial and subsequent treatment authorization requests may be granted for up to six calendar months.

(b) Treatment authorization requests shall be initiated by the adult day health care center, and shall include all of the following:

(1) The signature page of the history and physical form that shall serve to document the request for adult day health care services. A complete history and physical form, including a request for adult day health care services signed by the participant's personal health care provider, shall be maintained in the participant's health record. This history and physical form shall be developed by the department and published in the inpatient/outpatient provider manual. The department shall develop this form jointly with the statewide association representing adult day health care providers.

(2) The participant's individual plan of care, pursuant to Section 54211 of Title 22 of the California Code of Regulations.

(c) Every six months, the adult day health care center shall initiate a request for an updated history and physical form from the participant's personal health care provider using a standard update form that shall be maintained in the participant's health record. This update form shall be developed by the department for that use and shall be published in the inpatient/outpatient provider manual. The department shall develop this form jointly with the statewide association representing adult day health care providers.

(d) Except for participants residing in an intermediate care facility/developmentally disabled-habilitative, authorization or reauthorization of an adult day health care treatment authorization request shall be granted only if the participant meets all of the following medical necessity criteria:

(1) The participant has one or more chronic or ~~post acute~~ *postacute* medical, cognitive, or mental health conditions that are identified by the participant's personal health care provider as requiring one or more of the following, without which the participant's condition will likely deteriorate and require emergency department visits, hospitalization, or other institutionalization:

(A) Monitoring.

(B) Treatment.

(C) Intervention.

(2) The participant has a condition or conditions resulting in both of the following:

(A) Limitations in the performance of two or more activities of daily living or instrumental activities of daily living, as those terms are defined in Section 14522.3, or one or more from each category.

(B) A need for assistance or supervision in performing the activities identified in subparagraph (A) as related to the condition or conditions specified in paragraph (1) of subdivision (d). That assistance or supervision shall be in addition to any other nonadult day health care support the participant is currently receiving in his or her place of residence.

(3) The participant's network of non-adult day health care center supports is insufficient to maintain the individual in the community, demonstrated by at least one of the following:

(A) The participant lives alone and has no family or caregivers available to provide sufficient and necessary care or supervision.

(B) The participant resides with one or more related or unrelated individuals, but they are unwilling or unable to provide sufficient and necessary care or supervision to the participant.

(C) The participant has family or caregivers available, but those individuals require respite in order to continue providing sufficient and necessary care or supervision to the participant.

(4) A high potential exists for the deterioration of the participant's medical, cognitive, or mental health condition or conditions in a manner likely to result in emergency department visits, hospitalization, or other institutionalization if adult day health care services are not provided.

(5) The participant's condition or conditions require adult day health care services specified in subdivisions (a) to (d), inclusive, of Section 14550.5, on each day of attendance, that are individualized and designed to maintain the ability of the participant to remain in the community and avoid emergency department visits, hospitalizations, or other institutionalization.

(e) Reauthorization of an adult day health care treatment authorization request shall be granted when the criteria specified in subdivision (d) or (f), as appropriate, have been met and the participant's condition would likely deteriorate if the adult day health care services were denied.

(f) For individuals residing in an intermediate care facility/developmentally disabled-habilitative, authorization or reauthorization of an adult day health care treatment authorization request shall be granted only if the resident has disabilities and a level of functioning that are of such a nature that, without supplemental intervention through adult day health care, placement to a more costly institutional level of care would be likely to occur.

SEC. 217. Section 15660 of the Welfare and Institutions Code is amended to read:

15660. (a) The Department of Justice shall secure any criminal record of a person to determine whether the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of any felony that requires registration pursuant to Section 290 of the Penal Code, or whether the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a~~,~~ *or* 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, and shall provide a subsequent arrest notification pursuant to Section 11105.2 of the Penal Code, if both of the following conditions are met:

(1) An employer of the person requests the determination and submits fingerprints of the person to the Department of Justice. For purposes of this paragraph, "employer" includes, but is not limited to, an in-home supportive services recipient, as defined by Section 12302.2, an aged or disabled adult who is ineligible for benefits under Chapter 3 (commencing with Section 12000), who receives care by a person as described ~~with~~ *in* paragraph (2), any recipient of personal care services under the Medi-Cal program pursuant to Sections 14132.95 to 14132.97, inclusive, and any public authority or nonprofit consortium, as described in subdivision (a) of Section 12301.6.

(2) The person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home.

(b) (1) If it is found that the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of any felony which requires registration pursuant to Section 290 of the Penal Code, or that the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a~~,~~ *or* 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, the Department of Justice shall notify the employer of that fact. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact.

(2) Any employer may deny employment to any person who is the subject of a report under paragraph (1) when the report indicates that the person has committed any of the crimes identified in paragraph (1).

(3) Nothing in this section shall be construed to require any employer to hire any person who is the subject of a report under paragraph (1) when the report indicates that the person has not committed any of the crimes indicated in paragraph (1).

(c) (1) Fingerprints shall be on a card provided by the Department of Justice for the purpose of obtaining a set of fingerprints. The employer shall submit the fingerprints to the Department of Justice. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the employer of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact as soon as possible, but not later than 30 calendar days *from the date* of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, as soon as possible, but not later than 30 calendar days from the date of receipt of the fingerprints, notify the employer that the fingerprints were illegible.

(2) Fingerprints may be taken by any local law enforcement officer or agency for purposes of paragraph (1).

(3) Counties shall notify any recipient of, or applicant for, in-home supportive services or personal care services under the Medi-Cal program, upon his or her application for in-home supportive services or personal care services or during his or her annual redetermination, or upon the recipient's changing providers, that a criminal record check is available, and that the check can be performed by the Department of Justice.

(d) (1) The Department of Justice shall charge a fee to the employer to cover the costs of administering this section.

(2) (A) If the employer is an in-home supportive services recipient, as defined in Section 123202.2, a recipient of personal care services under the Medi-Cal program pursuant to Sections 14132.95 to 14132.97, inclusive, or any public authority or nonprofit consortium as described in subdivision (a) of Section 12301.6, the fee shall be shared by the county and the state in the same ratio as described in Section 12306.

(B) (i) Notwithstanding any other provision of law, and except as provided in clause (ii), the department shall, no later than January 1, 2009, implement subparagraph (A) through an ~~all county~~ *all-county* letter from the director.

(ii) No later than July 1, 2009, the department shall adopt regulations to implement the provisions listed in ~~clause (i)~~ *subparagraph (A)*.

(e) It is the intent of the Legislature that the Department of Justice charge a fee to cover its cost in providing services in accordance with this section to comply with the 30-calendar-day requirement for provision to the department of the criminal record information, as contained in subdivision (c).

SEC. 218. Section 5 of Chapter 898 of the Statutes of 1997, as amended by Section 1 of Chapter 318 of the Statutes of 2008, is amended to read:

Sec. 5. (a) Notwithstanding Article 2 (commencing with Section 33110) of Chapter 2 of Part 1 of Division 24 of the Health and Safety Code, the legislative body of the City and County of San Francisco may, by resolution, designate the authority or any successor entity or agency of the authority as the redevelopment agency with all of the rights, powers, privileges, immunities, authorities, and duties granted to a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, for the purpose of acquiring, using, operating, maintaining, converting, and redeveloping the property. Upon adoption of that resolution, the authority shall be considered a redevelopment agency for all purposes under state law, including, but not limited to, the purposes of Section 21090 of the Public Resources Code.

(b) Notwithstanding any state or local law, including, without limitation, Section 33111 of the Health and Safety Code, the board of directors of the authority may include individuals who are officers or employees of the City and County of San Francisco or of the San Francisco Redevelopment Agency and those individuals are not precluded, solely by virtue of their status as officers or employees of the City and County of San Francisco or the San Francisco Redevelopment Agency, from participating in decisions as members of the board of directors.

(c) Notwithstanding Section 1090 of the Government Code and Section C8.105 of Appendix C of the San Francisco Charter,

officers and employees of the City and County of San Francisco or the San Francisco Redevelopment Agency are not precluded, solely by virtue of their services as members of the board of directors, from participating in any decisions in their capacities as officers or employees of the City and County of San Francisco or the San Francisco Redevelopment Agency.

(d) Notwithstanding any other provision of law, the authority's employees are subject to the same civil service provisions as the employees of the City and County of San Francisco.

(e) Notwithstanding any other provision of law, the authority shall follow the same competitive bidding procedures applicable to redevelopment agencies in California.

(f) Prior to the board of supervisor's approval of a redevelopment plan for the property, any contract to which the authority is a party worth more than one million dollars ($1,000,000) or with a term of 10 or more years shall require the approval of the Board of Supervisors of the City and County of San Francisco.

(g) Due to the unique status of the existing housing units as set forth in this chapter, which were formerly base housing and must be removed, the authority ~~need~~ *is* not *required to* comply with Section 33385 of the Health and Safety Code, as long as the authority complies with all of the following alternative requirements:

(1) The authority shall consult with and obtain the advice of the existing Treasure Island/Yerba Buena Island Citizens Advisory Board, as created by Resolution No. 00-41-12/21 of the Treasure Island Development Authority Board, concerning the adoption and implementation of a redevelopment plan for Naval Station Treasure Island.

(2) At least 120 days before the adoption of the Redevelopment Plan for Naval Station Treasure Island, the authority shall amend the membership composition of the Treasure Island/Yerba Buena Island Citizens Advisory Board to include not less than four specific slots for residents currently residing on Naval Station Treasure Island, including slots designated for low- and moderate-income residents.

(3) The authority shall hold at least one public meeting to explain the new citizens advisory board composition. The authority shall provide written notice of the public meeting explaining the

new citizens advisory board composition and the opportunity for Naval Station Treasure Island residents to serve on the citizens advisory board to all residents of Naval Station Treasure Island at the time of the public meeting. The authority shall proscribe the procedure for selection of the resident members of the citizens advisory board, which shall ~~must~~ require that the resident members of the citizens advisory board be selected by a vote of the existing residents of the Naval Station Treasure Island. All resident member seats of the citizens advisory board added pursuant to this section shall be filled no later than 60 days prior to the adoption of the Redevelopment Plan for Naval Station Treasure Island. The authority may, but is not required to, increase the size of the citizens advisory board to include the resident members. The authority is authorized and shall take any and all actions consistent with this section to create specific slots for resident membership on the citizens advisory board.

(4) Persons of low- and moderate-income lawfully occupying the existing housing on Naval Station Treasure Island at the time the Redevelopment Plan for Naval Station Treasure Island is adopted, and at the time the existing housing is removed or demolished, shall be offered new permanent housing adequate to accommodate the household to be constructed within the redevelopment project area, at a cost or rent not exceeding the affordable housing costs or affordable rent, as defined by Section 50052.5 or 50053 of the Health and Safety Code, as applicable. The redevelopment plan shall include provisions requiring the authority to implement this subdivision.

SEC. 219. Section 2 of Chapter 235 of the Statutes of 2008 is amended to read:

SEC. 2. The Legislature hereby finds and declares all of the following:

(a) Section 81676.5 *of the Education Code*, by its own terms, was to be repealed one year from the date that it became effective, or when the California Supreme Court decision in 1st Street Books v. Marin Community College District (1989) 208 Cal.App.3d 1275 was issued, whichever occurred last.

(b) Despite the sunset provision in Section 81676.5 *of the Education Code*, it was never repealed.

(c) On August 1, 1996, in SEIU Local 715 v. Board of Trustees of the West Valley Mission Community College District (1996)

47 Cal.App.4th 1661, 1667-1670, the California Court of Appeal declared that Section 81676.5 *of the Education Code*, by its own terms, had been repealed.

(d) This ~~bill~~ *act* is therefore declaratory of existing statutory and case law.

SEC. 220. Section 65 of Chapter 758 of the Statutes of 2008 is amended to read:

SEC. 65. (a) Of the funds appropriated in Item 4265-111-0001 of Section 2.00 of the Budget Act of 2008 *(Chapters 268 and 269 of the Statutes of 2008)* from the Cigarette and Tobacco Products Surtax Fund, twenty-four million eight hundred three thousand dollars ($24,803,000) shall be allocated in accordance with subdivision (b) for the 2008–09 fiscal year from the following accounts:

(1) Twenty-two million six hundred fifty-one thousand dollars ($22,651,000) from the Hospital Services Account.

(2) Two million one hundred fifty-two thousand dollars ($2,152,000) from the Physician Services Account.

(b) The funds specified in subdivision (a) shall be allocated proportionately as follows:

(1) Twenty-two million three hundred twenty-four thousand dollars ($22,324,000) shall be administered and allocated for distribution through the California Healthcare for Indigents Program (CHIP) provided for pursuant to Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Two million four hundred seventy-nine thousand dollars ($2,479,000) shall be administered and allocated through the Rural Health Services Program provided for pursuant to Chapter 4 (commencing with Section 16930) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(c) (1) Funds allocated pursuant to this section from the Physician Services Account and the Hospital Services Account in the Cigarette and Tobacco Products Surtax Fund shall be used only for the reimbursement of physicians for losses incurred in providing uncompensated emergency services in general acute care hospitals providing basic, comprehensive, or standby emergency services, as defined in Section 16953 of the Welfare and Institutions Code. Funds shall be transferred to the Physician Services Account in the ~~county~~ *county's* Emergency Medical Services Fund established

pursuant to Sections 16951 and 16952 of the Welfare and Institutions Code, and shall be paid only to physicians who directly provide emergency medical services to patients, based on claims submitted or a subsequent reconciliation of claims. Payments shall be made as provided in ~~Sections 16951 to 16959, inclusive,~~ *Article 3.5 (commencing with Section 16951) of Chapter 5 of Part 4.7 of Division 9* of the Welfare and Institutions Code, and payments shall be made on an equitable basis, without preference to any particular physician or group of physicians.

(2) If a county has an Emergency Medical Services Fund Advisory Committee that includes both emergency physicians and emergency department ~~on-call~~ *oncall* backup panel physicians, and if the committee unanimously approves, the administrator of the Emergency Medical Services Fund may create a special fee schedule and claims submission criteria for reimbursement for services rendered to uninsured trauma patients, provided that no more than 15 percent of the tobacco tax revenues allocated to the county's Emergency Medical Services Fund is distributed through this special fee schedule, that all physicians who render trauma services are entitled to submit claims for reimbursement under this special fee schedule, and that no physician's claim may be reimbursed at greater than 50 percent of losses under the special fee schedule.

SEC. 221. Section 3 is added to Chapter 635 of the Statutes of 1999, to read:

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to finally, fully, and expeditiously implement the voters' wishes in creating the county department of corrections, giving it explicit direction to operate the county jails for all sentenced and unsentenced prisoners under authority of the county board of supervisors, it is necessary that this act take effect immediately.

SEC. 222. In connection with the repeals of the Chapter 590 versions of Sections 1373.65, 1373.95, and 1373.96 of the Health and Safety Code, Chapter 591 of the Statutes of 2003 added identical versions that remain in effect, except that Sections 1373.65 and 1373.96, as added by Chapter 591, were subsequently amended by Chapter 164 of the Statutes of 2004.

SEC. 223. Any section of any act 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, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2009 calendar year and takes effect on or before January 1, 2010, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

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