

AMENDED IN ASSEMBLY MAY 21, 2012

SENATE BILL

No. 1171

Introduced by Senator Harman

February 22, 2012

An act to amend Sections 2313, 7068.2, 12241, 19607.5, 19852.2, 19853, 23393.5, and 25503.56 of the Business and Professions Code, to amend Sections 55.3, 1368, and 2983 of the Civil Code, to amend Sections 527.6, 527.8, 527.85, 1287, 1514, and 2024.040 of the Code of Civil Procedure, to amend Sections 500, 2900, 6210, 8210, 12570, and 14301.3 of the Corporations Code, to amend Sections 234.1, 8483.76, 8499.5, 12000, 12001, 41202, 41202.5, 42251, 42605, 48204.1, 49061, 51500, 51501, 54699, 60044, 69508.5, 71091, 72699, 76300, and 89918 of the Education Code, to amend Sections 2196, 3206, and 18106 of, and to repeal Section 2168 of, the Elections Code, to amend and renumber Section 9213 of the Family Code, to amend Section 14101.6 of the Financial Code, to amend Section 8276.5 of the Fish and Game Code, to amend Sections 27551 and 30801 of the Food and Agricultural Code, to amend Sections 1322, 3540.1, 6208.2, 6218.01, 7572, 7582, 8310.7, 12011.5, 12172.5, 14502, 17280.3, 25825.5, 30025, 53395.3.5, 53395.81, 53760.3, 53891, 57077, 57150, 57534, 61105, 65863.10, 65863.11, and 76000.10 of, and to amend and renumber Sections 66499.20 $\frac{1}{4}$, 66499.20 $\frac{1}{2}$, and 66499.20 $\frac{3}{4}$ of, the Government Code, to amend Section 1156.6 of the Harbors and Navigation Code, to amend Sections 1367.241, 1374.74, 1527.3, 11357.5, 11364, 25160, 34163, 34167.5, 34173, 34176, 34188.8, 34189, 34194.4, 34195, 100425, 113789, 116565, 121690, 127405, and 136000 of, and to repeal Section 1461 of, the Health and Safety Code, to amend Sections 1760.1, 1763, 1764.1, 1765.1, 1765.2, 1768, 1774, 1775.5, 10123.191, 10144.51, 10192.12, 10509.912, and 11780.5 of the Insurance Code, to amend Sections 226.8 and 1308.10 of the Labor Code, to amend Sections 136.2,

243, 336.5, 429, 597.4, 629.62, 830.5, 1370, 2602, 2932, 3060.7, 3453, 4807, 11105, 11105.03, 11165.7, and 13750 of, and to amend and renumber Sections 21, 22, and 25.5 of, the Penal Code, to amend Sections 4461, 7660, and 13600 of the Probate Code, to amend Section 10490 of the Public Contract Code, to amend Sections 2762, 4214, 4514.5, 4527, 4551.5, 4561, 21092, 21108, 21152, 21167.6.5, and 25747 of the Public Resources Code, to amend Sections 278, 366.2, 381.1, 395.5, 399.11, 399.12, 399.18, 2775.6, 2830, 2851, 2881.1, 2881.2, and 8283 of the Public Utilities Code, to amend Sections 214.02, 3725, 17053.85, 17085, 17282, 19191, 24436.1, 30459.15, and 50156.18 of, to amend the heading of Article 9 (commencing with Section 6850) of Chapter 6 of Part 1 of Division 2 of, and to amend and renumber Section 17131.10 of, the Revenue and Taxation Code, to amend Section 1962.4 of the Streets and Highways Code, to amend Section 679 of, and to repeal Article 2 (commencing with Section 10521) of Chapter 4.5 of Part 1 of Division 3 of, the Unemployment Insurance Code, to amend Sections 11713.3, 12804.11, 23575, and 40240 of the Vehicle Code, to amend Sections 1486, 10753, and 74209 of the Water Code, to amend Sections 319, 366.21, 391, 712, 912, 4512, 4514, 4640.6, 4641.5, 4646.5, 4659.13, 4659.23, 4688.21, 4689, 5720, 8103, 10980, 11451.5, 11461, 11463, 12301.03, 12301.07, 12305.87, 14053.8, 14053.9, 14105.09, 14105.193, 14132.957, 14165, 14165.56, 14165.57, 14166.12, 14166.20, 14168.1, 14168.11, 14169.1, 14182, 14589, 14701, 15657.03, 15910, 15911, 15916, 15926, 17600, and 18220.1 of the Welfare and Institutions Code, to amend Sections 59 and 60 of Chapter 7 of the Statutes of 2011, to amend Sections 9 and 34 of Chapter 136 of the Statutes of 2011, to amend Section 2 of Chapter 211 of the Statutes of 2011, to amend Section 1 of Chapter 404 of the Statutes of 2011, to amend Section 17 of Chapter 13 of the First Extraordinary Session of the Statutes of 2011, and to amend Section 2 of Chapter 14 of the First Extraordinary Session of the Statutes of 2011, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as amended, Harman. 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:

1 SECTION 1. Section 2313 of the Business and Professions
2 Code is amended to read:
3 2313. The board shall report annually to the Legislature, no
4 later than October 1 of each year, the following information:
5 (a) The total number of temporary restraining orders or interim
6 suspension orders sought by the board to enjoin licensees pursuant
7 to Sections 125.7, 125.8, and 2311, the circumstances in each case
8 that prompted the board to seek that injunctive relief, and whether
9 a restraining order or interim suspension order was actually issued.
10 (b) The total number and types of actions for unprofessional
11 conduct taken by the board against licensees, the number and types
12 of actions taken against licensees for unprofessional conduct related
13 to prescribing drugs, narcotics, or other controlled substances,
14 including those related to the undertreatment or undermedication
15 of pain.
16 (c) Information relative to the performance of the board,
17 including the following: number of consumer calls received;
18 number of consumer calls or letters designated as discipline-related
19 complaints; number of complaint forms received; number of
20 Section 805 and Section 805.01 reports by type; number of Section
21 801.01 and Section 803 reports; coroner reports received; number
22 of convictions reported to the board; number of criminal filings
23 reported to the division; number of complaints and referrals closed,
24 referred out, or resolved without discipline, respectively, prior to
25 accusation; number of accusations filed and final disposition of
26 accusations through the board and court review, respectively; final
27 physician discipline by category; number of citations issued with
28 fines and without fines, and number of public reprimands issued;
29 number of cases in process more than six months from receipt by
30 the board of information concerning the relevant acts to the filing
31 of an accusation; average and median time in processing complaints
32 from original receipt of complaint by the board for all cases at

1 each stage of discipline and court review, respectively; number of
2 persons in diversion, and number successfully completing diversion
3 programs and failing to do so, respectively; probation violation
4 reports and probation revocation filings and dispositions; number
5 of petitions for reinstatement and their dispositions; and caseloads
6 of investigators for original cases and for probation cases,
7 respectively.

8 “Action,” for purposes of this section, includes proceedings
9 brought by, or on behalf of, the board against licensees for
10 unprofessional conduct that have not been finally adjudicated, as
11 well as disciplinary actions taken against licensees.

12 (d) The total number of reports received pursuant to Sections
13 805 and 805.01 by the type of peer review body reporting and,
14 where applicable, the type of health care facility involved and the
15 total number and type of administrative or disciplinary actions
16 taken by the board with respect to the reports.

17 (e) The number of malpractice settlements in excess of thirty
18 thousand dollars (\$30,000) reported pursuant to Section 801.01.
19 This information shall be grouped by specialty practice and shall
20 include the total number of physicians and surgeons practicing in
21 each specialty. For the purpose of this subdivision, “specialty”
22 includes all specialties and subspecialties considered in determining
23 the risk categories described in Section 803.1.

24 SEC. 2. Section 7068.2 of the Business and Professions Code
25 is amended to read:

26 7068.2. (a) If the responsible managing officer, responsible
27 managing employee, responsible managing member, or responsible
28 managing manager disassociates from the licensed entity, the
29 licensee or the qualifier shall notify the registrar in writing within
30 90 days after the date of disassociation. The licensee shall have
31 90 days after the date of disassociation in which to replace the
32 qualifier. Upon failure to replace the qualifier within 90 days after
33 the date of disassociation, the license shall be automatically
34 suspended or the classification removed at the end of the 90 days.

35 (b) To replace a responsible managing officer, responsible
36 managing employee, responsible managing member, or responsible
37 managing manager, the licensee shall file an application as
38 prescribed by the registrar, accompanied by the fee fixed by this
39 chapter, designating an individual to qualify as required by this
40 chapter.

1 (c) Upon failure of the licensee or the qualifier to notify the
2 registrar of the disassociation of the qualifier within 90 days after
3 the date of disassociation, the license shall be automatically
4 suspended or the classification removed and the qualifier removed
5 from the license effective the date the written notification is
6 received at the board's headquarters office.

7 (d) The person qualifying on behalf of a licensee under Section
8 7068 shall be responsible for the licensee's construction operations
9 until the date of disassociation or the date the board receives the
10 written notification of disassociation, whichever is later.

11 (e) (1) Upon a showing of good cause by the licensee, the
12 registrar may review and accept a petition for one 90-day extension
13 to replace the qualifier immediately following the initial 90-day
14 period described in subdivision (a) only under one or more of the
15 following circumstances:

16 (A) If the licensee is disputing the date of disassociation.

17 (B) If the responsible managing officer, employee, member, or
18 manager has died.

19 (C) If there has been a delay in processing the application to
20 replace the qualifier that is out of the applicant's control and it is
21 the responsibility of the board or another state or federal agency
22 that is relied upon in the application process.

23 (2) This petition shall be received within 90 days after the date
24 of disassociation or death or delay. The petition shall only be
25 considered if an application to replace the qualifier as prescribed
26 by the registrar is on file with the board. Under the circumstances
27 described in subparagraphs (A) and (B) of paragraph (1), the
28 licensee shall have no more than a total of 180 days after the date
29 of disassociation or death in which to replace the qualifier.

30 (f) Failure of the licensee or the qualifier to notify the registrar
31 of the qualifier's disassociation within 90 days after the date of
32 disassociation shall constitute grounds for disciplinary action.

33 SEC. 3. Section 12241 of the Business and Professions Code
34 is amended to read:

35 12241. On or before January 1, 2012, the secretary shall
36 establish by regulation an annual administrative fee to recover
37 reasonable administrative and enforcement costs incurred by the
38 department for exercising supervision over and performing
39 investigations in connection with the activities performed pursuant
40 to Sections 12210 and 12211. This administrative fee shall be

1 collected for every device registered with each county office of
2 weights and measures, and paid to the Department of Food and
3 Agriculture Fund beginning January 1, 2012, and annually
4 thereafter.

5 SEC. 4. Section 19607.5 of the Business and Professions Code
6 is amended to read:

7 19607.5. (a) Notwithstanding any other provision of law, if
8 both a fair and a thoroughbred association are licensed by the board
9 to conduct live racing meetings within the northern zone during
10 the same calendar period, signals of both racing programs shall be
11 accepted at each live racing meeting within the northern zone and
12 at all satellite wagering facilities eligible to receive these programs.

13 (b) Notwithstanding any other provision of law, in order to
14 ensure that fairs which previously had an exclusive right to send
15 their signals to satellite wagering facilities in the northern zone
16 during periods of overlap do not lose commission revenues from
17 satellite wagering, each fair that conducts its meeting during the
18 period described in subdivision (a) shall receive the following
19 satellite wagering commissions:

20 (1) With respect to the 2nd District Agricultural Association in
21 Stockton, the commissions payable to the fair from satellite
22 wagering during the period described in subdivision (a) shall be
23 the greater of any of the following:

24 (A) The actual commission earned by the fair from satellite
25 wagering on its live races during that period.

26 (B) Fifty percent of the total combined satellite wagering
27 commissions payable to the thoroughbred association and the fair
28 during that period.

29 (C) One hundred ten percent of the satellite wagering
30 commissions paid to the fair during its live racing meeting in 1990.

31 If the satellite wagering commissions received by the 2nd District
32 Agricultural Association are less than the greater of the amounts
33 specified in subparagraph (B) or (C), the thoroughbred association
34 shall pay to the fair from amounts deducted from satellite wagering
35 on its meeting and before distribution of any satellite wagering
36 commissions and purses on its meeting, an amount equal to the
37 difference between the actual satellite wagering commissions
38 received by the fair in that year and the applicable amount from
39 subparagraph (B) or (C). No additional satellite wagering
40 commission shall be paid to the fair by an association unless the

1 fair conducts live racing during the period described in subdivision
2 (a).

3 (2) With respect to the California Exposition and State Fair in
4 Sacramento, the commissions payable to the fair from satellite
5 wagering during the period described in subdivision (a) shall be
6 the greater of either of the following:

7 (A) The actual commission earned by the fair from satellite
8 wagering on its live races during that period.

9 (B) Sixty percent of the total combined satellite wagering
10 commissions payable to the thoroughbred association and the fair
11 during that period.

12 If the satellite wagering commissions received by the California
13 Exposition and State Fair are less than the amount described in
14 subparagraph (B), the thoroughbred association shall pay to the
15 fair from amounts deducted from satellite wagering on its meeting
16 and before distribution of any satellite wagering commissions and
17 purses on its meeting, an amount equal to the difference between
18 the actual satellite wagering commissions received by the fair in
19 that year and the amount described in subparagraph (B). No
20 additional satellite wagering commission shall be paid to the fair
21 by an association unless the fair conducts live racing during the
22 period described in subdivision (a).

23 (c) During any periods described in subdivision (a), including
24 periods of overlap for fairs not specified in subdivision (b), the
25 thoroughbred association shall deduct the same percentage from
26 the total amount wagered in its daily conventional and exotic
27 parimutuel pools as the percentage deducted by the fair meeting.
28 The amounts deducted shall be distributed as otherwise provided
29 in this article, with the following exceptions:

30 (1) If the percentages deducted from the conventional and exotic
31 parimutuel pools of the thoroughbred association under this
32 subdivision exceed the percentages deducted from the association's
33 pools during periods other than those described under subdivision
34 (a), the amount deducted which is equivalent to the difference
35 between those percentages shall be distributed by the thoroughbred
36 association equally between commissions and purses.

37 (2) If a thoroughbred association and the 2nd District
38 Agricultural Association in Stockton or the California Exposition
39 and State Fair in Sacramento both conduct live racing meetings
40 during any period described in subdivision (a), the total amount

1 deducted shall be distributed by both the association and fair in
2 the percentages specified for fair meetings in subdivision (b) of
3 Section 19605.7.

4 This subdivision does not require any portion of the additional
5 deduction to be distributed pursuant to subdivision (c) of Section
6 19614.

7 (d) Notwithstanding any other provision of law, an association
8 and fair that conduct their meeting pursuant to subdivision (b) shall
9 combine the operating expenses incurred at satellite wagering
10 facilities during the period described in subdivision (a). For
11 purposes of this subdivision only, the combined satellite wagering
12 operating expenses of the association and the fair during the period
13 described in subdivision (a) shall not exceed the actual expenses,
14 or 6 percent of the combined parimutuel pool at satellite wagering
15 facilities, whichever amount is less.

16 SEC. 5. Section 19852.2 of the Business and Professions Code
17 is amended to read:

18 19852.2. (a) Notwithstanding Section 19852 or any other
19 provision of law to the contrary, and solely for the purpose of the
20 licensure of a card club located on the grounds of a racetrack that
21 is owned by a limited partnership that also owns the racetrack, the
22 commission, in its discretion, may exempt from the licensing
23 requirements of this chapter all of the following:

24 (1) The limited partners in a limited partnership that holds
25 interest in a holding company if all of the following criteria are
26 met:

27 (A) The limited partners of the limited partnership in the
28 aggregate directly hold at least 95 percent of the interest in the
29 holding company.

30 (B) The limited partner is one of the following:

31 (i) An “institutional investor” as defined in subdivision (w) of
32 Section 19805.

33 (ii) An “employee benefit plan” as defined in Section 1002(3)
34 of Title 29 of the United States Code.

35 (iii) An investment company that manages a state university
36 endowment.

37 (2) Other limited partners in a limited partnership described in
38 paragraph (1), if the partners do not number more than five and
39 each partner indirectly owns 1 percent or less of the shares of the
40 interest in the holding company.

1 (3) A limited partner in a limited partnership that holds in the
2 aggregate less than 5 percent of the interest in a holding company.

3 (b) Nothing in this section shall be construed to limit the
4 licensure requirements for a general partner of a limited partnership
5 or a limited partner that is not specifically described in this section.

6 SEC. 6. Section 19853 of the Business and Professions Code
7 is amended to read:

8 19853. (a) The commission, by regulation or order, may
9 require that the following persons register with the commission,
10 apply for a finding of suitability as defined in subdivision (j) of
11 Section 19805, or apply for a gambling license:

12 (1) Any person who furnishes any services or any property to
13 a gambling enterprise under any arrangement whereby that person
14 receives payments based on earnings, profits, or receipts from
15 controlled gambling.

16 (2) Any person who owns an interest in the premises of a
17 licensed gambling establishment or in real property used by a
18 licensed gambling establishment.

19 (3) Any person who does business on the premises of a licensed
20 gambling establishment.

21 (4) Any person who is an independent agent of, or does business
22 with, a gambling enterprise as a ticket purveyor, a tour operator,
23 the operator of a bus program, or the operator of any other type of
24 travel program or promotion operated with respect to a licensed
25 gambling establishment.

26 (5) Any person who provides any goods or services to a
27 gambling enterprise for compensation that the commission finds
28 to be grossly disproportionate to the value of the goods or services
29 provided.

30 (6) Every person who, in the judgment of the commission, has
31 the power to exercise a significant influence over the gambling
32 operation.

33 (b) The department may conduct any investigation it deems
34 necessary to determine whether a publicly traded corporation is,
35 or has, engaged in activities specified in paragraph (2), (3), or (4)
36 of subdivision (a), and shall report its findings to the commission.
37 If a publicly traded corporation is engaged in activities described
38 in paragraph (2), (3), or (4) of subdivision (a), the commission
39 may require the corporation and the following other persons to
40 apply for and obtain a license or finding of suitability:

1 (1) Any officer or director.

2 (2) Any owner, other than an institutional investor, of 5 percent
3 or more of the outstanding shares of the corporation.

4 SEC. 7. Section 23393.5 of the Business and Professions Code
5 is amended to read:

6 23393.5. (a) The department may issue a limited off-sale retail
7 wine license which authorizes the sale of wine by the licensee if
8 all of the following conditions are met:

9 (1) Sales are restricted to those solicited and accepted via direct
10 mail, telephone, or the Internet.

11 (2) Sales are not conducted from a retail premises open to the
12 public.

13 (3) The licensee takes possession of and title to all wine sold
14 by the licensee.

15 (4) All wine sold by the licensee is delivered to the purchaser
16 from the licensee's licensed premises or from a licensed public
17 warehouse.

18 (b) The sale of wine shall only be to consumers and not for
19 resale, in packages or quantities of 52 gallons or less per sale, for
20 consumption off the premises where sold.

21 (c) The licensee shall comply with Section 23985, but is
22 exempted from Sections 23985.5 and 23986.

23 (d) The department may impose reasonable conditions upon the
24 licensee as may be needed in the interest of public health, safety,
25 and welfare.

26 (e) The application for the license shall be accompanied by an
27 original fee in an amount equivalent to that of an original off-sale
28 beer and wine license pursuant to Section 23954.5. The annual fee
29 for the license shall be an amount equivalent to that of a retail
30 package off-sale beer and wine license pursuant to Section 23320.
31 All moneys collected from the fees shall be deposited in the
32 Alcoholic Beverage Control Fund, pursuant to Section 25761.

33 SEC. 8. Section 25503.56 of the Business and Professions
34 Code is amended to read:

35 25503.56. (a) An authorized licensee, or a designated
36 representative of an authorized licensee acting as an agent of the
37 authorized licensee, may conduct, on the area specified by
38 paragraph (1) of subdivision (c) of Section 23396.6, an instructional
39 tasting event for consumers on the subject of wine, beer, or distilled
40 spirits, including, but not limited to, the history, nature, values,

1 and characteristics of wine, beer, or distilled spirits, and the
2 methods of presenting and serving wine, beer, or distilled spirits.

3 (1) (A) Except as provided in subparagraph (B), the
4 instructional tasting event may include the serving of alcoholic
5 beverages to an attendee of legal drinking age. An instructional
6 tasting event on the subject of wine or distilled spirits shall be
7 limited to not more than three tastings per person per day. A single
8 tasting of distilled spirits shall not exceed one-fourth of one ounce
9 and a single tasting of wine shall not exceed one ounce. An
10 instructional tasting event on the subject of beer shall be limited
11 to not more than the tasting of eight ounces of beer per person per
12 day. The wine, beer, or distilled spirits tasted shall be limited to
13 the products that are authorized to be sold by the authorized
14 licensee and the licenseholder under its off-sale license.

15 (B) A beer and wine wholesaler may conduct an instructional
16 tasting event but shall not serve tastes of beer unless the beer and
17 wine wholesaler also holds a beer manufacturer's license, an
18 out-of-state beer manufacturer's certificate, or more than six
19 distilled spirits wholesaler's licenses.

20 (C) No charge of any sort shall be made for the tastings. Except
21 for the purposes of Section 23985, the serving of tastings shall not
22 be deemed a sale of products pursuant to this division.

23 (D) A person under 21 years of age shall not serve wine, beer,
24 or distilled spirits at the instructional tasting event.

25 (E) All tastes shall be served by an employee of the authorized
26 licensee, the designated representative of the authorized licensee,
27 or by an employee of the designated representative of the
28 authorized licensee.

29 (F) An authorized licensee, or a designated representative of an
30 authorized licensee, shall either supply the wine or distilled spirits
31 to be tasted during the instructional tasting event or purchase the
32 wine or distilled spirits from the licenseholder at the original
33 invoiced cost. An authorized licensee, or a designated
34 representative of an authorized licensee, shall purchase beer to be
35 tasted during the instructional tasting event from the licenseholder
36 at the original invoiced cost.

37 (G) Any unused wine, beer, or distilled spirits remaining from
38 the tasting shall be removed from the off-sale licensed premises
39 by the authorized licensee or its designated representative.

1 (2) If the instructional tasting event is conducted by a designated
2 representative of an authorized licensee, the designated
3 representative shall not be owned, controlled, or employed directly
4 or indirectly by the licenseholder on whose premises the
5 instructional tasting event is held.

6 (3) An instructional tasting event shall be limited to a single
7 type of alcoholic beverage. For purposes of this paragraph, “type
8 of alcoholic beverage” means distilled spirits, wine, or beer.

9 (b) For purposes of this section:

10 (1) “Authorized licensee” means a winegrower, California
11 winegrower’s agent, beer and wine importer general, beer and
12 wine wholesaler, wine rectifier, distilled spirits manufacturer,
13 distilled spirits manufacturer’s agent, distilled spirits importer
14 general, distilled spirits rectifier, distilled spirits general rectifier,
15 rectifier, out-of-state distilled spirits shipper’s certificate holder,
16 distilled spirits wholesaler, brandy manufacturer, brandy importer,
17 California brandy wholesaler, beer manufacturer, or an out-of-state
18 beer manufacturer certificate holder. “Authorized licensee” shall
19 not include an entity that solely holds a combination of a beer and
20 wine wholesale license and an off-sale beer and wine retail license
21 or holds those licenses solely in combination with any license not
22 listed in this paragraph, or holds a limited off-sale retail wine
23 license.

24 (2) “Licenseholder” means an off-sale retail licensee issued an
25 instructional tasting license pursuant to Section 23396.6.

26 (3) “Location” means the total contiguous area encompassed
27 by the off-sale and on-sale licenses.

28 (c) Notwithstanding subparagraph (E) of paragraph (1) of
29 subdivision (a), a licenseholder may conduct an instructional tasting
30 event that includes the serving of tastings only when an authorized
31 licensee or its designated representative are unable to conduct an
32 instructional tasting event previously advertised pursuant to this
33 section and scheduled by the authorized licensee or its designated
34 representative, provided that the licenseholder supplies the wine,
35 beer, or distilled spirits used in the instructional tasting event and
36 provides or pays for a person to serve the wine, beer, or distilled
37 spirits. Instructional tasting events conducted by a licenseholder
38 pursuant to this subdivision are subject to the provisions of this
39 section and Section 23396.6.

1 (d) No more than one authorized licensee, or its designated
2 representative, may conduct an instructional tasting event that
3 includes the serving of tastes of wine, beer, or distilled spirits at
4 any one individual licensed premises of a licenseholder per day.

5 (e) A licenseholder that also holds an on-sale beer and wine
6 license, an on-sale beer and wine eating place license, or an on-sale
7 general license shall not allow an authorized licensee, or its
8 designated representative, to conduct an instructional tasting event
9 on the same day and at the same location as any instructional
10 tasting event held pursuant to subdivision (b) of Section 23386,
11 Section 25503.4, subdivision (c) of Section 25503.5, or Section
12 25503.55.

13 (f) A licenseholder shall not condition the allowance of an
14 instructional tasting event upon the use of a particular designated
15 representative of an authorized licensee.

16 (g) (1) In addition to any point-of-sale advertising or other
17 advertising items allowed under this division or under rules of the
18 department, an authorized licensee or its designated representative,
19 in his or her absolute discretion and with permission of the
20 licenseholder upon whose premises the instructional tasting event
21 will be held, may list in an advertisement to the general public the
22 name and address of the licenseholder, the names of the alcoholic
23 beverages being featured at the instructional tasting event, and the
24 time, date, and location of, and other information about, the
25 instructional tasting event, provided that both of the following
26 apply:

27 (A) The advertisement does not contain the retail price of the
28 alcoholic beverages.

29 (B) The listing of the licenseholder's name and address is the
30 only reference to the licenseholder in the advertisement.

31 (2) Pictures or illustrations of the licenseholder's licensed
32 premises and laudatory references to the licenseholder in these
33 advertisements are not authorized. Nothing in this section shall
34 authorize an authorized licensee or its designated representative
35 to share in the costs, if any, of the licenseholder.

36 (h) A licenseholder may advertise an instructional tasting event
37 to the general public. The costs of this advertising shall be borne
38 solely by the licenseholder. Advertising permitted by this
39 subdivision includes flyers, newspaper ads, Internet
40 communications, and interior signage.

1 (i) Except as otherwise provided in this division or rules of the
2 department, no premium, gift, free goods, or other thing of value
3 shall be given away by an authorized licensee or its designated
4 representative in connection with an instructional tasting event
5 that includes tastings of an alcoholic beverage.

6 (j) The licenseholder or the authorized licensee or its designated
7 representative is authorized to perform setup and breakdown of
8 the instructional tasting event area. The authorized licensee or its
9 designated representative may provide, free of charge to the
10 licenseholder, the equipment, materials, and utensils as may be
11 required for use in connection with the instructional tasting event.

12 (k) (1) A licenseholder shall not require, or enter into a collusive
13 scheme with, an authorized licensee or its designated representative
14 to conduct one or more instructional tasting events as a condition
15 of the licenseholder's carrying or continuing to carry a brand or
16 brands of the authorized licensee or as a condition for display or
17 other merchandising plan which is based on an agreement to
18 provide shelf space. An authorized licensee or its designated
19 representative shall not require any preferential treatment or benefit
20 from, or enter into a collusive scheme with, a licenseholder as a
21 condition of conducting one or more instructional tasting events,
22 require a licenseholder to carry or continue to carry a brand or
23 brands of the authorized licensee as a condition of conducting one
24 or more instructional tasting events, or condition display or other
25 merchandising plans that are based on agreements for the provision
26 of shelf space on the conducting of one or more instructional tasting
27 events. Any agreement, whether written or oral, entered into by
28 and between a licenseholder and an authorized licensee or its
29 designated representative that precludes the conducting of
30 instructional tasting events on the premises of the licenseholder
31 by any other authorized licensee is prohibited. A licenseholder or
32 authorized licensee, or its designated representative, shall not use
33 an instructional tasting event to circumvent any other requirements
34 of this division.

35 (2) In addition to any other remedies available under this
36 division, upon a finding by the department of a failure to comply
37 with this subdivision, the department shall suspend the instructional
38 tasting license of the licenseholder and the privilege of the
39 authorized licensee to conduct instructional events for not less than
40 six months but for no more than one year.

1 (l) The Legislature finds that it is necessary and proper to require
2 a separation between manufacturing interests, wholesale interests,
3 and retail interests in the production and distribution of alcoholic
4 beverages in order to prevent suppliers from dominating local
5 markets through vertical integration and to prevent excessive sales
6 of alcoholic beverages produced by overly aggressive marketing
7 techniques. The Legislature further finds that the exception
8 established by this section to the general prohibition against tied
9 interests must be limited to its express terms so as not to undermine
10 the general prohibition, and intends that this section be construed
11 accordingly.

12 SEC. 9. Section 55.3 of the Civil Code is amended to read:

13 55.3. (a) For purposes of this section, the following shall apply:

14 (1) “Complaint” means a civil complaint that is filed or is to be
15 filed with a court and is sent to or served upon a defendant on the
16 basis of one or more construction-related accessibility claims, as
17 defined in this section.

18 (2) “Demand for money” means a written document that is
19 provided to a building owner or tenant, or an agent or employee
20 of a building owner or tenant, that contains a request for money
21 on the basis of one or more construction-related accessibility
22 claims, as defined in paragraph (3), whether or not the attorney
23 intends to file a complaint or eventually files a complaint in state
24 or federal court.

25 (3) “Construction-related accessibility claim” means any claim
26 of a violation of any construction-related accessibility standard,
27 as defined by paragraph (6) of subdivision (a) of Section 55.52,
28 with respect to a place of public accommodation.
29 “Construction-related accessibility claim” does not include a claim
30 of interference with housing within the meaning of paragraph (2)
31 of subdivision (b) of Section 54.1, or any claim of interference
32 caused by something other than the construction-related
33 accessibility condition of the property, including, but not limited
34 to, the conduct of any person.

35 (b) An attorney shall provide a written advisory with each
36 demand for money or complaint sent to or served by him or her
37 upon a defendant, in the form described in subdivision (c), and on
38 a page or pages that are separate and clearly distinguishable from
39 the demand for money or complaint, as follows:

1 <http://www.dgs.ca.gov/dsa/Programs/programCert/casp.aspx>), you
2 may have the right to a court stay (temporary stoppage) and early
3 evaluation conference to evaluate the merits of the
4 construction-related accessibility claim against you pursuant to
5 Civil Code Section 55.54. At your option, you may be, but need
6 not be, represented by an attorney to file a reply and to file an
7 application for a court stay and early evaluation conference. If you
8 choose not to hire an attorney to represent you, you may obtain
9 additional information about how to represent yourself and how
10 to file a reply without hiring an attorney through the Judicial
11 Council Internet Web site at <http://www.courts.ca.gov>. You may
12 also obtain a form to file your reply to the lawsuit, as well as the
13 form and information for filing an application to request the court
14 stay and early evaluation conference at that same Web site.

15 If you choose to hire an attorney to represent you, the attorney
16 who sent you the demand for money or complaint is prohibited
17 from contacting you further unless your attorney has given the
18 other attorney permission to contact you. If the other attorney does
19 try to contact you, you should immediately notify your attorney.
20

21 (c) On or before July 1, 2009, the Judicial Council shall adopt
22 a form that may be used by attorneys to comply with the
23 requirements of subdivision (b). The form shall be in substantially
24 the same format and include all of the text set forth in subdivision
25 (b). The form shall be available in English, Spanish, Chinese,
26 Vietnamese, and Korean, and shall include a statement that the
27 form is available in additional languages, and the Judicial Council
28 Internet Web site address where the different versions of the form
29 may be located. The form shall include Internet Web site
30 information for the Division of the State Architect and, when
31 operational, the California Commission on Disability Access.

32 (d) Subdivision (b) shall apply only to a demand for money or
33 complaint made by an attorney. Nothing in this section is intended
34 to affect the right to file a civil complaint under any other law or
35 regulation protecting the physical access rights of persons with
36 disabilities. Additionally, nothing in this section requires a party
37 acting in propria persona to provide or send a demand for money
38 to another party before proceeding against that party with a civil
39 complaint.

1 (e) This section shall not apply to any action brought by the
2 Attorney General, or by any district attorney, city attorney, or
3 county counsel.

4 SEC. 10. Section 1368 of the Civil Code is amended to read:

5 1368. (a) The owner of a separate interest, other than an owner
6 subject to the requirements of Section 11018.6 of the Business and
7 Professions Code, shall, as soon as practicable before transfer of
8 title to the separate interest or execution of a real property sales
9 contract therefor, as defined in Section 2985, provide the following
10 to the prospective purchaser:

11 (1) A copy of the governing documents of the common interest
12 development, including any operating rules, and including a copy
13 of the association's articles of incorporation, or, if not incorporated,
14 a statement in writing from an authorized representative of the
15 association that the association is not incorporated.

16 (2) If there is a restriction in the governing documents limiting
17 the occupancy, residency, or use of a separate interest on the basis
18 of age in a manner different from that provided in Section 51.3, a
19 statement that the restriction is only enforceable to the extent
20 permitted by Section 51.3 and a statement specifying the applicable
21 provisions of Section 51.3.

22 (3) A copy of the most recent documents distributed pursuant
23 to Section 1365.

24 (4) A true statement in writing obtained from an authorized
25 representative of the association as to the amount of the
26 association's current regular and special assessments and fees, any
27 assessments levied upon the owner's interest in the common
28 interest development that are unpaid on the date of the statement,
29 and any monetary fines or penalties levied upon the owner's
30 interest and unpaid on the date of the statement. The statement
31 obtained from an authorized representative shall also include true
32 information on late charges, interest, and costs of collection which,
33 as of the date of the statement, are or may be made a lien upon the
34 owner's interest in a common interest development pursuant to
35 Section 1367 or 1367.1.

36 (5) A copy or a summary of any notice previously sent to the
37 owner pursuant to subdivision (g) of Section 1363 that sets forth
38 any alleged violation of the governing documents that remains
39 unresolved at the time of the request. The notice shall not be
40 deemed a waiver of the association's right to enforce the governing

1 documents against the owner or the prospective purchaser of the
2 separate interest with respect to any violation. This paragraph shall
3 not be construed to require an association to inspect an owner's
4 separate interest.

5 (6) A copy of the initial list of defects provided to each member
6 of the association pursuant to Section 1375, unless the association
7 and the builder subsequently enter into a settlement agreement or
8 otherwise resolve the matter and the association complies with
9 Section 1375.1. Disclosure of the initial list of defects pursuant to
10 this paragraph does not waive any privilege attached to the
11 document. The initial list of defects shall also include a statement
12 that a final determination as to whether the list of defects is accurate
13 and complete has not been made.

14 (7) A copy of the latest information provided for in Section
15 1375.1.

16 (8) Any change in the association's current regular and special
17 assessments and fees which have been approved by the
18 association's board of directors, but have not become due and
19 payable as of the date disclosure is provided pursuant to this
20 subdivision.

21 (9) If there is a provision in the governing documents that
22 prohibits the rental or leasing of any of the separate interests in
23 the common interest development to a renter, lessee, or tenant, a
24 statement describing the prohibition and its applicability.

25 (10) If requested by the prospective purchaser, a copy of the
26 minutes of the meetings, excluding meetings held in executive
27 session, of the association's board of directors, conducted over the
28 previous 12 months, that were approved by the association's board
29 of directors.

30 (b) (1) Upon written request, the association shall, within 10
31 days of the mailing or delivery of the request, provide the owner
32 of a separate interest, or any other recipient authorized by the
33 owner, with a copy of the requested documents specified in
34 paragraphs (1) to (10), inclusive, of subdivision (a). Upon receipt
35 of a written request, the association shall provide, on the form
36 described in Section 1368.2, a written or electronic estimate of the
37 fees that will be assessed for providing the requested documents.
38 The documents required to be made available pursuant to this
39 section may be maintained in electronic form, and may be posted
40 on the association's Internet Web site. Requesting parties shall

1 have the option of receiving the documents by electronic
2 transmission if the association maintains the documents in
3 electronic form. The association may collect a reasonable fee based
4 upon the association's actual cost for the procurement, preparation,
5 reproduction, and delivery of the documents requested pursuant
6 to the provisions of this section.

7 (2) No additional fees may be charged by the association for
8 the electronic delivery of the documents requested.

9 (3) Fees for any documents required by this section shall be
10 distinguished from other fees, fines, or assessments billed as part
11 of the transfer or sales transaction. Delivery of the documents
12 required by this section shall not be withheld for any reason nor
13 subject to any condition except the payment of the fee allowed
14 pursuant to paragraph (1).

15 (4) An association may contract with any person or entity to
16 facilitate compliance with the requirements of this subdivision on
17 behalf of the association.

18 (5) The association shall also provide a recipient authorized by
19 the owner of a separate interest with a copy of the completed form
20 specified in Section 1368.2 at the time the required documents are
21 delivered.

22 (c) (1) Except as provided in paragraph (2), neither an
23 association nor a community service organization or similar entity
24 may impose or collect any assessment, penalty, or fee in connection
25 with a transfer of title or any other interest except for the following:

26 (A) An amount not to exceed the association's actual costs to
27 change its records.

28 (B) An amount authorized by subdivision (b).

29 (2) The prohibition in paragraph (1) does not apply to a
30 community service organization or similar entity, or to a nonprofit
31 entity that provides services to a common interest development
32 under a declaration of trust, that is described in subparagraph (A)
33 or (B):

34 (A) The community service organization or similar entity
35 satisfies both of the following requirements:

36 (i) The community service organization or similar entity was
37 established prior to February 20, 2003.

38 (ii) The community service organization or similar entity exists
39 and operates, in whole or in part, to fund or perform environmental
40 mitigation or to restore or maintain wetlands or native habitat, as

1 required by the state or local government as an express written
2 condition of development.

3 (B) The community service organization or similar entity, or a
4 nonprofit entity that provides services to a common interest
5 development under a declaration of trust, satisfies all of the
6 following requirements:

7 (i) The organization or entity is not an organization or entity
8 described in subparagraph (A).

9 (ii) The organization or entity was established and received a
10 transfer fee prior to January 1, 2004.

11 (iii) On and after January 1, 2006, the organization or entity
12 offers a purchaser the following payment options for the fee or
13 charge it collects at the time of transfer:

14 (I) Paying the fee or charge at the time of transfer.

15 (II) Paying the fee or charge pursuant to an installment payment
16 plan for a period of not less than seven years. If the purchaser
17 elects to pay the fee or charge in installment payments, the
18 organization or entity may also collect additional amounts that do
19 not exceed the actual costs for billing and financing on the amount
20 owed. If the purchaser sells the separate interest before the end of
21 the installment payment plan period, he or she shall pay the
22 remaining balance prior to transfer.

23 (3) For the purposes of this subdivision, a “community service
24 organization or similar entity” means a nonprofit entity, other than
25 an association, that is organized to provide services to residents
26 of the common interest development or to the public in addition
27 to the residents, to the extent community common areas or facilities
28 are available to the public. A “community service organization or
29 similar entity” does not include an entity that has been organized
30 solely to raise moneys and contribute to other nonprofit
31 organizations that are qualified as tax exempt under Section
32 501(c)(3) of the Internal Revenue Code and that provide housing
33 or housing assistance.

34 (d) Any person or entity who willfully violates this section is
35 liable to the purchaser of a separate interest that is subject to this
36 section for actual damages occasioned thereby and, in addition,
37 shall pay a civil penalty in an amount not to exceed five hundred
38 dollars (\$500). In an action to enforce this liability, the prevailing
39 party shall be awarded reasonable attorney’s fees.

1 (e) Nothing in this section affects the validity of title to real
2 property transferred in violation of this section.

3 (f) In addition to the requirements of this section, an owner
4 transferring title to a separate interest shall comply with applicable
5 requirements of Sections 1133 and 1134.

6 (g) For the purposes of this section, a person who acts as a
7 community association manager is an agent, as defined in Section
8 2297, of the association.

9 SEC. 11. Section 2983 of the Civil Code is amended to read:

10 2983. (a) Except as provided in subdivision (b), if the seller,
11 except as the result of an accidental or bona fide error in
12 computation, violates any provision of Section 2981.9, or of
13 subdivision (a), (j), or (k) of Section 2982, the conditional sale
14 contract shall not be enforceable, except by a bona fide purchaser,
15 assignee, or pledgee for value, or until after the violation is
16 corrected as provided in Section 2984, and, if the violation is not
17 corrected, the buyer may recover from the seller the total amount
18 paid, pursuant to the terms of the contract, by the buyer to the seller
19 or his *or her* assignee. The amount recoverable for property traded
20 in as all or part of the downpayment shall be equal to the agreed
21 cash value of the property as the value appears on the conditional
22 sale contract or the fair market value of the property as of the time
23 the contract is made, whichever is greater.

24 (b) A conditional sale contract executed or entered into on or
25 after January 1, 2012, shall not be made unenforceable solely
26 because of a violation by the seller of paragraph (2) or (5) of
27 subdivision (a) of Section 2982. In addition to any other remedies
28 that may be available, the buyer is entitled to any actual damages
29 sustained as a result of a violation of those provisions. Nothing in
30 this subdivision affects any legal rights, claims, or remedies
31 otherwise available under law.

32 SEC. 12. Section 527.6 of the Code of Civil Procedure is
33 amended to read:

34 527.6. (a) (1) A person who has suffered harassment as
35 defined in subdivision (b) may seek a temporary restraining order
36 and an injunction prohibiting harassment as provided in this
37 section.

38 (2) A minor, under 12 years of age, accompanied by a duly
39 appointed and acting guardian ad litem, shall be permitted to appear
40 in court without counsel for the limited purpose of requesting or

1 opposing a request for a temporary restraining order or injunction,
2 or both, under this section as provided in Section 374.

3 (b) For the purposes of this section:

4 (1) “Course of conduct” is a pattern of conduct composed of a
5 series of acts over a period of time, however short, evidencing a
6 continuity of purpose, including following or stalking an individual,
7 making harassing telephone calls to an individual, or sending
8 harassing correspondence to an individual by any means, including,
9 but not limited to, the use of public or private mails, interoffice
10 mail, ~~fax~~ *facsimile*, or computer email. Constitutionally protected
11 activity is not included within the meaning of “course of conduct.”

12 (2) “Credible threat of violence” is a knowing and willful
13 statement or course of conduct that would place a reasonable person
14 in fear for his or her safety, or the safety of his or her immediate
15 family, and that serves no legitimate purpose.

16 (3) “Harassment” is unlawful violence, a credible threat of
17 violence, or a knowing and willful course of conduct directed at
18 a specific person that seriously alarms, annoys, or harasses the
19 person, and that serves no legitimate purpose. The course of
20 conduct must be such as would cause a reasonable person to suffer
21 substantial emotional distress, and must actually cause substantial
22 emotional distress to the petitioner.

23 (4) “Petitioner” means the person to be protected by the
24 temporary restraining order and injunction and, if the court grants
25 the petition, the protected person.

26 (5) “Respondent” means the person against whom the temporary
27 restraining order and injunction are sought and, if the petition is
28 granted, the restrained person.

29 (6) “Temporary restraining order” and “injunction” mean orders
30 that include any of the following restraining orders, whether issued
31 ex parte or after notice and hearing:

32 (A) An order enjoining a party from harassing, intimidating,
33 molesting, attacking, striking, stalking, threatening, sexually
34 assaulting, battering, abusing, telephoning, including, but not
35 limited to, making annoying telephone calls, as described in Section
36 653m of the Penal Code, destroying personal property, contacting,
37 either directly or indirectly, by mail or otherwise, or coming within
38 a specified distance of, or disturbing the peace of, the petitioner.

1 (B) An order enjoining a party from specified behavior that the
2 court determines is necessary to effectuate orders described in
3 subparagraph (A).

4 (7) “Unlawful violence” is any assault or battery, or stalking as
5 prohibited in Section 646.9 of the Penal Code, but shall not include
6 lawful acts of self-defense or defense of others.

7 (c) In the discretion of the court, on a showing of good cause,
8 a temporary restraining order or injunction issued under this section
9 may include other named family or household members.

10 (d) Upon filing a petition for an injunction under this section,
11 the petitioner may obtain a temporary restraining order in
12 accordance with Section 527, except to the extent this section
13 provides a rule that is inconsistent. The temporary restraining order
14 may include any of the restraining orders described in paragraph
15 (6) of subdivision (b). A temporary restraining order may be issued
16 with or without notice, based on a declaration that, to the
17 satisfaction of the court, shows reasonable proof of harassment of
18 the petitioner by the respondent, and that great or irreparable harm
19 would result to the petitioner.

20 (e) A request for the issuance of a temporary restraining order
21 without notice under this section shall be granted or denied on the
22 same day that the petition is submitted to the court, unless the
23 petition is filed too late in the day to permit effective review, in
24 which case the order shall be granted or denied on the next day of
25 judicial business in sufficient time for the order to be filed that day
26 with the clerk of the court.

27 (f) A temporary restraining order issued under this section shall
28 remain in effect, at the court’s discretion, for a period not to exceed
29 21 days, or, if the court extends the time for hearing under
30 subdivision (g), not to exceed 25 days, unless otherwise modified
31 or terminated by the court.

32 (g) Within 21 days, or, if good cause appears to the court, 25
33 days from the date that a petition for a temporary order is granted
34 or denied, a hearing shall be held on the petition for the injunction.
35 If no request for temporary orders is made, the hearing shall be
36 held within 21 days, or, if good cause appears to the court, 25 days,
37 from the date that the petition is filed.

38 (h) The respondent may file a response that explains, excuses,
39 justifies, or denies the alleged harassment or may file a
40 cross-petition under this section.

1 (i) At the hearing, the judge shall receive any testimony that is
2 relevant, and may make an independent inquiry. If the judge finds
3 by clear and convincing evidence that unlawful harassment exists,
4 an injunction shall issue prohibiting the harassment.

5 (j) (1) In the discretion of the court, an order issued after notice
6 and hearing under this section may have a duration of not more
7 than three years, subject to termination or modification by further
8 order of the court either on written stipulation filed with the court
9 or on the motion of a party. These orders may be renewed, upon
10 the request of a party, for a duration of not more than three years,
11 without a showing of any further harassment since the issuance of
12 the original order, subject to termination or modification by further
13 order of the court either on written stipulation filed with the court
14 or on the motion of a party. The request for renewal may be brought
15 at any time within the three months before the expiration of the
16 order.

17 (2) The failure to state the expiration date on the face of the
18 form creates an order with a duration of three years from the date
19 of issuance.

20 (3) If an action is filed for the purpose of terminating or
21 modifying a protective order prior to the expiration date specified
22 in the order by a party other than the protected party, the party
23 who is protected by the order shall be given notice, pursuant to
24 subdivision (b) of Section 1005, of the proceeding by personal
25 service or, if the protected party has satisfied the requirements of
26 Chapter 3.1 (commencing with Section 6205) of Division 7 of
27 Title 1 of the Government Code, by service on the Secretary of
28 State. If the party who is protected by the order cannot be notified
29 prior to the hearing for modification or termination of the protective
30 order, the court shall deny the motion to modify or terminate the
31 order without prejudice or continue the hearing until the party who
32 is protected can be properly noticed and may, upon a showing of
33 good cause, specify another method for service of process that is
34 reasonably designed to afford actual notice to the protected party.
35 The protected party may waive his or her right to notice if he or
36 she is physically present in court and does not challenge the
37 sufficiency of the notice.

38 (k) This section does not preclude either party from
39 representation by private counsel or from appearing on the party's
40 own behalf.

1 (l) In a proceeding under this section if there are allegations of
2 unlawful violence or credible threats of violence, a support person
3 may accompany a party in court and, if the party is not represented
4 by an attorney, may sit with the party at the table that is generally
5 reserved for the party and the party's attorney. The support person
6 is present to provide moral and emotional support for a person
7 who alleges he or she is a victim of violence. The support person
8 is not present as a legal adviser and may not provide legal advice.
9 The support person may assist the person who alleges he or she is
10 a victim of violence in feeling more confident that he or she will
11 not be injured or threatened by the other party during the
12 proceedings if the person who alleges he or she is a victim of
13 violence and the other party are required to be present in close
14 proximity. This subdivision does not preclude the court from
15 exercising its discretion to remove the support person from the
16 courtroom if the court believes the support person is prompting,
17 swaying, or influencing the party assisted by the support person.

18 (m) Upon the filing of a petition for an injunction under this
19 section, the respondent shall be personally served with a copy of
20 the petition, temporary restraining order, if any, and notice of
21 hearing of the petition. Service shall be made at least five days
22 before the hearing. The court may for good cause, on motion of
23 the petitioner or on its own motion, shorten the time for service
24 on the respondent.

25 (n) A notice of hearing under this section shall notify the
26 respondent that if he or she does not attend the hearing, the court
27 may make orders against him or her that could last up to three
28 years.

29 (o) (1) The court may, upon the filing of a declaration by the
30 petitioner that the respondent could not be served within the time
31 required by statute, reissue an order previously issued and dissolved
32 by the court for failure to serve the respondent. The reissued order
33 shall remain in effect until the date set for the hearing.

34 (2) The reissued order shall state on its face the date of
35 expiration of the order.

36 (p) (1) If a respondent, named in a restraining order issued after
37 a hearing, has not been served personally with the order but has
38 received actual notice of the existence and substance of the order
39 through personal appearance in court to hear the terms of the order

1 from the court, no additional proof of service is required for
2 enforcement of the order.

3 (2) If the respondent named in a temporary restraining order is
4 personally served with the order and notice of hearing with respect
5 to a restraining order or protective order based on the temporary
6 restraining order, but the respondent does not appear at the hearing,
7 either personally or by an attorney, and the terms and conditions
8 of the restraining order or protective order issued at the hearing
9 are identical to the temporary restraining order, except for the
10 duration of the order, then the restraining order or protective order
11 issued at the hearing may be served on the respondent by first-class
12 mail sent to the respondent at the most current address for the
13 respondent available to the court.

14 (3) The Judicial Council form for temporary orders issued
15 pursuant to this subdivision shall contain a statement in
16 substantially the following form:

17
18 “If you have been personally served with this temporary
19 restraining order and notice of hearing, but you do not appear at
20 the hearing either in person or by a lawyer, and a restraining order
21 that is the same as this temporary restraining order except for the
22 expiration date is issued at the hearing, a copy of the restraining
23 order will be served on you by mail at the following address: ____.

24 If that address is not correct or you wish to verify that the
25 temporary restraining order was converted to a restraining order
26 at the hearing without substantive change and to find out the
27 duration of that order, contact the clerk of the court.”

28
29 (q) (1) Information on any temporary restraining order or
30 injunction relating to civil harassment issued by a court pursuant
31 to this section shall be transmitted to the Department of Justice in
32 accordance with either paragraph (2) or (3).

33 (2) The court shall order the petitioner or the attorney for the
34 petitioner to deliver a copy of an order issued under this section,
35 or reissuance, extension, modification, or termination of the order,
36 and any subsequent proof of service, by the close of the business
37 day on which the order, reissuance, extension, modification, or
38 termination was made, to a law enforcement agency having
39 jurisdiction over the residence of the petitioner and to any

1 additional law enforcement agencies within the court’s discretion
2 as are requested by the petitioner.

3 (3) Alternatively, the court or its designee shall transmit, within
4 one business day, to law enforcement personnel all information
5 required under subdivision (b) of Section 6380 of the Family Code
6 regarding any order issued under this section, or a reissuance,
7 extension, modification, or termination of the order, and any
8 subsequent proof of service, by either one of the following
9 methods:

10 (A) Transmitting a physical copy of the order or proof of service
11 to a local law enforcement agency authorized by the Department
12 of Justice to enter orders into the California Law Enforcement
13 Telecommunications System (CLETS).

14 (B) With the approval of the Department of Justice, entering
15 the order or proof of service into CLETS directly.

16 (4) Each appropriate law enforcement agency shall make
17 available information as to the existence and current status of these
18 orders to law enforcement officers responding to the scene of
19 reported harassment.

20 (5) An order issued under this section shall, on request of the
21 petitioner, be served on the respondent, whether or not the
22 respondent has been taken into custody, by any law enforcement
23 officer who is present at the scene of reported harassment involving
24 the parties to the proceeding. The petitioner shall provide the
25 officer with an endorsed copy of the order and a proof of service
26 that the officer shall complete and send to the issuing court.

27 (6) Upon receiving information at the scene of an incident of
28 harassment that a protective order has been issued under this
29 section, or that a person who has been taken into custody is the
30 subject of an order, if the protected person cannot produce a
31 certified copy of the order, a law enforcement officer shall
32 immediately attempt to verify the existence of the order.

33 (7) If the law enforcement officer determines that a protective
34 order has been issued, but not served, the officer shall immediately
35 notify the respondent of the terms of the order and shall at that
36 time also enforce the order. Verbal notice of the terms of the order
37 shall constitute service of the order and is sufficient notice for the
38 purposes of this section and for the purposes of Section 29825 of
39 the Penal Code.

1 (r) The prevailing party in any action brought under this section
2 may be awarded court costs and attorney’s fees, if any.

3 (s) Any willful disobedience of any temporary restraining order
4 or injunction granted under this section is punishable pursuant to
5 Section 273.6 of the Penal Code.

6 (t) (1) A person subject to a protective order issued under this
7 section shall not own, possess, purchase, receive, or attempt to
8 purchase or receive a firearm or ammunition while the protective
9 order is in effect.

10 (2) The court shall order a person subject to a protective order
11 issued under this section to relinquish any firearms he or she owns
12 or possesses pursuant to Section 527.9.

13 (3) Every person who owns, possesses, purchases, or receives,
14 or attempts to purchase or receive, a firearm or ammunition while
15 the protective order is in effect is punishable pursuant to Section
16 29825 of the Penal Code.

17 (u) This section does not apply to any action or proceeding
18 covered by Title 1.6C (commencing with Section 1788) of Part 4
19 of Division 3 of the Civil Code or by Division 10 (commencing
20 with Section 6200) of the Family Code. This section does not
21 preclude a petitioner from using other existing civil remedies.

22 (v) (1) The Judicial Council shall develop forms, instructions,
23 and rules relating to matters governed by this section. The petition
24 and response forms shall be simple and concise, and their use by
25 parties in actions brought pursuant to this section shall be
26 mandatory.

27 (2) A temporary restraining order or injunction relating to civil
28 harassment issued by a court pursuant to this section shall be issued
29 on forms adopted by the Judicial Council of California and that
30 have been approved by the Department of Justice pursuant to
31 subdivision (i) of Section 6380 of the Family Code. However, the
32 fact that an order issued by a court pursuant to this section was not
33 issued on forms adopted by the Judicial Council and approved by
34 the Department of Justice shall not, in and of itself, make the order
35 unenforceable.

36 (w) There is no filing fee for a petition that alleges that a person
37 has inflicted or threatened violence against the petitioner, or stalked
38 the petitioner, or acted or spoken in any other manner that has
39 placed the petitioner in reasonable fear of violence, and that seeks
40 a protective or restraining order or injunction restraining stalking

1 or future violence or threats of violence, in any action brought
2 pursuant to this section. No fee shall be paid for a subpoena filed
3 in connection with a petition alleging these acts. No fee shall be
4 paid for filing a response to a petition alleging these acts.

5 (x) (1) Subject to paragraph (4) of subdivision (b) of Section
6 6103.2 of the Government Code, there shall be no fee for the
7 service of process by a sheriff or marshal of a protective order,
8 restraining order, or injunction to be issued, if either of the
9 following conditions applies:

10 (A) The protective order, restraining order, or injunction issued
11 pursuant to this section is based upon stalking, as prohibited by
12 Section 646.9 of the Penal Code.

13 (B) The protective order, restraining order, or injunction issued
14 pursuant to this section is based upon unlawful violence or a
15 credible threat of violence.

16 (2) The Judicial Council shall prepare and develop forms for
17 persons who wish to avail themselves of the services described in
18 this subdivision.

19 SEC. 13. Section 527.8 of the Code of Civil Procedure is
20 amended to read:

21 527.8. (a) Any employer, whose employee has suffered
22 unlawful violence or a credible threat of violence from any
23 individual, that can reasonably be construed to be carried out or
24 to have been carried out at the workplace, may seek a temporary
25 restraining order and an injunction on behalf of the employee and,
26 at the discretion of the court, any number of other employees at
27 the workplace, and, if appropriate, other employees at other
28 workplaces of the employer.

29 (b) For the purposes of this section:

30 (1) "Course of conduct" is a pattern of conduct composed of a
31 series of acts over a period of time, however short, evidencing a
32 continuity of purpose, including following or stalking an employee
33 to or from the place of work; entering the workplace; following
34 an employee during hours of employment; making telephone calls
35 to an employee; or sending correspondence to an employee by any
36 means, including, but not limited to, the use of the public or private
37 mails, interoffice mail, ~~fax~~ *facsimile*, or computer email.

38 (2) "Credible threat of violence" is a knowing and willful
39 statement or course of conduct that would place a reasonable person

1 in fear for his or her safety, or the safety of his or her immediate
2 family, and that serves no legitimate purpose.

3 (3) “Employer” and “employee” mean persons defined in
4 Section 350 of the Labor Code. “Employer” also includes a federal
5 agency, the state, a state agency, a city, county, or district, and a
6 private, public, or quasi-public corporation, or any public agency
7 thereof or therein. “Employee” also includes the members of boards
8 of directors of private, public, and quasi-public corporations and
9 elected and appointed public officers. For purposes of this section
10 only, “employee” also includes a volunteer or independent
11 contractor who performs services for the employer at the
12 employer’s worksite.

13 (4) “Petitioner” means the employer that petitions under
14 subdivision (a) for a temporary restraining order and injunction.

15 (5) “Respondent” means the person against whom the temporary
16 restraining order and injunction are sought and, if the petition is
17 granted, the restrained person.

18 (6) “Temporary restraining order” and “injunction” mean orders
19 that include any of the following restraining orders, whether issued
20 ex parte or after notice and hearing:

21 (A) An order enjoining a party from harassing, intimidating,
22 molesting, attacking, striking, stalking, threatening, sexually
23 assaulting, battering, abusing, telephoning, including, but not
24 limited to, making annoying telephone calls as described in Section
25 653m of the Penal Code, destroying personal property, contacting,
26 either directly or indirectly, by mail or otherwise, or coming within
27 a specified distance of, or disturbing the peace of, the employee.

28 (B) An order enjoining a party from specified behavior that the
29 court determines is necessary to effectuate orders described in
30 subparagraph (A).

31 (7) “Unlawful violence” is any assault or battery, or stalking as
32 prohibited in Section 646.9 of the Penal Code, but shall not include
33 lawful acts of self-defense or defense of others.

34 (c) This section does not permit a court to issue a temporary
35 restraining order or injunction prohibiting speech or other activities
36 that are constitutionally protected, or otherwise protected by
37 Section 527.3 or any other provision of law.

38 (d) In the discretion of the court, on a showing of good cause,
39 a temporary restraining order or injunction issued under this section

1 may include other named family or household members, or other
2 persons employed at the employee's workplace or workplaces.

3 (e) Upon filing a petition for an injunction under this section,
4 the petitioner may obtain a temporary restraining order in
5 accordance with subdivision (a) of Section 527, if the petitioner
6 also files a declaration that, to the satisfaction of the court, shows
7 reasonable proof that an employee has suffered unlawful violence
8 or a credible threat of violence by the respondent, and that great
9 or irreparable harm would result to an employee. The temporary
10 restraining order may include any of the protective orders described
11 in paragraph (6) of subdivision (b).

12 (f) A request for the issuance of a temporary restraining order
13 without notice under this section shall be granted or denied on the
14 same day that the petition is submitted to the court, unless the
15 petition is filed too late in the day to permit effective review, in
16 which case the order shall be granted or denied on the next day of
17 judicial business in sufficient time for the order to be filed that day
18 with the clerk of the court.

19 (g) A temporary restraining order granted under this section
20 shall remain in effect, at the court's discretion, for a period not to
21 exceed 21 days, or if the court extends the time for hearing under
22 subdivision (h), not to exceed 25 days, unless otherwise modified
23 or terminated by the court.

24 (h) Within 21 days, or if good cause appears to the court, 25
25 days from the date that a petition for a temporary order is granted
26 or denied, a hearing shall be held on the petition for the injunction.
27 If no request for temporary orders is made, the hearing shall be
28 held within 21 days, or, if good cause appears to the court, 25 days,
29 from the date that the petition is filed.

30 (i) The respondent may file a response that explains, excuses,
31 justifies, or denies the alleged unlawful violence or credible threats
32 of violence.

33 (j) At the hearing, the judge shall receive any testimony that is
34 relevant and may make an independent inquiry. Moreover, if the
35 respondent is a current employee of the entity requesting the
36 injunction, the judge shall receive evidence concerning the
37 employer's decision to retain, terminate, or otherwise discipline
38 the respondent. If the judge finds by clear and convincing evidence
39 that the respondent engaged in unlawful violence or made a

1 credible threat of violence, an injunction shall issue prohibiting
2 further unlawful violence or threats of violence.

3 (k) (1) In the discretion of the court, an order issued after notice
4 and hearing under this section may have a duration of not more
5 than three years, subject to termination or modification by further
6 order of the court either on written stipulation filed with the court
7 or on the motion of a party. These orders may be renewed, upon
8 the request of a party, for a duration of not more than three years,
9 without a showing of any further violence or threats of violence
10 since the issuance of the original order, subject to termination or
11 modification by further order of the court either on written
12 stipulation filed with the court or on the motion of a party. The
13 request for renewal may be brought at any time within the three
14 months before the expiration of the order.

15 (2) The failure to state the expiration date on the face of the
16 form creates an order with a duration of three years from the date
17 of issuance.

18 (3) If an action is filed for the purpose of terminating or
19 modifying a protective order prior to the expiration date specified
20 in the order by a party other than the protected party, the party
21 who is protected by the order shall be given notice, pursuant to
22 subdivision (b) of Section 1005, of the proceeding by personal
23 service or, if the protected party has satisfied the requirements of
24 Chapter 3.1 (commencing with Section 6205) of Division 7 of
25 Title 1 of the Government Code, by service on the Secretary of
26 State. If the party who is protected by the order cannot be notified
27 prior to the hearing for modification or termination of the protective
28 order, the court shall deny the motion to modify or terminate the
29 order without prejudice or continue the hearing until the party who
30 is protected can be properly noticed and may, upon a showing of
31 good cause, specify another method for service of process that is
32 reasonably designed to afford actual notice to the protected party.
33 The protected party may waive his or her right to notice if he or
34 she is physically present in court and does not challenge the
35 sufficiency of the notice.

36 (l) This section does not preclude either party from
37 representation by private counsel or from appearing on his or her
38 own behalf.

39 (m) Upon filing of a petition for an injunction under this section,
40 the respondent shall be personally served with a copy of the

1 petition, temporary restraining order, if any, and notice of hearing
2 of the petition. Service shall be made at least five days before the
3 hearing. The court may, for good cause, on motion of the petitioner
4 or on its own motion, shorten the time for service on the
5 respondent.

6 (n) A notice of hearing under this section shall notify the
7 respondent that, if he or she does not attend the hearing, the court
8 may make orders against him or her that could last up to three
9 years.

10 (o) (1) The court may, upon the filing of a declaration by the
11 petitioner that the respondent could not be served within the time
12 required by statute, reissue an order previously issued and dissolved
13 by the court for failure to serve the respondent. The reissued order
14 shall remain in effect until the date set for the hearing.

15 (2) The reissued order shall state on its face the date of
16 expiration of the order.

17 (p) (1) If a respondent, named in a restraining order issued
18 under this section after a hearing, has not been served personally
19 with the order but has received actual notice of the existence and
20 substance of the order through personal appearance in court to
21 hear the terms of the order from the court, no additional proof of
22 service is required for enforcement of the order.

23 (2) If the respondent named in a temporary restraining order is
24 personally served with the order and notice of hearing with respect
25 to a restraining order or protective order based on the temporary
26 restraining order, but the person does not appear at the hearing,
27 either personally or by an attorney, and the terms and conditions
28 of the restraining order or protective order issued at the hearing
29 are identical to the temporary restraining order, except for the
30 duration of the order, then the restraining order or protective order
31 issued at the hearing may be served on the person by first-class
32 mail sent to that person at the most current address for the person
33 available to the court.

34 (3) The Judicial Council form for temporary orders issued
35 pursuant to this subdivision shall contain a statement in
36 substantially the following form:

37
38 “If you have been personally served with this temporary
39 restraining order and notice of hearing, but you do not appear at
40 the hearing either in person or by a lawyer, and a restraining order

1 that is the same as this restraining order except for the expiration
2 date is issued at the hearing, a copy of the order will be served on
3 you by mail at the following address: _____.

4 If that address is not correct or you wish to verify that the
5 temporary restraining order was converted to a restraining order
6 at the hearing without substantive change and to find out the
7 duration of that order, contact the clerk of the court.”

8

9 (q) (1) Information on any temporary restraining order or
10 injunction relating to workplace violence issued by a court pursuant
11 to this section shall be transmitted to the Department of Justice in
12 accordance with either paragraph (2) or (3).

13 (2) The court shall order the petitioner or the attorney for the
14 petitioner to deliver a copy of any order issued under this section,
15 or a reissuance, extension, modification, or termination of the
16 order, and any subsequent proof of service, by the close of the
17 business day on which the order, reissuance, extension,
18 modification, or termination was made, to each law enforcement
19 agency having jurisdiction over the residence of the petitioner and
20 to any additional law enforcement agencies within the court’s
21 discretion as are requested by the petitioner.

22 (3) Alternatively, the court or its designee shall transmit, within
23 one business day, to law enforcement personnel all information
24 required under subdivision (b) of Section 6380 of the Family Code
25 regarding any order issued under this section, or a reissuance,
26 extension, modification, or termination of the order, and any
27 subsequent proof of service, by either one of the following
28 methods:

29 (A) Transmitting a physical copy of the order or proof of service
30 to a local law enforcement agency authorized by the Department
31 of Justice to enter orders into the California Law Enforcement
32 Telecommunications System (CLETS).

33 (B) With the approval of the Department of Justice, entering
34 the order or proof of service into CLETS directly.

35 (4) Each appropriate law enforcement agency shall make
36 available information as to the existence and current status of these
37 orders to law enforcement officers responding to the scene of
38 reported unlawful violence or a credible threat of violence.

39 (5) At the request of the petitioner, an order issued under this
40 section shall be served on the respondent, regardless of whether

1 the respondent has been taken into custody, by any law
2 enforcement officer who is present at the scene of reported
3 unlawful violence or a credible threat of violence involving the
4 parties to the proceedings. The petitioner shall provide the officer
5 with an endorsed copy of the order and proof of service that the
6 officer shall complete and send to the issuing court.

7 (6) Upon receiving information at the scene of an incident of
8 unlawful violence or a credible threat of violence that a protective
9 order has been issued under this section, or that a person who has
10 been taken into custody is the subject of an order, if the petitioner
11 or the protected person cannot produce an endorsed copy of the
12 order, a law enforcement officer shall immediately attempt to
13 verify the existence of the order.

14 (7) If the law enforcement officer determines that a protective
15 order has been issued, but not served, the officer shall immediately
16 notify the respondent of the terms of the order and obtain the
17 respondent's address. The law enforcement officer shall at that
18 time also enforce the order, but may not arrest or take the
19 respondent into custody for acts in violation of the order that were
20 committed prior to the verbal notice of the terms and conditions
21 of the order. The law enforcement officer's verbal notice of the
22 terms of the order shall constitute service of the order and
23 constitutes sufficient notice for the purposes of this section and
24 for the purposes of Section 29825 of the Penal Code. The petitioner
25 shall mail an endorsed copy of the order to the respondent's mailing
26 address provided to the law enforcement officer within one
27 business day of the reported incident of unlawful violence or a
28 credible threat of violence at which a verbal notice of the terms of
29 the order was provided by a law enforcement officer.

30 (r) (1) A person subject to a protective order issued under this
31 section shall not own, possess, purchase, receive, or attempt to
32 purchase or receive a firearm or ammunition while the protective
33 order is in effect.

34 (2) The court shall order a person subject to a protective order
35 issued under this section to relinquish any firearms he or she owns
36 or possesses pursuant to Section 527.9.

37 (3) Every person who owns, possesses, purchases or receives,
38 or attempts to purchase or receive a firearm or ammunition while
39 the protective order is in effect is punishable pursuant to Section
40 29825 of the Penal Code.

1 (s) Any intentional disobedience of any temporary restraining
2 order or injunction granted under this section is punishable pursuant
3 to Section 273.6 of the Penal Code.

4 (t) Nothing in this section may be construed as expanding,
5 diminishing, altering, or modifying the duty, if any, of an employer
6 to provide a safe workplace for employees and other persons.

7 (u) (1) The Judicial Council shall develop forms, instructions,
8 and rules for relating to matters governed by this section. The
9 forms for the petition and response shall be simple and concise,
10 and their use by parties in actions brought pursuant to this section
11 shall be mandatory.

12 (2) A temporary restraining order or injunction relating to
13 unlawful violence or a credible threat of violence issued by a court
14 pursuant to this section shall be issued on forms adopted by the
15 Judicial Council of California and that have been approved by the
16 Department of Justice pursuant to subdivision (i) of Section 6380
17 of the Family Code. However, the fact that an order issued by a
18 court pursuant to this section was not issued on forms adopted by
19 the Judicial Council and approved by the Department of Justice
20 shall not, in and of itself, make the order unenforceable.

21 (v) There is no filing fee for a petition that alleges that a person
22 has inflicted or threatened violence against an employee of the
23 petitioner, or stalked the employee, or acted or spoken in any other
24 manner that has placed the employee in reasonable fear of violence,
25 and that seeks a protective or restraining order or injunction
26 restraining stalking or future violence or threats of violence, in
27 any action brought pursuant to this section. No fee shall be paid
28 for a subpoena filed in connection with a petition alleging these
29 acts. No fee shall be paid for filing a response to a petition alleging
30 these acts.

31 (w) (1) Subject to paragraph (4) of subdivision (b) of Section
32 6103.2 of the Government Code, there shall be no fee for the
33 service of process by a sheriff or marshal of a temporary restraining
34 order or injunction to be issued pursuant to this section if either
35 of the following conditions applies:

36 (A) The temporary restraining order or injunction issued
37 pursuant to this section is based upon stalking, as prohibited by
38 Section 646.9 of the Penal Code.

1 (B) The temporary restraining order or injunction issued
2 pursuant to this section is based on unlawful violence or a credible
3 threat of violence.

4 (2) The Judicial Council shall prepare and develop forms for
5 persons who wish to avail themselves of the services described in
6 this subdivision.

7 SEC. 14. Section 527.85 of the Code of Civil Procedure is
8 amended to read:

9 527.85. (a) Any chief administrative officer of a postsecondary
10 educational institution, or an officer or employee designated by
11 the chief administrative officer to maintain order on the school
12 campus or facility, a student of which has suffered a credible threat
13 of violence made off the school campus or facility from any
14 individual, which can reasonably be construed to be carried out or
15 to have been carried out at the school campus or facility, may, with
16 the written consent of the student, seek a temporary restraining
17 order and an injunction, on behalf of the student and, at the
18 discretion of the court, any number of other students at the campus
19 or facility who are similarly situated.

20 (b) For the purposes of this section, the following definitions
21 shall apply:

22 (1) “Chief administrative officer” means the principal, president,
23 or highest ranking official of the postsecondary educational
24 institution.

25 (2) “Course of conduct” means a pattern of conduct composed
26 of a series of acts over a period of time, however short, evidencing
27 a continuity of purpose, including any of the following:

- 28 (A) Following or stalking a student to or from school.
- 29 (B) Entering the school campus or facility.
- 30 (C) Following a student during school hours.
- 31 (D) Making telephone calls to a student.
- 32 (E) Sending correspondence to a student by any means,
33 including, but not limited to, the use of the public or private mails,
34 interoffice mail, ~~fax~~ *facsimile*, or computer email.

35 (3) “Credible threat of violence” means a knowing and willful
36 statement or course of conduct that would place a reasonable person
37 in fear for his or her safety, or the safety of his or her immediate
38 family, and that serves no legitimate purpose.

1 (4) “Petitioner” means the chief administrative officer, or his
2 or her designee, who petitions under subdivision (a) for a temporary
3 restraining order and injunction.

4 (5) “Postsecondary educational institution” means a private
5 institution of vocational, professional, or postsecondary education.

6 (6) “Respondent” means the person against whom the temporary
7 restraining order and injunction are sought and, if the petition is
8 granted, the restrained person.

9 (7) “Student” means an adult currently enrolled in or applying
10 for admission to a postsecondary educational institution.

11 (8) “Temporary restraining order” and “injunction” mean orders
12 that include any of the following restraining orders, whether issued
13 ex parte, or after notice and hearing:

14 (A) An order enjoining a party from harassing, intimidating,
15 molesting, attacking, striking, stalking, threatening, sexually
16 assaulting, battering, abusing, telephoning, including, but not
17 limited to, making annoying telephone calls as described in Section
18 653m of the Penal Code, destroying personal property, contacting,
19 either directly or indirectly, by mail or otherwise, or coming within
20 a specified distance of, or disturbing the peace of, the student.

21 (B) An order enjoining a party from specified behavior that the
22 court determines is necessary to effectuate orders described in
23 subparagraph (A).

24 (9) “Unlawful violence” means any assault or battery, or stalking
25 as prohibited in Section 646.9 of the Penal Code, but shall not
26 include lawful acts of self-defense or defense of others.

27 (c) This section does not permit a court to issue a temporary
28 restraining order or injunction prohibiting speech or other activities
29 that are constitutionally protected, or otherwise protected by
30 Section 527.3 or any other provision of law.

31 (d) In the discretion of the court, on a showing of good cause,
32 a temporary restraining order or injunction issued under this section
33 may include other named family or household members of the
34 student, or other students at the campus or facility.

35 (e) Upon filing a petition for an injunction under this section,
36 the petitioner may obtain a temporary restraining order in
37 accordance with subdivision (a) of Section 527, if the petitioner
38 also files a declaration that, to the satisfaction of the court, shows
39 reasonable proof that a student has suffered a credible threat of
40 violence made off the school campus or facility by the respondent,

1 and that great or irreparable harm would result to the student. The
2 temporary restraining order may include any of the protective
3 orders described in paragraph (8) of subdivision (b).

4 (f) A request for the issuance of a temporary restraining order
5 without notice under this section shall be granted or denied on the
6 same day that the petition is submitted to the court, unless the
7 petition is filed too late in the day to permit effective review, in
8 which case the order shall be granted or denied on the next day of
9 judicial business in sufficient time for the order to be filed that day
10 with the clerk of the court.

11 (g) A temporary restraining order granted under this section
12 shall remain in effect, at the court's discretion, for a period not to
13 exceed 21 days, or if the court extends the time for hearing under
14 subdivision (h), not to exceed 25 days, unless otherwise modified
15 or terminated by the court.

16 (h) Within 21 days, or if good cause appears to the court, within
17 25 days, from the date that a petition for a temporary order is
18 granted or denied, a hearing shall be held on the petition for the
19 injunction. If no request for temporary orders is made, the hearing
20 shall be held within 21 days, or if good cause appears to the court,
21 25 days, from the date the petition is filed.

22 (i) The respondent may file a response that explains, excuses,
23 justifies, or denies the alleged credible threats of violence.

24 (j) At the hearing, the judge shall receive any testimony that is
25 relevant and may make an independent inquiry. Moreover, if the
26 respondent is a current student of the entity requesting the
27 injunction, the judge shall receive evidence concerning the decision
28 of the postsecondary educational institution decision to retain,
29 terminate, or otherwise discipline the respondent. If the judge finds
30 by clear and convincing evidence that the respondent made a
31 credible threat of violence off the school campus or facility, an
32 injunction shall be issued prohibiting further threats of violence.

33 (k) (1) In the discretion of the court, an order issued after notice
34 and hearing under this section may have a duration of not more
35 than three years, subject to termination or modification by further
36 order of the court either on written stipulation filed with the court
37 or on the motion of a party. These orders may be renewed, upon
38 the request of a party, for a duration of not more than three years,
39 without a showing of any further violence or threats of violence
40 since the issuance of the original order, subject to termination or

1 modification by further order of the court either on written
2 stipulation filed with the court or on the motion of a party. The
3 request for renewal may be brought at any time within the three
4 months before the expiration of the order.

5 (2) The failure to state the expiration date on the face of the
6 form creates an order with a duration of three years from the date
7 of issuance.

8 (3) If an action is filed for the purpose of terminating or
9 modifying a protective order prior to the expiration date specified
10 in the order by a party other than the protected party, the party
11 who is protected by the order shall be given notice, pursuant to
12 subdivision (b) of Section 1005, of the proceeding by personal
13 service or, if the protected party has satisfied the requirements of
14 Chapter 3.1 (commencing with Section 6205) of Division 7 of
15 Title 1 of the Government Code, by service on the Secretary of
16 State. If the party who is protected by the order cannot be notified
17 prior to the hearing for modification or termination of the protective
18 order, the court shall deny the motion to modify or terminate the
19 order without prejudice or continue the hearing until the party who
20 is protected can be properly noticed and may, upon a showing of
21 good cause, specify another method for service of process that is
22 reasonably designed to afford actual notice to the protected party.
23 The protected party may waive his or her right to notice if he or
24 she is physically present in court and does not challenge the
25 sufficiency of the notice.

26 (l) This section does not preclude either party from
27 representation by private counsel or from appearing on his or her
28 own behalf.

29 (m) Upon filing of a petition for an injunction under this section,
30 the respondent shall be personally served with a copy of the
31 petition, temporary restraining order, if any, and notice of hearing
32 of the petition. Service shall be made at least five days before the
33 hearing. The court may, for good cause, on motion of the petitioner
34 or on its own motion, shorten the time for service on the
35 respondent.

36 (n) A notice of hearing under this section shall notify the
37 respondent that if he or she does not attend the hearing, the court
38 may make orders against him or her that could last up to three
39 years.

1 (o) (1) The court may, upon the filing of a declaration by the
2 petitioner that the respondent could not be served within the time
3 required by statute, reissue an order previously issued and dissolved
4 by the court for failure to serve the respondent. The reissued order
5 shall remain in effect until the date set for the hearing.

6 (2) The reissued order shall state on its face the date of
7 expiration of the order.

8 (p) (1) If a respondent, named in an order issued under this
9 section after a hearing, has not been served personally with the
10 order but has received actual notice of the existence and substance
11 of the order through personal appearance in court to hear the terms
12 of the order from the court, no additional proof of service is
13 required for enforcement of the order.

14 (2) If the respondent named in a temporary restraining order is
15 personally served with the order and notice of hearing with respect
16 to a restraining order or protective order based on the temporary
17 restraining order, but the respondent does not appear at the hearing,
18 either personally or by an attorney, and the terms and conditions
19 of the restraining order or protective order issued at the hearing
20 are identical to the temporary restraining order, except for the
21 duration of the order, then the restraining order or protective order
22 issued at the hearing may be served on the respondent by first-class
23 mail sent to that person at the most current address for the
24 respondent available to the court.

25 (3) The Judicial Council form for temporary orders issued
26 pursuant to this subdivision shall contain a statement in
27 substantially the following form:

28
29 “If you have been personally served with a temporary restraining
30 order and notice of hearing, but you do not appear at the hearing
31 either in person or by a lawyer, and a restraining order that is the
32 same as this temporary restraining order except for the expiration
33 date is issued at the hearing, a copy of the order will be served on
34 you by mail at the following address:_____.

35 If that address is not correct or you wish to verify that the
36 temporary restraining order was converted to a restraining order
37 at the hearing without substantive change and to find out the
38 duration of that order, contact the clerk of the court.”

39

1 (q) (1) Information on any temporary restraining order or
2 injunction relating to schoolsite violence issued by a court pursuant
3 to this section shall be transmitted to the Department of Justice in
4 accordance with either paragraph (2) or (3).

5 (2) The court shall order the petitioner or the attorney for the
6 petitioner to deliver a copy of any order issued under this section,
7 or a reissuance, extension, modification, or termination of the
8 order, and any subsequent proof of service, by the close of the
9 business day on which the order, reissuance, or termination of the
10 order, and any proof of service, was made, to each law enforcement
11 agency having jurisdiction over the residence of the petition and
12 to any additional law enforcement agencies within the court's
13 discretion as are requested by the petitioner.

14 (3) Alternatively, the court or its designee shall transmit, within
15 one business day, to law enforcement personnel all information
16 required under subdivision (b) of Section 6380 of the Family Code
17 regarding any order issued under this section, or a reissuance,
18 extension, modification, or termination of the order, and any
19 subsequent proof of service, by either one of the following
20 methods:

21 (A) Transmitting a physical copy of the order or proof of service
22 to a local law enforcement agency authorized by the Department
23 of Justice to enter orders into the California Law Enforcement
24 Telecommunications System (CLETS).

25 (B) With the approval of the Department of Justice, entering
26 the order of proof of service into CLETS directly.

27 (4) Each appropriate law enforcement agency shall make
28 available information as to the existence and current status of these
29 orders to law enforcement officers responding to the scene of
30 reported unlawful violence or a credible threat of violence.

31 (5) At the request of the petitioner, an order issued under this
32 section shall be served on the respondent, regardless of whether
33 the respondent has been taken into custody, by any law
34 enforcement officer who is present at the scene of reported
35 unlawful violence or a credible threat of violence involving the
36 parties to the proceedings. The petitioner shall provide the officer
37 with an endorsed copy of the order and proof of service that the
38 officer shall complete and send to the issuing court.

39 (6) Upon receiving information at the scene of an incident of
40 unlawful violence or a credible threat of violence that a protective

1 order has been issued under this section, or that a person who has
2 been taken into custody is the subject of an order, if the petitioner
3 or the protected person cannot produce an endorsed copy of the
4 order, a law enforcement officer shall immediately attempt to
5 verify the existence of the order.

6 (7) If the law enforcement officer determines that a protective
7 order has been issued, but not served, the officer shall immediately
8 notify the respondent of the terms of the order and obtain the
9 respondent's address. The law enforcement officer shall at that
10 time also enforce the order, but may not arrest or take the
11 respondent into custody for acts in violation of the order that were
12 committed prior to the verbal notice of the terms and conditions
13 of the order. The law enforcement officer's verbal notice of the
14 terms of the order shall constitute service of the order and
15 constitutes sufficient notice for the purposes of this section, and
16 Section 29825 of the Penal Code. The petitioner shall mail an
17 endorsed copy of the order to the respondent's mailing address
18 provided to the law enforcement officer within one business day
19 of the reported incident of unlawful violence or a credible threat
20 of violence at which a verbal notice of the terms of the order was
21 provided by a law enforcement officer.

22 (r) (1) A person subject to a protective order issued under this
23 section shall not own, possess, purchase, receive, or attempt to
24 purchase or receive a firearm or ammunition while the protective
25 order is in effect.

26 (2) The court shall order a person subject to a protective order
27 issued under this section to relinquish any firearms he or she owns
28 or possesses pursuant to Section 527.9.

29 (3) Every person who owns, possesses, purchases, or receives,
30 or attempts to purchase or receive a firearm or ammunition while
31 the protective order is in effect is punishable pursuant to Section
32 29825 of the Penal Code.

33 (s) Any intentional disobedience of any temporary restraining
34 order or injunction granted under this section is punishable pursuant
35 to Section 273.6 of the Penal Code.

36 (t) Nothing in this section may be construed as expanding,
37 diminishing, altering, or modifying the duty, if any, of a
38 postsecondary educational institution to provide a safe environment
39 for students and other persons.

1 (u) (1) The Judicial Council shall develop forms, instructions,
2 and rules relating to matters governed by this section. The forms
3 for the petition and response shall be simple and concise, and their
4 use by parties in actions brought pursuant to this section shall be
5 mandatory.

6 (2) A temporary restraining order or injunction relating to
7 unlawful violence or a credible threat of violence issued by a court
8 pursuant to this section shall be issued on forms adopted by the
9 Judicial Council and that have been approved by the Department
10 of Justice pursuant to subdivision (i) of Section 6380 of the Family
11 Code. However, the fact that an order issued by a court pursuant
12 to this section was not issued on forms adopted by the Judicial
13 Council and approved by the Department of Justice shall not, in
14 and of itself, make the order unenforceable.

15 (v) There is no filing fee for a petition that alleges that a person
16 has threatened violence against a student of the petitioner, or
17 stalked the student, or acted or spoken in any other manner that
18 has placed the student in reasonable fear of violence, and that seeks
19 a protective or restraining order or injunction restraining stalking
20 or future threats of violence, in any action brought pursuant to this
21 section. No fee shall be paid for a subpoena filed in connection
22 with a petition alleging these acts. No fee shall be paid for filing
23 a response to a petition alleging these acts.

24 (w) (1) Subject to paragraph (4) of subdivision (b) of Section
25 6103.2 of the Government Code, there shall be no fee for the
26 service of process by a sheriff or marshal of a temporary restraining
27 order or injunction to be issued pursuant to this section if either
28 of the following conditions applies:

29 (A) The temporary restraining order or injunction issued
30 pursuant to this section is based upon stalking, as prohibited by
31 Section 646.9 of the Penal Code.

32 (B) The temporary restraining order or injunction issued
33 pursuant to this section is based upon a credible threat of violence.

34 (2) The Judicial Council shall prepare and develop forms for
35 persons who wish to avail themselves of the services described in
36 this subdivision.

37 SEC. 15. Section 1287 of the Code of Civil Procedure is
38 amended to read:

39 1287. If the award is vacated, the court may order a rehearing
40 before new arbitrators. If the award is vacated on the grounds set

1 forth in paragraph (4) or (5) of subdivision (a) of Section 1286.2,
2 the court with the consent of the parties to the court proceeding
3 may order a rehearing before the original arbitrators.

4 If the arbitration agreement requires that the award be made
5 within a specified period of time, the rehearing may nevertheless
6 be held and the award made within an equal period of time
7 beginning with the date of the order for rehearing but only if the
8 court determines that the purpose of the time limit agreed upon by
9 the parties to the arbitration agreement will not be frustrated by
10 the application of this provision.

11 SEC. 16. Section 1514 of the Code of Civil Procedure is
12 amended to read:

13 1514. (a) The contents of, or the proceeds of sale of the
14 contents of, any safe deposit box or any other safekeeping
15 repository, held in this state by a business association, escheat to
16 this state if unclaimed by the owner for more than three years from
17 the date on which the lease or rental period on the box or other
18 repository expired, or from the date of termination of any
19 agreement because of which the box or other repository was
20 furnished to the owner without cost, whichever last occurs.

21 (b) If a business association has in its records an address for an
22 apparent owner of the contents of, or the proceeds of sale of the
23 contents of, a safe deposit box or other safekeeping repository
24 described in subdivision (a), and the records of the business
25 association do not disclose the address to be inaccurate, the
26 business association shall make reasonable efforts to notify the
27 owner by mail, or, if the owner has consented to electronic notice,
28 electronically, that the owner's contents, or the proceeds of the
29 sale of the contents, will escheat to the state pursuant to this section.
30 The business association shall give notice not less than 6 months
31 and not more than 12 months before the time the contents, or the
32 proceeds of the sale of the contents, become reportable to the
33 Controller in accordance with this chapter.

34 (c) The face of the notice shall contain a heading at the top that
35 reads as follows: "THE STATE OF CALIFORNIA REQUIRES
36 US TO NOTIFY YOU THAT YOUR UNCLAIMED PROPERTY
37 MAY BE TRANSFERRED TO THE STATE IF YOU DO NOT
38 CONTACT US," or substantially similar language. The notice
39 required by this subdivision shall specify the date that the property
40 will escheat and the effects of escheat, including the necessity for

1 filing a claim for the return of the property. The notice required
2 by this section shall, in boldface type or in a font a minimum of
3 two points larger than the rest of the notice, exclusive of the
4 heading, do all of the following:

5 (1) Identify the safe deposit box or other safekeeping repository
6 by number or identifier.

7 (2) State that the lease or rental period on the box or repository
8 has expired or the agreement has terminated.

9 (3) Indicate that the contents of, or the proceeds of sale of the
10 contents of, the safe deposit box or other safekeeping repository
11 will escheat to the state unless the owner requests the contents or
12 their proceeds.

13 (4) Specify that the Unclaimed Property Law requires business
14 associations to transfer the contents of, or the proceeds of sale of
15 the contents of, a safe deposit box or other safekeeping repository
16 to the Controller if they remain unclaimed for more than three
17 years.

18 (5) Advise the owner to make arrangements with the business
19 association to either obtain possession of the contents of, or the
20 proceeds of sale of the contents of, the safe deposit box or other
21 safekeeping repository, or enter into a new agreement with the
22 business association to establish a leasing or rental arrangement.
23 If an owner fails to establish such an arrangement prior to the end
24 of the period described in subdivision (a), the contents or proceeds
25 shall escheat to this state.

26 (d) In addition to the notice required pursuant to subdivision
27 (b), the business association may give additional notice in
28 accordance with subdivision (c) at any time between the date on
29 which the lease or rental period for the safe deposit box or
30 repository expired, or from the date of the termination of any
31 agreement, through which the box or other repository was furnished
32 to the owner without cost, whichever is earlier, and the date the
33 business association transfers the contents of, or the proceeds of
34 sale of the contents of, the safe deposit box or other safekeeping
35 repository to the Controller.

36 (e) The contents of, or the proceeds of sale of the contents of,
37 a safe deposit box or other safekeeping repository shall not escheat
38 to the state if, as of June 30 or the fiscal yearend next preceding
39 the date on which a report is required to be filed under Section
40 1530, the owner has owned, with a banking organization providing

1 the safe deposit box or other safekeeping repository, any demand,
2 savings, or matured time deposit, or account subject to a negotiable
3 order of withdrawal, which has not escheated under Section 1513
4 and is not reportable under subdivision (d) of Section 1530.

5 (f) The contents of, or the proceeds of sale of the contents of, a
6 safe deposit box or other safekeeping repository shall not escheat
7 to the state if, as of June 30 or the fiscal yearend next preceding
8 the date on which a report is required to be filed under Section
9 1530, the owner has owned, with a financial organization providing
10 the safe deposit box or other safekeeping repository, any demand,
11 savings, or matured time deposit, or matured investment certificate,
12 or account subject to a negotiable order of withdrawal, or other
13 interest in a financial organization or any deposit made therewith,
14 and any interest or dividends thereon, which has not escheated
15 under Section 1513 and is not reportable under subdivision (d) of
16 Section 1530.

17 (g) The contents of, or the proceeds of sale of the contents of,
18 a safe deposit box or other safekeeping repository shall not escheat
19 to the state if, as of June 30 or the fiscal yearend next preceding
20 the date on which a report is required to be filed under Section
21 1530, the owner has owned, with a banking or financial
22 organization providing the safe deposit box or other safekeeping
23 repository, any funds in an individual retirement account or under
24 a retirement plan for self-employed individuals or similar account
25 or plan pursuant to the internal revenue laws of the United States
26 or the income tax laws of this state, which has not escheated under
27 Section 1513 and is not reportable under subdivision (d) of Section
28 1530.

29 (h) In the event the owner is in default under the safe deposit
30 box or other safekeeping repository agreement and the owner has
31 owned any demand, savings, or matured time deposit, account, or
32 plan described in subdivision (e), (f), or (g), the banking or
33 financial organization may pay or deliver the contents of, or the
34 proceeds of sale of the contents of, the safe deposit box or other
35 safekeeping repository to the owner after deducting any amount
36 due and payable from those proceeds under that agreement. Upon
37 making that payment or delivery under this subdivision, the
38 banking or financial organization shall be relieved of all liability
39 to the extent of the value of those contents or proceeds.

1 (i) For new accounts opened for a safe deposit box or other
2 safekeeping repository with a business association on and after
3 January 1, 2011, the business association shall provide a written
4 notice to the person leasing the safe deposit box or safekeeping
5 repository informing the person that his or her property, or the
6 proceeds of sale of the property, may be transferred to the
7 appropriate state upon running of the time period specified by state
8 law from the date the lease or rental period on the safe deposit box
9 or repository expired, or from the date of termination of any
10 agreement because of which the box or other repository was
11 furnished to the owner without cost, whichever is earlier.

12 (j) A business association may directly escheat the contents of
13 a safe deposit box or other safekeeping repository without
14 exercising its rights under Article 2 (commencing with Section
15 1630) of Chapter 17 of Division 1 of the Financial Code.

16 SEC. 17. Section 2024.040 of the Code of Civil Procedure is
17 amended to read:

18 2024.040. (a) The time limit on completing discovery in an
19 action to be arbitrated under Chapter 2.5 (commencing with Section
20 1141.10) of Title 3 of Part 3 is subject to Judicial Council Rule.
21 After an award in a case ordered to judicial arbitration, completion
22 of discovery is limited by Section 1141.24.

23 (b) This chapter does not apply to either of the following:

24 (1) Summary proceedings for obtaining possession of real
25 property governed by Chapter 4 (commencing with Section 1159)
26 of Title 3 of Part 3. Except as provided in Sections 2024.050 and
27 2024.060, discovery in these proceedings shall be completed on
28 or before the fifth day before the date set for trial.

29 (2) Eminent domain proceedings governed by Title 7
30 (commencing with Section 1230.010) of Part 3.

31 SEC. 18. Section 500 of the Corporations Code is amended to
32 read:

33 500. (a) Neither a corporation nor any of its subsidiaries shall
34 make any distribution to the corporation's shareholders (Section
35 166) unless the board of directors has determined in good faith
36 either of the following:

37 (1) The amount of retained earnings of the corporation
38 immediately prior to the distribution equals or exceeds the sum of
39 (A) the amount of the proposed distribution plus (B) the preferential
40 dividends arrears amount.

1 (2) Immediately after the distribution, the value of the
2 corporation's assets would equal or exceed the sum of its total
3 liabilities plus the preferential rights amount.

4 (b) For the purpose of applying paragraph (1) of subdivision
5 (a) to a distribution by a corporation, "preferential dividends arrears
6 amount" means the amount, if any, of cumulative dividends in
7 arrears on all shares having a preference with respect to payment
8 of dividends over the class or series to which the applicable
9 distribution is being made, provided that if the articles of
10 incorporation provide that a distribution can be made without
11 regard to preferential dividends arrears amount, then the
12 preferential dividends arrears amount shall be zero. For the purpose
13 of applying paragraph (2) of subdivision (a) to a distribution by a
14 corporation, "preferential rights amount" means the amount that
15 would be needed if the corporation were to be dissolved at the time
16 of the distribution to satisfy the preferential rights, including
17 accrued but unpaid dividends, of other shareholders upon
18 dissolution that are superior to the rights of the shareholders
19 receiving the distribution, provided that if the articles of
20 incorporation provide that a distribution can be made without
21 regard to any preferential rights, then the preferential rights amount
22 shall be zero. In the case of a distribution of cash or property in
23 payment by the corporation in connection with the purchase of its
24 shares, (1) there shall be added to retained earnings all amounts
25 that had been previously deducted therefrom with respect to
26 obligations incurred in connection with the corporation's
27 repurchase of its shares and reflected on the corporation's balance
28 sheet, but not in excess of the principal of the obligations that
29 remain unpaid immediately prior to the distribution and (2) there
30 shall be deducted from liabilities all amounts that had been
31 previously added thereto with respect to the obligations incurred
32 in connection with the corporation's repurchase of its shares and
33 reflected on the corporation's balance sheet, but not in excess of
34 the principal of the obligations that will remain unpaid after the
35 distribution, provided that no addition to retained earnings or
36 deduction from liabilities under this subdivision shall occur on
37 account of any obligation that is a distribution to the corporation's
38 shareholders (Section 166) at the time the obligation is incurred.

1 (c) The board of directors may base a determination that a
2 distribution is not prohibited under subdivision (a) or under Section
3 501 on any of the following:

4 (1) Financial statements prepared on the basis of accounting
5 practices and principles that are reasonable under the
6 circumstances.

7 (2) A fair valuation.

8 (3) Any other method that is reasonable under the circumstances.

9 (d) The effect of a distribution under paragraph (1) or (2) of
10 subdivision (a) is measured as of the date the distribution is
11 authorized if the payment occurs within 120 days after the date of
12 authorization.

13 (e) (1) If terms of indebtedness provide that payment of principal
14 and interest is to be made only if, and to the extent that, payment
15 of a distribution to shareholders could then be made under this
16 section, indebtedness of a corporation, including indebtedness
17 issued as a distribution, is not a liability for purposes of
18 determinations made under paragraph (2) of subdivision (a).

19 (2) If indebtedness is issued as a distribution, each payment of
20 principal or interest on the indebtedness shall be treated as a
21 distribution, the effect of which is measured on the date the
22 payment of the indebtedness is actually made.

23 (f) This section does not apply to a corporation licensed as a
24 broker-dealer under Chapter 2 (commencing with Section 25210)
25 of Part 3 of Division 1 of Title 4, if immediately after giving effect
26 to any distribution the corporation is in compliance with the net
27 capital rules of the Commissioner of Corporations and the
28 Securities and Exchange Commission.

29 SEC. 19. Section 2900 of the Corporations Code is amended
30 to read:

31 2900. (a) As used in this section:

32 (1) "Flexible purpose corporation" includes an unincorporated
33 association.

34 (2) "Board" includes the managing body of an unincorporated
35 association.

36 (3) "Shareholder" includes a member of an unincorporated
37 association.

38 (4) "Shares" includes memberships in an unincorporated
39 association.

1 (b) No action may be instituted or maintained in right of any
2 domestic or foreign flexible purpose corporation under this section
3 by any party other than a shareholder of the flexible purpose
4 corporation.

5 (c) No action may be instituted or maintained in right of any
6 domestic or foreign flexible purpose corporation by any holder of
7 shares or of voting trust certificates of the flexible purpose
8 corporation unless both of the following conditions exist:

9 (1) The plaintiff alleges in the complaint that plaintiff was a
10 shareholder, of record or beneficially, or the holder of voting trust
11 certificates at the time of the transaction or any part thereof of
12 which plaintiff complains or that plaintiff's shares or voting trust
13 certificates thereafter devolved upon plaintiff by operation of law
14 from a holder who was a holder at the time of the transaction or
15 any part thereof complained of. Any shareholder who does not
16 meet these requirements may nevertheless be allowed, in the
17 discretion of the court, to maintain the action on a preliminary
18 showing to and determination by the court, by motion and after a
19 hearing, at which the court shall consider the evidence by affidavit
20 or testimony, as it deems material, of all of the following:

21 (A) There is a strong prima facie case in favor of the claim
22 asserted on behalf of the flexible purpose corporation.

23 (B) No other similar action has been or is likely to be instituted.

24 (C) The plaintiff acquired the shares before there was disclosure
25 to the public or to the plaintiff of the wrongdoing of which plaintiff
26 complains.

27 (D) Unless the action can be maintained the defendant may
28 retain a gain derived from defendant's willful breach of a fiduciary
29 duty.

30 (E) The requested relief will not result in unjust enrichment of
31 the flexible purpose corporation or any shareholder of the flexible
32 purpose corporation.

33 (2) The plaintiff alleges in the complaint with particularity
34 plaintiff's efforts to secure from the board the action as plaintiff
35 desires, or the reasons for not making that effort, and alleges further
36 that plaintiff has either informed the flexible purpose corporation
37 or the board in writing of the ultimate facts of each cause of action
38 against each defendant or delivered to the flexible purpose
39 corporation or the board a true copy of the complaint which
40 plaintiff proposes to file.

1 (d) In any action referred to in subdivision (b), at any time within
2 30 days after service of summons upon the flexible purpose
3 corporation or upon any defendant who is an officer or director of
4 the flexible purpose corporation, or held that office at the time of
5 the acts complained of, the flexible purpose corporation or the
6 defendant may move the court for an order, upon notice and
7 hearing, requiring the plaintiff to furnish a bond as hereinafter
8 provided. The motion shall be based upon one or both of the
9 following grounds:

10 (1) There is no reasonable possibility that the prosecution of
11 the cause of action alleged in the complaint against the moving
12 party will benefit the flexible purpose corporation or its
13 shareholders.

14 (2) The moving party, if other than the flexible purpose
15 corporation, did not participate in the transaction complained of
16 in any capacity.

17 The court on application of the flexible purpose corporation or
18 any defendant may, for good cause shown, extend the 30-day
19 period for an additional period or periods not exceeding 60 days.

20 (e) At the hearing upon any motion pursuant to subdivision (c),
21 the court shall consider the evidence, written or oral, by witnesses
22 or affidavit, as may be material to the ground or grounds upon
23 which the motion is based, or to a determination of the probable
24 reasonable expenses, including attorney's fees, of the flexible
25 purpose corporation and the moving party that will be incurred in
26 the defense of the action. If the court determines, after hearing the
27 evidence adduced by the parties, that the moving party has
28 established a probability in support of any of the grounds upon
29 which the motion is based, the court shall fix the amount of the
30 bond, not to exceed fifty thousand dollars (\$50,000), to be
31 furnished by the plaintiff for reasonable expenses, including
32 attorney's fees, which may be incurred by the moving party and
33 the flexible purpose corporation in connection with the action,
34 including expenses for which the flexible purpose corporation may
35 become liable pursuant to Section 2702. A ruling by the court on
36 the motion shall not be a determination of any issue in the action
37 or of the merits thereof. If the court, upon the motion, makes a
38 determination that a bond shall be furnished by the plaintiff as to
39 any one or more defendants, the action shall be dismissed as to
40 the defendant or defendants, unless the bond required by the court

1 has been furnished within such reasonable time as may be fixed
2 by the court.

3 (f) If the plaintiff, either before or after a motion is made
4 pursuant to subdivision (c), or any order or determination pursuant
5 to the motion, furnishes a bond in the aggregate amount of fifty
6 thousand dollars (\$50,000) to secure the reasonable expenses of
7 the parties entitled to make the motion, the plaintiff shall be deemed
8 to have complied with the requirements of this section and with
9 any order for a bond theretofore made, and any motion then
10 pending shall be dismissed and no further or additional bond shall
11 be required.

12 (g) If a motion is filed pursuant to subdivision (c), no pleadings
13 need be filed by the flexible purpose corporation or any other
14 defendant and the prosecution of the action shall be stayed until
15 10 days after the motion has been disposed of.

16 SEC. 20. Section 6210 of the Corporations Code is amended
17 to read:

18 6210. (a) Every corporation shall, within 90 days after the
19 filing of its original articles and biennially thereafter during the
20 applicable filing period, file, on a form prescribed by the Secretary
21 of State, a statement containing: (1) the name of the corporation
22 and the Secretary of State's file number; (2) the names and
23 complete business or residence addresses of its chief executive
24 officer, secretary, and chief financial officer; (3) the street address
25 of its principal office in this state, if any; (4) the mailing address
26 of the corporation, if different from the street address of its
27 principal executive office or if the corporation has no principal
28 office address in this state; and (5) if the corporation chooses to
29 receive renewal notices and any other notifications from the
30 Secretary of State by electronic mail instead of by United States
31 mail, a valid electronic mail address for the corporation or for the
32 corporation's designee to receive those notices.

33 (b) The statement required by subdivision (a) shall also
34 designate, as the agent of the corporation for the purpose of service
35 of process, a natural person residing in this state or any domestic
36 or foreign or foreign business corporation that has complied with
37 Section 1505 and whose capacity to act as an agent has not
38 terminated. If a natural person is designated, the statement shall
39 set forth the person's complete business or residence street address.

1 If a corporate agent is designated, no address for it shall be set
2 forth.

3 (c) For the purposes of this section, the applicable filing period
4 for a corporation shall be the calendar month during which its
5 original articles were filed and the immediately preceding five
6 calendar months. The Secretary of State shall provide a notice to
7 each corporation to comply with this section approximately three
8 months prior to the close of the applicable filing period. The notice
9 shall state the due date for compliance and shall be sent to the last
10 address of the corporation according to the records of the Secretary
11 of State or to the last electronic mail address according to the
12 records of the Secretary of State if the corporation has elected to
13 receive notices from the Secretary of State by electronic mail.
14 Neither the failure of the Secretary of State to send the notice nor
15 the failure of the corporation to receive it is an excuse for failure
16 to comply with this section.

17 (d) Whenever any of the information required by subdivision
18 (a) is changed, the corporation may file a current statement
19 containing all the information required by subdivisions (a) and
20 (b). In order to change its agent for service of process or the address
21 of the agent, the corporation must file a current statement
22 containing all the information required by subdivisions (a) and
23 (b). Whenever any statement is filed pursuant to this section, it
24 supersedes any previously filed statement and the statement in the
25 articles as to the agent for service of process and the address of
26 the agent.

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

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

34 SEC. 21. Section 8210 of the Corporations Code is amended
35 to read:

36 8210. (a) Every corporation shall, within 90 days after the
37 filing of its original articles and biennially thereafter during the
38 applicable filing period, file, on a form prescribed by the Secretary
39 of State, a statement containing: (1) the name of the corporation
40 and the Secretary of State's file number; (2) the names and

1 complete business or residence addresses of its chief executive
2 officer, secretary, and chief financial officer; (3) the street address
3 of its principal office in this state, if any; (4) the mailing address
4 of the corporation, if different from the street address of its
5 principal executive office or if the corporation has no principal
6 office address in this state; and (5) if the corporation chooses to
7 receive renewal notices and any other notifications from the
8 Secretary of State by electronic mail instead of by United States
9 mail, a valid electronic mail address for the corporation or for the
10 corporation's designee to receive those notices.

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

20 (c) For the purposes of this section, the applicable filing period
21 for a corporation shall be the calendar month during which its
22 original articles were filed and the immediately preceding five
23 calendar months. The Secretary of State shall provide a notice to
24 each corporation to comply with this section approximately three
25 months prior to the close of the applicable filing period. The notice
26 shall state the due date for compliance and shall be sent to the last
27 address of the corporation according to the records of the Secretary
28 of State or to the last electronic mail address according to the
29 records of the Secretary of State if the corporation has elected to
30 receive notices from the Secretary of State by electronic mail.
31 Neither the failure of the Secretary of State to send the notice nor
32 the failure of the corporation to receive it is an excuse for failure
33 to comply with this section.

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

1 supersedes any previously filed statement and the statement in the
2 articles as to the agent for service of process and the address of
3 the agent.

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

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

11 SEC. 22. Section 12570 of the Corporations Code is amended
12 to read:

13 12570. (a) Every corporation shall, within 90 days after the
14 filing of its original articles and annually thereafter during the
15 applicable filing period in each year, file, on a form prescribed by
16 the Secretary of State, a statement containing: (1) the name of the
17 corporation and the Secretary of State's file number; (2) the names
18 and complete business or residence addresses of its chief executive
19 officer or general manager, secretary, and chief financial officer;
20 (3) the street address of its principal office in this state, if any; (4)
21 the mailing address of the corporation, if different from the street
22 address of its principal office in this state; and (5) if the corporation
23 chooses to receive renewal notices and any other notifications from
24 the Secretary of State by electronic mail instead of by United States
25 mail, a valid electronic mail address for the corporation or for the
26 corporation's designee to receive those notices.

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

35 (c) For the purposes of this section, the applicable filing period
36 for a corporation shall be the calendar month during which its
37 original articles were filed and the immediately preceding five
38 calendar months. The Secretary of State shall provide a notice to
39 each corporation to comply with this section approximately three
40 months prior to the close of the applicable filing period. The notice

1 shall state the due date for compliance and shall be sent to the last
2 address of the corporation according to the records of the Secretary
3 of State or to the last electronic mail address according to the
4 records of the Secretary of State if the corporation has elected to
5 receive notices from the Secretary of State by electronic mail.
6 Neither the failure of the Secretary of State to send the notice nor
7 the failure of the corporation to receive it is an excuse for failure
8 to comply with this section.

9 (d) Whenever any of the information required by subdivision
10 (a) is changed, the corporation may file a current statement
11 containing all the information required by subdivisions (a) and
12 (b). In order to change its agent for service of process or the address
13 of the agent, the corporation must file a current statement
14 containing all the information required by subdivisions (a) and
15 (b). Whenever any statement is filed pursuant to this section, it
16 supersedes any previously filed statement and the statement in the
17 articles as to the agent for service of process and the address of
18 the agent.

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

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

26 SEC. 23. Section 14301.3 of the Corporations Code is amended
27 to read:

28 14301.3. (a) All construction on public water systems operated
29 by a mutual water company shall be designed and constructed to
30 comply with the applicable California Waterworks standards, as
31 provided in Chapter 16 (commencing with Section 64551) of
32 Division 4 of Title 22 of the California Code of Regulations.

33 (b) A mutual water company that operates a public water system
34 shall maintain a financial reserve fund for repairs and replacements
35 to its water production, transmission, and distribution facilities at
36 a level sufficient for continuous operation of facilities in
37 compliance with the federal Safe Drinking Water Act (42 U.S.C.
38 Sec. 300f et seq.) and the California Safe Drinking Water Act
39 (Chapter 4 (commencing with Section 116270) of Part 12 of
40 Division 104 of the Health and Safety Code).

1 SEC. 24. Section 234.1 of the Education Code, as amended by
2 Section 2 of Chapter 723 of the Statutes of 2011, is amended to
3 read:

4 234.1. The department, pursuant to subdivision (b) of Section
5 64001, shall monitor adherence to the requirements of Chapter 5.3
6 (commencing with Section 4900) of Division 1 of Title 5 of the
7 California Code of Regulations and Chapter 2 (commencing with
8 Section 200) of this part as part of its regular monitoring and review
9 of local educational agencies, commonly known as the Categorical
10 Program Monitoring process. The department shall assess whether
11 local educational agencies have done all of the following:

12 (a) Adopted a policy that prohibits discrimination, harassment,
13 intimidation, and bullying based on the actual or perceived
14 characteristics set forth in Section 422.55 of the Penal Code and
15 Section 220 of this code, and disability, gender, gender identity,
16 gender expression, nationality, race or ethnicity, religion, sexual
17 orientation, or association with a person or group with one or more
18 of these actual or perceived characteristics. The policy shall include
19 a statement that the policy applies to all acts related to school
20 activity or school attendance occurring within a school under the
21 jurisdiction of the superintendent of the school district.

22 (b) Adopted a process for receiving and investigating complaints
23 of discrimination, harassment, intimidation, and bullying based
24 on any of the actual or perceived characteristics set forth in Section
25 422.55 of the Penal Code and Section 220 of this code, and
26 disability, gender, gender identity, gender expression, nationality,
27 race or ethnicity, religion, sexual orientation, or association with
28 a person or group with one or more of these actual or perceived
29 characteristics. The complaint process shall include, but not be
30 limited to, all of the following:

31 (1) A requirement that, if school personnel witness an act of
32 discrimination, harassment, intimidation, or bullying, they shall
33 take immediate steps to intervene when safe to do so.

34 (2) A timeline to investigate and resolve complaints of
35 discrimination, harassment, intimidation, or bullying that shall be
36 followed by all schools under the jurisdiction of the school district.

37 (3) An appeal process afforded to the complainant should he or
38 she disagree with the resolution of a complaint filed pursuant to
39 this section.

1 (4) All forms developed pursuant to this process shall be
2 translated pursuant to Section 48985.

3 (c) Publicized antidiscrimination, antiharassment,
4 anti-intimidation, and antibullying policies adopted pursuant to
5 subdivision (a), including information about the manner in which
6 to file a complaint, to pupils, parents, employees, agents of the
7 governing board, and the general public. The information shall be
8 translated pursuant to Section 48985.

9 (d) Posted the policy established pursuant to subdivision (a) in
10 all schools and offices, including staff lounges and pupil
11 government meeting rooms.

12 (e) Maintained documentation of complaints and their resolution
13 for a minimum of one review cycle.

14 (f) Ensured that complainants are protected from retaliation and
15 that the identity of a complainant alleging discrimination,
16 harassment, intimidation, or bullying remains confidential, as
17 appropriate.

18 (g) Identified a responsible local educational agency officer for
19 ensuring school district or county office of education compliance
20 with the requirements of Chapter 5.3 (commencing with Section
21 4900) of Division 1 of Title 5 of the California Code of Regulations
22 and Chapter 2 (commencing with Section 200) of this part.

23 SEC. 25. Section 8483.76 of the Education Code is amended
24 to read:

25 8483.76. (a) A school that establishes a program pursuant to
26 Section 8483.7 or 8483.75 is eligible to receive a supplemental
27 grant to operate the program in excess of 180 regular schooldays
28 or during any combination of summer, intersession, or vacation
29 periods for a maximum of 30 percent of the total grant amount
30 awarded, per school year, to the school.

31 (b) An existing after school supplemental grantee may operate
32 a three-hour or a six-hour per day program, but is not eligible to
33 receive additional grant funds for the purpose of operating a
34 six-hour per day program pursuant to this section. If the grantee
35 operates a six-hour per day program, the target attendance level
36 for the purpose of grant reductions pursuant to subparagraph (A)
37 of paragraph (1) of subdivision (a) of Section 8483.7 shall be
38 computed as if the grant award were based upon the lesser of fifteen
39 dollars (\$15) per day of pupil attendance or 30 percent of the total
40 grant awarded to the school per school year. It is the intent of the

1 Legislature that a grantee who serves additional pupils by operating
2 a longer day program not receive additional funding for this
3 purpose.

4 (c) A supplemental grantee that operates a program pursuant to
5 this section may change the location of the program to address the
6 needs of pupils and school closures. The program may be
7 conducted at an offsite location or at an alternate schoolsite. The
8 supplemental grantee shall give notice to the department of the
9 change of location and shall include a plan to provide safe
10 transportation pursuant to Section 8484.6.

11 (d) A supplemental grantee that operates a program pursuant to
12 this section may open eligibility to every pupil attending a school
13 in the district. Priority for enrollment shall be given to the pupils
14 enrolled in the school that receives the grant.

15 (e) A supplemental grantee operating a six-hour per day program
16 shall provide for each needy pupil at least one nutritionally
17 adequate free or reduced-price meal during each program day.

18 (f) A supplemental grantee that operates a six-hour per day
19 program is required to submit, for prior approval by the department,
20 a revised program plan that includes all of the following:

21 (1) A plan for provision of the free or reduced-price meal
22 required by subdivision (e).

23 (2) An attendance and early release policy for the program that
24 is consistent with the local educational agency's early release
25 policy for the regular schoolday.

26 SEC. 26. Section 8499.5 of the Education Code is amended to
27 read:

28 8499.5. (a) The department shall allocate child care funding
29 pursuant to Chapter 2 (commencing with Section 8200) based on
30 the amount of state and federal funding that is available.

31 (b) By May 30 of each year, upon approval by the county board
32 of supervisors and the county superintendent of schools, a local
33 planning council shall submit to the department the local priorities
34 it has identified that reflect all child care needs in the county. To
35 accomplish this, a local planning council shall do all of the
36 following:

37 (1) Conduct an assessment of child care needs in the county no
38 less than once every five years. The department shall define and
39 prescribe data elements to be included in the needs assessment and
40 shall specify the format for the data reporting. The needs

1 assessment shall also include all factors deemed appropriate by
2 the local planning council in order to obtain an accurate picture of
3 the comprehensive child care needs in the county. The factors
4 include, but are not limited to, all of the following:

5 (A) The needs of families eligible for subsidized child care.

6 (B) The needs of families not eligible for subsidized child care.

7 (C) The waiting lists for programs funded by the department
8 and the State Department of Social Services.

9 (D) The need for child care for children determined by the child
10 protective services agency to be neglected, abused, or exploited,
11 or at risk of being neglected, abused, or exploited.

12 (E) The number of children in families receiving public
13 assistance, including CalFresh benefits, housing support, and
14 Medi-Cal, and assistance from the Healthy Families Program and
15 the Temporary Assistance for Needy Families (TANF) program.

16 (F) Family income among families with preschool or schoolage
17 children.

18 (G) The number of children in migrant agricultural families
19 who move from place to place for work or who are currently
20 dependent for their income on agricultural employment in
21 accordance with subdivision (a) of, and paragraphs (1) and (2) of
22 subdivision (b) of, Section 8231.

23 (H) The number of children who have been determined by a
24 regional center to require services pursuant to an individualized
25 family service plan, or by a local educational agency to require
26 services pursuant to an individualized education program or an
27 individualized family service plan.

28 (I) The number of children in the county by primary language
29 spoken pursuant to the department's language survey.

30 (J) Special needs based on geographic considerations, including
31 rural areas.

32 (K) The number of children needing child care services by age
33 cohort.

34 (2) Document information gathered during the needs assessment
35 which shall include, but need not be limited to, data on supply,
36 demand, cost, and market rates for each category of child care in
37 the county.

38 (3) Encourage public input in the development of the priorities.
39 Opportunities for public input shall include at least one public

1 hearing during which members of the public can comment on the
2 proposed priorities.

3 (4) Prepare a comprehensive countywide child care plan
4 designed to mobilize public and private resources to address
5 identified needs.

6 (5) Conduct a periodic review of child care programs funded
7 by the department and the State Department of Social Services to
8 determine if identified priorities are being met.

9 (6) Collaborate with subsidized and unsubsidized child care
10 providers, county welfare departments, human service agencies,
11 regional centers, job training programs, employers, integrated child
12 and family service councils, local and state children and families
13 commissions, parent organizations, early start family resource
14 centers, family empowerment centers on disability, local child care
15 resource and referral programs, and other interested parties to
16 foster partnerships designed to meet local child care needs.

17 (7) Design a system to consolidate local child care waiting lists,
18 if a centralized eligibility list is not already in existence.

19 (8) Coordinate part-day programs, including state preschool
20 and Head Start, with other child care and development services to
21 provide full-day child care.

22 (9) Submit the results of the needs assessment and the local
23 priorities identified by the local planning council to the board of
24 supervisors and the county superintendent of schools for approval
25 before submitting them to the department.

26 (10) Identify at least one, but not more than two, members to
27 serve as part of the department team that reviews and scores
28 proposals for the provision of services funded through contracts
29 with the department. Local planning council representatives may
30 not review and score proposals from the geographic area covered
31 by their own local planning council. The department shall notify
32 each local planning council whenever this opportunity is available.

33 (c) The department shall, in conjunction with the State
34 Department of Social Services and all appropriate statewide
35 agencies and associations, develop guidelines for use by local
36 planning councils to assist them in conducting needs assessments
37 that are reliable and accurate. The guidelines shall include
38 acceptable sources of demographic and child care data, and
39 methodologies for assessing child care supply and demand.

1 (d) The department shall allocate funding within each county
 2 in accordance with the priorities identified by the local planning
 3 council of that county and submitted to the department pursuant
 4 to this section, unless the priorities do not meet the requirements
 5 of state or federal law.

6 SEC. 27. Section 12000 of the Education Code is amended to
 7 read:

8 12000. (a) If, by any act of Congress, funds are provided as
 9 federal aid to education to the several states and the disposition of
 10 the funds is not otherwise provided for by or under the act of
 11 Congress or by or under any law of this state, the apportionment
 12 and distribution of those funds to school districts shall, insofar as
 13 consistent with the requirements prescribed by the federal law and
 14 implementing rules and regulations, be governed by the standards
 15 set forth in this article.

16 (b) If a federal law designates a state educational agency or
 17 other agency or officer primarily responsible for state supervision
 18 of public schools, that designation shall be deemed to refer to the
 19 state board. The state board shall make timely application for any
 20 federal funds made available, and shall, pursuant to the federal
 21 law and this article, direct the allocation and apportionment of the
 22 federal funds to school districts.

23 (c) For purposes of this section and Section 12001, “school
 24 districts” includes school districts, county offices of education,
 25 and other educational agencies or entities deemed eligible pursuant
 26 to state and federal law.

27 SEC. 28. Section 12001 of the Education Code is amended to
 28 read:

29 12001. The state board shall adopt rules and regulations for
 30 the allocation of federal funds to school districts entitled to receive
 31 federal funds for the support of schools. In determining the rules
 32 and regulations by which those allocations are to be made, the
 33 state board shall consider all factors of local effort and all
 34 educational programs maintained by those school districts. The
 35 rules and regulations adopted pursuant to this section shall be based
 36 upon need, and the state board shall carefully scrutinize the abilities
 37 and efforts of the affected school districts.

38 SEC. 29. Section 41202 of the Education Code is amended to
 39 read:

1 41202. The words and phrases set forth in subdivision (b) of
2 Section 8 of Article XVI of the California Constitution shall have
3 the following meanings:

4 (a) “Moneys to be applied by the State,” as used in subdivision
5 (b) of Section 8 of Article XVI of the California Constitution,
6 means appropriations from the General Fund that are made for
7 allocation to school districts, as defined, or community college
8 districts. An appropriation that is withheld, impounded, or made
9 without provisions for its allocation to school districts or
10 community college districts, shall not be considered to be “moneys
11 to be applied by the State.”

12 (b) “General Fund revenues which may be appropriated pursuant
13 to Article XIII B,” as used in paragraph (1) of subdivision (b) of
14 Section 8 of Article XVI of the California Constitution, means
15 General Fund revenues that are the proceeds of taxes as defined
16 by subdivision (c) of Section 8 of Article XIII B of the California
17 Constitution, including, for the 1986–87 fiscal year only, any
18 revenues that are determined to be in excess of the appropriations
19 limit established pursuant to Article XIII B of the California
20 Constitution for the fiscal year in which they are received. General
21 Fund revenues for a fiscal year to which paragraph (1) of
22 subdivision (b) of Section 8 of Article XVI of the California
23 Constitution is being applied shall include, in that computation,
24 only General Fund revenues for that fiscal year that are the
25 proceeds of taxes, as defined in subdivision (c) of Section 8 of
26 Article XIII B of the California Constitution, and shall not include
27 prior fiscal year revenues. Commencing with the 1995–96 fiscal
28 year, and each fiscal year thereafter, “General Fund revenues that
29 are the proceeds of taxes,” as defined in subdivision (c) of Section
30 8 of Article XIII B of the California Constitution, includes any
31 portion of the proceeds of taxes received from the state sales tax
32 that are transferred to the counties pursuant to, and only if,
33 legislation is enacted during the 1995–96 fiscal year the purpose
34 of which is to realign children’s programs. The amount of the
35 proceeds of taxes shall be computed for any fiscal year in a manner
36 consistent with the manner in which the amount of the proceeds
37 of taxes was computed by the Department of Finance for purposes
38 of the Governor’s Budget for the Budget Act of 1986.

39 (c) “General Fund revenues appropriated for school districts,”
40 as used in paragraph (1) of subdivision (b) of Section 8 of Article

1 XVI of the California Constitution, means the sum of
2 appropriations made that are for allocation to school districts, as
3 defined in Section 41302.5, regardless of whether those
4 appropriations were made from the General Fund to the
5 Superintendent, to the Controller, or to any other fund or state
6 agency for the purpose of allocation to school districts. The full
7 amount of any appropriation shall be included in the calculation
8 of the percentage required by paragraph (1) of subdivision (b) of
9 Section 8 of Article XVI of the California Constitution, without
10 regard to any unexpended balance of any appropriation. Any
11 reappropriation of funds appropriated in any prior year shall not
12 be included in the sum of appropriations.

13 (d) “General Fund revenues appropriated for community college
14 districts,” as used in paragraph (1) of subdivision (b) of Section 8
15 of Article XVI of the California Constitution, means the sum of
16 appropriations made that are for allocation to community college
17 districts, regardless of whether those appropriations were made
18 from the General Fund to the Controller, to the Chancellor of the
19 California Community Colleges, or to any other fund or state
20 agency for the purpose of allocation to community college districts.
21 The full amount of any appropriation shall be included in the
22 calculation of the percentage required by paragraph (1) of
23 subdivision (b) of Section 8 of Article XVI of the California
24 Constitution, without regard to any unexpended balance of any
25 appropriation. Any reappropriation of funds appropriated in any
26 prior year shall not be included in the sum of appropriations.

27 (e) “Total allocations to school districts and community college
28 districts from General Fund proceeds of taxes appropriated pursuant
29 to Article XIII B,” as used in paragraph (2) or (3) of subdivision
30 (b) of Section 8 of Article XVI of the California Constitution,
31 means the sum of appropriations made that are for allocation to
32 school districts, as defined in Section 41302.5, and community
33 college districts, regardless of whether those appropriations were
34 made from the General Fund to the Controller, to the
35 Superintendent, to the Chancellor of the California Community
36 Colleges, or to any other fund or state agency for the purpose of
37 allocation to school districts and community college districts. The
38 full amount of any appropriation shall be included in the calculation
39 of the percentage required by paragraph (2) or (3) of subdivision
40 (b) of Section 8 of Article XVI of the California Constitution,

1 without regard to any unexpended balance of any appropriation.
2 Any reappropriation of funds appropriated in any prior year shall
3 not be included in the sum of appropriations.

4 (f) “General Fund revenues appropriated for school districts
5 and community college districts, respectively” and “moneys to be
6 applied by the state for the support of school districts and
7 community college districts,” as used in Section 8 of Article XVI
8 of the California Constitution, shall include funds appropriated for
9 part-day California state preschool programs under Article 7
10 (commencing with Section 8235) of Chapter 2 of Part 6 of Division
11 1 of Title 1, and the After School Education and Safety Program
12 established pursuant to Article 22.5 (commencing with Section
13 8482) of Chapter 2 of Part 6 of Division 1 of Title 1, and shall not
14 include any of the following:

15 (1) Any appropriation that is not made for allocation to a school
16 district, as defined in Section 41302.5, or to a community college
17 district, regardless of whether the appropriation is made for any
18 purpose that may be considered to be for the benefit to a school
19 district, as defined in Section 41302.5, or a community college
20 district. This paragraph shall not be construed to exclude any
21 funding appropriated for part-day California state preschool
22 programs under Article 7 (commencing with Section 8235) of
23 Chapter 2 of Part 6 of Division 1 of Title 1 or the After School
24 Education and Safety Program established pursuant to Article 22.5
25 (commencing with Section 8482) of Chapter 2 of Part 6 of Division
26 1 of Title 1.

27 (2) Any appropriation made to the Teachers’ Retirement Fund
28 or to the Public Employees’ Retirement Fund except those
29 appropriations for reimbursable state mandates imposed on or
30 before January 1, 1988.

31 (3) Any appropriation made to service any public debt approved
32 by the voters of this state.

33 (4) With the exception of the programs identified in paragraph
34 (1), commencing with the 2011–12 fiscal year, any funds
35 appropriated for the Child Care and Development Services Act,
36 pursuant to Chapter 2 (commencing with Section 8200) of Part 6
37 of Division 1 of Title 1.

38 (g) “Allocated local proceeds of taxes,” as used in paragraph
39 (2) or (3) of subdivision (b) of Section 8 of Article XVI of the
40 California Constitution, means, for school districts as defined,

1 those local revenues, except revenues identified pursuant to
2 paragraph (5) of subdivision (h) of Section 42238, that are used
3 to offset state aid for school districts in calculations performed
4 pursuant to Sections 2558 and 42238, and Chapter 7.2
5 (commencing with Section 56836) of Part 30 of Division 4 of Title
6 2.

7 (h) “Allocated local proceeds of taxes,” as used in paragraph
8 (2) or (3) of subdivision (b) of Section 8 of Article XVI of the
9 California Constitution, means, for community college districts,
10 those local revenues that are used to offset state aid for community
11 college districts in calculations performed pursuant to Section
12 84751. In no event shall the revenues or receipts derived from
13 student fees be considered “allocated local proceeds of taxes.”

14 (i) For purposes of calculating the 4-percent entitlement pursuant
15 to subdivision (a) of Section 8.5 of Article XVI of the California
16 Constitution, “the total amount required pursuant to Section 8(b)”
17 shall mean the General Fund aid required for schools pursuant to
18 subdivision (b) of Section 8 of Article XVI of the California
19 Constitution, and shall not include allocated local proceeds of
20 taxes.

21 (j) This section shall become operative on July 1, 2011.

22 SEC. 30. Section 41202.5 of the Education Code is amended
23 to read:

24 41202.5. (a) The Legislature finds and declares as follows:

25 (1) The Legislature acted to implement Proposition 98 soon
26 after its passage by defining “total allocations to school districts
27 and community college districts from General Fund proceeds of
28 taxes” to include the entirety of programs funded under the Child
29 Care and Development Services Act (Chapter 2 (commencing with
30 Section 8200) of Part 6 of Division 1 of Title 1).

31 (2) In California Teachers Assn. v. Hayes (1992) 5 Cal.App.4th
32 1513, the Court of Appeal permitted the inclusion of child care
33 within the Proposition 98 minimum funding guarantee but left
34 open the possibility of excluding particular child care programs
35 that did not directly advance and support the educational mission
36 of school districts.

37 (b) It is the intent of the Legislature to clarify that the part-time
38 state preschool programs and the After School Education and
39 Safety Program fall within the Proposition 98 guarantee and to
40 fund other child care programs less directly associated with school

1 districts from appropriations that do not count toward the
2 Proposition 98 minimum guarantee.

3 (c) Notwithstanding any other provision of law, for purposes
4 of making the computations required by subdivision (b) of Section
5 8 of Article XVI of the California Constitution in the 2011–12
6 fiscal year and each subsequent fiscal year, both of the following
7 apply:

8 (1) For purposes of paragraph (1) of subdivision (b) of Section
9 8 of Article XVI of the California Constitution, “General Fund
10 revenues appropriated for school districts and community college
11 districts, respectively, in fiscal year 1986–87” does not include
12 General Fund revenues appropriated for any program within
13 Chapter 2 (commencing with Section 8200) of Part 6 of Division
14 1 of Title 1, with the exception of the part-day California state
15 preschool programs set forth in Article 7 (commencing with
16 Section 8235) and the After School Education and Safety Program
17 in Article 22.5 (commencing with Section 8482). The Director of
18 Finance shall adjust accordingly “the percentage of General Fund
19 revenues appropriated for school districts and community college
20 districts, respectively, in fiscal year 1986–87,” for purposes of
21 applying that percentage in the 2011–12 fiscal year and each
22 subsequent fiscal year in making the calculations required under
23 paragraph (1) of subdivision (b) of Section 8 of Article XVI of the
24 California Constitution.

25 (2) General Fund revenues appropriated in the 2010–11 fiscal
26 year or any subsequent fiscal year for any program within Chapter
27 2 (commencing with Section 8200) of Part 6 of Division 1 of Title
28 1, with the exception of the part-day California state preschool
29 programs set forth in Article 7 (commencing with Section 8235)
30 and the After School Education and Safety Program in Article 22.5
31 (commencing with Section 8482), are not included within the “total
32 allocations to school districts and community college districts from
33 General Fund proceeds of taxes appropriated pursuant to Article
34 XIII B” for purposes of paragraph (2) or (3) of subdivision (b) of
35 Section 8 of Article XVI of the California Constitution.

36 SEC. 31. Section 42251 of the Education Code is amended to
37 read:

38 42251. (a) The Superintendent shall make the following
39 calculations for the 2011–12 fiscal year:

1 (1) Determine the amount of funds that will be restricted after
2 the Superintendent makes the deduction pursuant to Section
3 52335.3 for each county office of education pursuant to subdivision
4 (e) of Section 2558 as of June 30, 2012.

5 (2) Divide fifty million dollars (\$50,000,000) by the statewide
6 sum of the amounts determined pursuant to paragraph (1). If the
7 fraction is greater than one it shall be deemed to be one.

8 (3) Multiply the fraction determined pursuant to paragraph (2)
9 by the amount determined pursuant to paragraph (1) for each
10 county office of education.

11 (b) The auditor-controller of each county shall distribute the
12 amounts determined in paragraph (3) of subdivision (a) to the
13 Supplemental Revenue Augmentation Fund created within the
14 county pursuant to Section 100.06 of the Revenue and Taxation
15 Code. The aggregate amount of transfers required by this
16 subdivision shall be made in two equal shares, with the first share
17 being transferred no later than January 15, 2012, and the second
18 share being transferred after that date but no later than May 1,
19 2012.

20 (c) The moneys transferred to the Supplemental Revenue
21 Augmentation Fund in the 2011–12 fiscal year shall be transferred
22 by the county office of education to the Controller, in amounts and
23 for those purposes as directed by the Director of Finance,
24 exclusively to reimburse the state for the costs of providing trial
25 court services and costs until those moneys are exhausted.

26 SEC. 32. Section 42605 of the Education Code is amended to
27 read:

28 42605. (a) (1) Unless otherwise prohibited under federal law
29 or otherwise specified in subdivision (e), for the 2008–09 fiscal
30 year to the 2014–15 fiscal year, inclusive, recipients of funds from
31 the items listed in paragraph (2) may use funding received, pursuant
32 to subdivision (b), from any of these items listed in paragraph (2)
33 that are contained in Section 2.00 of the annual Budget Act, for
34 any educational purpose.

35 (2) Items 6110-104-0001, 6110-105-0001, 6110-108-0001,
36 6110-122-0001, 6110-124-0001, 6110-137-0001, 6110-144-0001,
37 6110-150-0001, 6110-151-0001, 6110-156-0001, 6110-181-0001,
38 6110-188-0001, 6110-189-0001, 6110-190-0001, 6110-193-0001,
39 6110-195-0001, 6110-198-0001, 6110-204-0001, 6110-208-0001,
40 6110-209-0001, 6110-211-0001, 6110-227-0001, 6110-228-0001,

1 6110-232-0001, 6110-240-0001, 6110-242-0001, 6110-243-0001,
2 6110-244-0001, 6110-245-0001, 6110-246-0001, 6110-247-0001,
3 6110-248-0001, 6110-260-0001, 6110-265-0001, 6110-266-0001,
4 6110-267-0001, 6110-268-0001, and 6360-101-0001 of Section
5 2.00.

6 (b) (1) For the 2009–10 fiscal year to the 2014–15 fiscal year,
7 inclusive, the Superintendent or other administering state agency,
8 as appropriate, shall apportion from the amounts provided in the
9 annual Budget Act for the items enumerated in paragraph (2) of
10 subdivision (a) an amount to recipients based on the same relative
11 proportion that the recipient received in the 2008–09 fiscal year
12 for the programs funded through the items enumerated in paragraph
13 (2) of subdivision (a).

14 (2) This section and Section 42 of Chapter 12 of the Third
15 Extraordinary Session of the Statutes of 2009 do not authorize a
16 school district that receives funding on behalf of a charter school
17 pursuant to Sections 47634.1 and 47651 to redirect this funding
18 for another purpose unless otherwise authorized in law or pursuant
19 to an agreement between a charter school and its chartering
20 authority. Notwithstanding paragraph (1), for the 2008–09 fiscal
21 year to the 2014–15 fiscal year, inclusive, a school district that
22 receives funding on behalf of a charter school pursuant to Sections
23 47634.1 and 47651 shall continue to distribute the funds to those
24 charter schools based on the relative proportion that the school
25 district distributed in the 2007–08 fiscal year, and shall adjust those
26 amounts to reflect changes in charter school attendance in the
27 district. The amounts allocated shall be adjusted for any greater
28 or lesser amount appropriated for the items enumerated in
29 paragraph (2) of subdivision (a). For a charter school that began
30 operation in the 2008–09 fiscal year, if a school district received
31 funding on behalf of that charter school pursuant to Sections
32 47634.1 and 47651, the school district shall continue to distribute
33 the funds to that charter school based on the relative proportion
34 that the school district distributed in the 2008–09 fiscal year and
35 shall adjust the amount of those funds to reflect changes in charter
36 school attendance in the district. The amounts allocated shall be
37 adjusted for any greater or lesser amount appropriated for the items
38 enumerated in paragraph (2) of subdivision (a).

39 (3) Notwithstanding paragraph (1), for the 2008–09 fiscal year
40 to the 2014–15 fiscal year, inclusive, the Superintendent shall

1 apportion from the amounts appropriated by Item 6110-211-0001
2 of Section 2.00 of the annual Budget Act an amount to a charter
3 school in accordance with the per-pupil methodology prescribed
4 in subdivision (c) of Section 47634.1.

5 (4) Notwithstanding paragraph (1), for the 2008–09 fiscal year
6 to the 2014–15 fiscal year, inclusive, the Superintendent shall
7 apportion from the amounts provided in the annual Budget Act an
8 amount to a school district, charter school, and county office of
9 education based on the same relative proportion that the local
10 educational agency received in the 2007–08 fiscal year for the
11 programs funded through the following items contained in Section
12 2.00 of the annual Budget Act: 6110-104-0001, 6110-105-0001,
13 6110-156-0001, 6110-190-0001, Schedule (3) of 6110-193-0001,
14 6110-198-0001, 6110-232-0001, and Schedule (2) of
15 6110-240-0001.

16 (5) For purposes of paragraph (4), if a direct-funded charter
17 school began operation in the 2008–09 fiscal year, the amount that
18 the charter school was entitled to receive from the items
19 enumerated in paragraph (4) for the 2008–09 fiscal year, as certified
20 by the Superintendent in March 2009, is deemed to have been
21 received in the 2007–08 fiscal year.

22 (c) (1) This section does not obligate the state to refund or repay
23 reductions made pursuant to this section. A decision by a school
24 district to reduce funding pursuant to this section for a
25 state-mandated local program shall constitute a waiver of the
26 subvention of funds that the school district is otherwise entitled to
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution on the amount so reduced.

29 (2) (A) As a condition of receipt of funds, the governing board
30 of the school district or governing board of the county office of
31 education, as appropriate, at a regularly scheduled open public
32 hearing shall take testimony from the public, discuss, approve or
33 disapprove the proposed use of funding, and make explicit for each
34 of the budget items in paragraph (2) of subdivision (a) the purposes
35 for which the funds will be used.

36 (B) The regularly scheduled open public hearing held pursuant
37 to subparagraph (A) shall be held prior to and independent of a
38 meeting where the governing board of the school district or
39 governing board of the county office of education adopts a budget.
40 If the governing board intends to close a program funded by the

1 items listed in paragraph (2) of subdivision (a), the governing board
2 shall identify, in the notice of the agenda of the public hearing or
3 at another public hearing, the program or programs proposed to
4 be closed.

5 (3) Using the Standardized Account Code Structure reporting
6 process, a local educational agency shall report expenditures of
7 funds pursuant to the authority of this section by using the
8 appropriate function codes to indicate the activities for which these
9 funds are expended. The department shall collect and provide this
10 information to the Department of Finance and the appropriate
11 policy and budget committees of the Legislature by April 15, 2010,
12 and annually thereafter on April 15 until, and including, April 15,
13 2016.

14 (d) For the 2008–09 fiscal year to the 2014–15 fiscal year,
15 inclusive, local educational agencies that use the flexibility
16 provision of this section shall be deemed to be in compliance with
17 the program and funding requirements contained in statutory,
18 regulatory, and provisional language, associated with the items
19 enumerated in subdivision (a).

20 (e) Notwithstanding subdivision (d), the following requirements
21 shall continue to apply:

22 (1) For Item 6110-105-0001 of Section 2.00 of the annual
23 Budget Act, the amount authorized for flexibility shall exclude the
24 funding provided to fund remedial educational services pursuant
25 to Provision 4. For Item 6110-156-0001 of Section 2.00 of the
26 annual Budget Act, the amount authorized for flexibility shall
27 exclude the funding provided for instruction of CalWORKs-eligible
28 students pursuant to Schedules (2) and (3) and Provisions 2 and
29 4.

30 (2) (A) Any instructional materials purchased by a local
31 educational agency shall be the materials adopted by the state
32 board for kindergarten and grades 1 to 8, inclusive, and for grades
33 9 to 12, inclusive, the materials purchased shall be aligned with
34 state standards as defined by Section 60605, and shall also meet
35 the reporting and sufficiency requirements contained in Section
36 60119.

37 (B) For purposes of this section, “sufficiency” means that each
38 pupil has sufficient textbooks and instructional materials in the
39 four core areas as defined by Section 60119 and that all pupils
40 within the local educational agency who are enrolled in the same

1 course shall have identical textbooks and instructional materials,
2 as specified in Section 1240.3.

3 (3) For Item 6110-195-0001 of Section 2.00 of the annual
4 Budget Act, the item shall exclude moneys that are required to
5 fund awards for teachers that have previously met the requirements
6 necessary to obtain these awards, until the award is paid in full.

7 (4) For Item 6110-266-0001 of Section 2.00 of the annual
8 Budget Act, a county office of education shall conduct at least one
9 site visit to each of the required schoolsites pursuant to Section
10 1240 and shall fulfill all of the duties set forth in Sections 1240
11 and 44258.9.

12 (5) For Item 6110-198-0001 of Section 2.00 of the annual
13 Budget Act, a school district or county office of education that
14 operates the child care component of the Cal-SAFE program shall
15 comply with paragraphs (5) and (6) of subdivision (c) of Section
16 54746.

17 (f) This section does not invalidate any state law pertaining to
18 teacher credentialing requirements or the functions that require
19 credentials.

20 SEC. 33. Section 48204.1 of the Education Code is amended
21 to read:

22 48204.1. (a) A school district shall accept from the parent or
23 legal guardian of a pupil reasonable evidence that the pupil meets
24 the residency requirements for school attendance in the school
25 district as set forth in Sections 48200 and 48204. Reasonable
26 evidence of residency for a pupil living with his or her parent or
27 legal guardian shall be established by documentation showing the
28 name and address of the parent or legal guardian within the school
29 district, including, but not limited to, any of the following
30 documentation:

- 31 (1) Property tax payment receipts.
- 32 (2) Rental property contract, lease, or payment receipts.
- 33 (3) Utility service contract, statement, or payment receipts.
- 34 (4) Pay stubs.
- 35 (5) Voter registration.
- 36 (6) Correspondence from a government agency.
- 37 (7) Declaration of residency executed by the parent or legal
38 guardian of a pupil.

39 (b) Nothing in this section shall be construed to require a parent
40 or legal guardian of a pupil to show all of the items of

1 documentation listed in paragraphs (1) to (7), inclusive, of
2 subdivision (a).

3 (c) If an employee of a school district reasonably believes that
4 the parent or legal guardian of a pupil has provided false or
5 unreliable evidence of residency, the school district may make
6 reasonable efforts to determine that the pupil actually meets the
7 residency requirements set forth in Sections 48200 and 48204.

8 (d) Nothing in this section shall be construed as limiting access
9 to pupil enrollment in a school district as otherwise provided by
10 federal and state statutes and regulations. This includes immediate
11 enrollment and attendance guaranteed to a homeless child or youth,
12 as defined in Section 11434a(2) of the federal McKinney-Vento
13 Homeless Assistance Act (42 U.S.C. Sec. 11434a(2) et seq.),
14 without any proof of residency or other documentation.

15 (e) Consistent with Section 11432(g) of the federal
16 McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301
17 et seq.), proof of residency of a parent within a school district shall
18 not be required for an unaccompanied youth, as defined in Section
19 11434a(6) of Title 42 of the United States Code. A school district
20 shall accept a declaration of residency executed by the
21 unaccompanied youth in lieu of a declaration of residency executed
22 by his or her parent or legal guardian.

23 SEC. 34. Section 49061 of the Education Code is amended to
24 read:

25 49061. As used in this chapter:

26 (a) “Parent” means a natural parent, an adopted parent, or legal
27 guardian. If the parents are divorced or legally separated, only a
28 parent having legal custody of the pupil may challenge the content
29 of a record pursuant to Section 49070, offer a written response to
30 a record pursuant to Section 49072, or consent to release records
31 to others pursuant to Section 49075. Either parent may grant
32 consent if both parents have notified, in writing, the school or
33 school district that an agreement has been made. If a pupil has
34 attained the age of 18 years or is attending an institution of
35 postsecondary education, the permission or consent required of,
36 and the rights accorded to, the parents or guardian of the pupil
37 shall thereafter only be required of, and accorded to, the pupil.

38 (b) “Pupil record” means any item of information directly related
39 to an identifiable pupil, other than directory information, that is
40 maintained by a school district or required to be maintained by an

1 employee in the performance of his or her duties whether recorded
2 by handwriting, print, tapes, film, microfilm, or other means.

3 “Pupil record” does not include informal notes related to a pupil
4 compiled by a school officer or employee that remain in the sole
5 possession of the maker and are not accessible or revealed to any
6 other person except a substitute. For purposes of this subdivision,
7 “substitute” means a person who performs the duties of the
8 individual who made the notes on a temporary basis, and does not
9 refer to a person who permanently succeeds the maker of the notes
10 in his or her position.

11 (c) “Directory information” means one or more of the following
12 items: pupil’s name, address, telephone number, date of birth,
13 email address, major field of study, participation in officially
14 recognized activities and sports, weight and height of members of
15 athletic teams, dates of attendance, degrees and awards received,
16 and the most recent previous public or private school attended by
17 the pupil.

18 (d) “School district” means any school district maintaining any
19 kindergarten or any of grades 1 to 12, inclusive, any public school
20 providing instruction in any kindergarten or any of grades 1 to 12,
21 inclusive, the office of the county superintendent of schools, or
22 any special school operated by the department.

23 (e) “Access” means a personal inspection and review of a record
24 or an accurate copy of a record, or receipt of an accurate copy of
25 a record, an oral description or communication of a record or an
26 accurate copy of a record, and a request to release a copy of any
27 record.

28 (f) “County placing agency” means the county social service
29 department or county probation department.

30 SEC. 35. Section 51500 of the Education Code is amended to
31 read:

32 51500. A teacher shall not give instruction and a school district
33 shall not sponsor any activity that promotes a discriminatory bias
34 on the basis of race or ethnicity, gender, religion, disability,
35 nationality, or sexual orientation, or because of a characteristic
36 listed in Section 220.

37 SEC. 36. Section 51501 of the Education Code is amended to
38 read:

39 51501. The state board and any governing board shall not adopt
40 any textbooks or other instructional materials for use in the public

1 schools that contain any matter reflecting adversely upon persons
2 on the basis of race or ethnicity, gender, religion, disability,
3 nationality, or sexual orientation, or because of a characteristic
4 listed in Section 220.

5 SEC. 37. Section 54699 of the Education Code is amended to
6 read:

7 54699. (a) (1) The Controller shall annually allocate the sum
8 of eight million dollars (\$8,000,000) from the Renewable Resource
9 Trust Fund established pursuant to Section 25751 of the Public
10 Resources Code or other related fund, upon appropriation by the
11 Legislature, to the Superintendent for expenditure in the form of
12 grants to school districts, that shall be allocated using the same
13 criteria as provided in Article 5 (commencing with Section 54690),
14 except as provided in subdivision (b) of Section 54691, and
15 pursuant to the additional requirements of this article.

16 (2) If sufficient funds are not available to fully meet the funding
17 requirement of paragraph (1), for the 2010–11, 2011–12, and
18 2012–13 fiscal years, the Controller shall allocate the balance of
19 funds required to meet the funding requirement from the
20 Alternative and Renewable Fuel and Vehicle Technology Fund
21 established pursuant to Section 44273 of the Health and Safety
22 Code, upon appropriation by the Legislature, for expenditure in
23 the form of grants to school districts, that shall be allocated using
24 the same criteria as provided in Article 5 (commencing with
25 Section 54690), except as provided in subdivision (b) of Section
26 54691, and pursuant to the additional requirements of this article.

27 (b) The Superintendent shall award grants pursuant to this article
28 to school districts that do all of the following:

29 (1) Meet the requirements specified in Article 5 (commencing
30 with Section 54690).

31 (2) Propose to implement a partnership academy, or to maintain
32 an existing academy, that focuses on employment in clean
33 technology businesses or renewable energy businesses and provides
34 skilled workforces for the products and services for energy or water
35 conservation, or both, renewable energy, pollution reduction, or
36 other technologies that improve the environment in furtherance of
37 state environmental laws.

38 (c) The Superintendent shall review grant applications submitted
39 by school districts in consultation with the State Energy Resources
40 Conservation and Development Commission.

1 (d) The Superintendent, in consultation with the State Energy
2 Resources Conservation and Development Commission, shall
3 review ongoing programs to ensure that those programs comply
4 with subdivision (b).

5 (e) (1) No later than 60 days after the effective date of this
6 article, and prior to the department issuing a request for grant
7 applications, the State Energy Resources Conservation and
8 Development Commission, in consultation with the Superintendent,
9 shall adopt guidelines to ensure that programs receiving grants
10 reflect current state energy policies and priorities as well as provide
11 skills and education linked to the needs of relevant industries.

12 (2) Notwithstanding any other law, any guideline adopted
13 pursuant to this section shall be exempt from the requirements of
14 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
15 3 of Title 2 of the Government Code.

16 (f) (1) The Superintendent shall give priority for grants pursuant
17 to this article according to the following:

18 (A) First, to school districts that propose to establish partnership
19 academies that are consistent with the guidelines developed by the
20 State Energy Resources Conservation and Development
21 Commission pursuant to subdivision (e).

22 (B) Second, to school districts that propose to establish a
23 partnership academy at schoolsites that do not currently participate
24 in the partnership academies program pursuant to Article 5
25 (commencing with Section 54690).

26 (C) Third, to school districts that would establish a partnership
27 academy at schoolsites that do not currently participate in the green
28 partnership academies program funded pursuant to Section 32 of
29 Chapter 757 of the Statutes of 2008.

30 (2) Notwithstanding subparagraphs (B) and (C) of paragraph
31 (1), the Superintendent may assign a higher priority to a school
32 district that has received a grant pursuant to the green partnership
33 academies program funded pursuant to Section 32 of Chapter 757
34 of the Statutes of 2008, subject to subdivision (d).

35 (3) The Superintendent shall award grants to a school district
36 to establish or operate a partnership academy pursuant to this article
37 in the following amounts:

38 (A) A district operating a partnership academy may receive one
39 thousand dollars (\$1,000) per year for each qualified student
40 enrolled in grade 9 in an academy during the first year of that

1 academy's operation, except that no more than forty-five thousand
2 dollars (\$45,000) may be granted to any one academy for the initial
3 year.

4 (B) A district operating a partnership academy may receive one
5 thousand dollars (\$1,000) per year for each qualified student
6 enrolled in either grade 9 or 10 in an academy during the second
7 year of that academy's operation, except that no more than eighty
8 thousand dollars (\$80,000) may be granted to any one academy
9 for the second year.

10 (C) A district operating a partnership academy may receive one
11 thousand dollars (\$1,000) for each qualified student enrolled in
12 any of grades 9 to 11, inclusive, in an academy during the third
13 year of that academy's operation, except that no more than one
14 hundred twenty thousand dollars (\$120,000) may be granted to
15 any one academy for the third year.

16 (D) A district operating a partnership academy may receive one
17 thousand dollars (\$1,000) for each qualified student enrolled in
18 any of grades 9 to 12, inclusive, in an academy during the fourth
19 and following years of that academy's operation, except that no
20 more than one hundred fifty thousand dollars (\$150,000) may be
21 granted to any one academy for each fiscal year.

22 (4) For purposes of this section, "qualified student" has the same
23 meaning as described in subdivision (c) of Section 54691, but shall
24 also include a 9th grade pupil who meets the at-risk criteria
25 specified in Section 54690, who is enrolled in an academy for the
26 9th grade, obtains 90 percent of the credits each academic year in
27 courses that are required for graduation, and successfully completes
28 a school year during the 9th grade with an attendance record of
29 not less than 80 percent.

30 (g) The Superintendent shall encourage a school district that
31 receives a grant under this article to work and coordinate with
32 regional occupational centers and programs for the required career
33 technical education sequence of courses.

34 (h) A school district may apply for planning grants, in
35 accordance with subdivision (a) of Section 54691, for
36 implementing a partnership academy pursuant to this article.

37 (i) Commencing in 2014 and not later than January 1 of each
38 year for which this article is operative, the Superintendent, in
39 consultation with the State Energy Resources Conservation and
40 Development Commission, shall provide a report to the Legislature

1 that includes, but is not limited to, a description of the curriculum
 2 and substance of the programs funded by grants awarded pursuant
 3 to this article. The first annual report shall include the identification
 4 of gaps in available curricula relating to clean technology and
 5 renewable energy that are consistent with current state energy
 6 policy and priorities, as well as the proportion of participating
 7 pupils who meet the at-risk criteria enumerated in subdivision (d)
 8 of Section 54690. The report also shall include pupil participation
 9 data and data collected pursuant to subdivision (d) of Section
 10 54691.

11 (j) Up to 5 percent of the funds transferred to the Superintendent
 12 pursuant to this article may be expended to pay the costs incurred
 13 in the administration of this article.

14 SEC. 38. Section 60044 of the Education Code is amended to
 15 read:

16 60044. A governing board shall not adopt any instructional
 17 materials for use in the schools that, in its determination, contain:

18 (a) Any matter reflecting adversely upon persons on the basis
 19 of race or ethnicity, gender, religion, disability, nationality, or
 20 sexual orientation, occupation, or because of a characteristic listed
 21 in Section 220.

22 (b) Any sectarian or denominational doctrine or propaganda
 23 contrary to law.

24 SEC. 39. Section 69508.5 of the Education Code is amended
 25 to read:

26 69508.5. (a) Notwithstanding any other law, and except as
 27 provided for in subdivision (c), a student who meets the
 28 requirements of subdivision (a) of Section 68130.5, or who meets
 29 equivalent requirements adopted by the Regents of the University
 30 of California, is eligible to apply for, and participate in, any student
 31 financial aid program administered by the State of California to
 32 the full extent permitted by federal law. The Legislature finds and
 33 declares that this section is a state law within the meaning of
 34 Section 1621(d) of Title 8 of the United States Code.

35 (b) Notwithstanding any other law, the Student Aid Commission
 36 shall establish procedures and forms that enable students who are
 37 exempt from paying nonresident tuition under Section 68130.5,
 38 or who meet equivalent requirements adopted by the regents, to
 39 apply for, and participate in, all student financial aid programs

1 administered by the State of California to the full extent permitted
2 by federal law.

3 (c) A student who is exempt from paying nonresident tuition
4 under Section 68130.5 shall not be eligible for Competitive Cal
5 Grant A and B Awards unless funding remains available after all
6 California students not exempt pursuant to Section 68130.5 have
7 received Competitive Cal Grant A and B Awards for which they
8 are eligible.

9 (d) This section shall become operative on January 1, 2013.

10 SEC. 40. Section 71091 of the Education Code is amended to
11 read:

12 71091. (a) It is the intent of the Legislature that students
13 enrolling in the California Community Colleges system who desire
14 to apply to and enroll in another segment or in another community
15 college, or have previously enrolled in another segment, have their
16 educational records transferred electronically using transmission
17 systems and protocols that satisfy all of the following criteria:

18 (1) Are secure, are not susceptible to fraud, and protect student
19 privacy in a manner that complies with federal and state privacy
20 laws, including, but not limited to, the *federal* Family Educational
21 Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g).

22 (2) Permit expeditious review of student transcripts for purposes
23 of admissions, academic assessment, and placement.

24 (3) Reduce operational costs, such as postage, key data entry,
25 and manual uploading and downloading of student records,
26 printing, paper, and other materials.

27 (4) Minimize delays in the transmission of student transcripts
28 to accelerate and enhance student transfer.

29 (5) Permit for other technological infrastructure, such as online
30 student planners, student electronic portfolios, and other electronic
31 student services, to be compatible with this system.

32 (6) Conform to national standards and protocols for electronic
33 transcript transmission.

34 (7) Have the capability of receiving and sending student
35 educational records electronically with current and future electronic
36 transcript systems developed and operated by other community
37 college districts, the State Department of Education, the California
38 State University, and the University of California.

39 (b) By January 1, 2012, the Office of the Chancellor of the
40 California Community Colleges shall implement a procedure that

1 complies with subdivision (a) to facilitate the electronic receipt
2 and transmission of student transcripts by community college
3 districts.

4 (c) Contingent upon the Office of the Chancellor's receipt of
5 new, one-time state, federal, or philanthropic funding sufficient
6 for this purpose, and, as a condition for receiving funding under
7 this section, a community college district shall implement a process
8 for the receipt and transmission of electronic student transcripts
9 that complies with subdivisions (a) and (b).

10 (d) (1) The Office of the Chancellor shall determine the
11 requirements and procedures for dispersing funds received pursuant
12 to subdivision (c) to participating community college districts.

13 (2) The Office of the Chancellor shall report to the appropriate
14 policy and fiscal committees of the Legislature, a year after funds
15 are dispersed pursuant to this section, the community colleges that
16 have adopted electronic transcripts and the remaining community
17 colleges that have yet to adopt the electronic transcript delivery
18 system.

19 (e) Any community college district that elects to implement a
20 process for the receipt and transmission of electronic student
21 transcripts pursuant to subdivision (c) may later opt out of the
22 provisions of this section in any subsequent year.

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

26 SEC. 41. Section 72699 of the Education Code is amended to
27 read:

28 72699. (a) Notwithstanding any other provision of law, and
29 except as provided for in subdivision (c), whenever an auxiliary
30 organization discloses a record it maintains that is otherwise
31 exempt from this article, this disclosure shall constitute a waiver
32 of the exemptions specified in this article.

33 (b) For purposes of this section, "auxiliary organization"
34 includes a member, agent, volunteer, or officer of the auxiliary
35 organization acting within the scope of his or her affiliation with
36 the organization.

37 (c) Subdivision (a) shall not apply to the following disclosures:

38 (1) Disclosures made to a donor or prospective donor with regard
39 to that donor's donation or prospective donation to an auxiliary
40 organization.

1 (2) Disclosures made to a volunteer or prospective volunteer
2 with respect to that volunteer's services being provided to the
3 auxiliary organization.

4 (3) Disclosures made through other legal proceedings or as
5 otherwise required by law.

6 (4) Disclosures within the scope of a disclosure required by law
7 that limits disclosure of specified writings to certain purposes.

8 (5) Disclosures described in subdivision (a) of Section 72696
9 to an auditor conducting an audit.

10 (6) Disclosures described in subdivision (a) of Section 72696
11 to a bank or similar financial institution in the course of ordinary
12 financial transactions, or in response to a request from the bank
13 or other financial institution relating to the ordinary delivery of
14 financial services.

15 SEC. 42. Section 76300 of the Education Code, as amended
16 by Section 4 of Chapter 15 of the 1st Extraordinary Session of the
17 Statutes of 2011, is amended to read:

18 76300. (a) The governing board of each community college
19 district shall charge each student a fee pursuant to this section.

20 (b) (1) The fee prescribed by this section shall be forty-six
21 dollars (\$46) per unit per semester, effective with the summer term
22 of the 2012 calendar year.

23 (2) The board of governors shall proportionately adjust the
24 amount of the fee for term lengths based upon a quarter system,
25 and also shall proportionately adjust the amount of the fee for
26 summer sessions, intersessions, and other short-term courses. In
27 making these adjustments, the board of governors may round the
28 per unit fee and the per term or per session fee to the nearest dollar.

29 (c) For the purposes of computing apportionments to community
30 college districts pursuant to Section 84750.5, the board of
31 governors shall subtract, from the total revenue owed to each
32 district, 98 percent of the revenues received by districts from
33 charging a fee pursuant to this section.

34 (d) The board of governors shall reduce apportionments by up
35 to 10 percent to any district that does not collect the fees prescribed
36 by this section.

37 (e) The fee requirement does not apply to any of the following:

38 (1) Students enrolled in the noncredit courses designated by
39 Section 84757.

1 (2) California State University or University of California
2 students enrolled in remedial classes provided by a community
3 college district on a campus of the University of California or a
4 campus of the California State University, for whom the district
5 claims an attendance apportionment pursuant to an agreement
6 between the district and the California State University or the
7 University of California.

8 (3) Students enrolled in credit contract education courses
9 pursuant to Section 78021, if the entire cost of the course, including
10 administrative costs, is paid by the public or private agency,
11 corporation, or association with which the district is contracting
12 and if these students are not included in the calculation of the
13 full-time equivalent students (FTES) of that district.

14 (f) The governing board of a community college district may
15 exempt special part-time students admitted pursuant to Section
16 76001 from the fee requirement.

17 (g) (1) The fee requirements of this section shall be waived for
18 any student who, at the time of enrollment, is a recipient of benefits
19 under the Temporary Assistance for Needy Families program, the
20 Supplemental Security Income/State Supplementary Payment
21 Program, or a general assistance program or has demonstrated
22 financial need in accordance with the methodology set forth in
23 federal law or regulation for determining the expected family
24 contribution of students seeking financial aid.

25 (2) The governing board of a community college district also
26 shall waive the fee requirements of this section for any student
27 who demonstrates eligibility according to income standards
28 established by regulations of the board of governors.

29 (3) Paragraphs (1) and (2) may be applied to a student enrolled
30 in the 2005–06 academic year if the student is exempted from
31 nonresident tuition under paragraph (3) of subdivision (a) of
32 Section 76140.

33 (h) The fee requirements of this section shall be waived for any
34 student who, at the time of enrollment, is a dependent or surviving
35 spouse who has not remarried, of any member of the California
36 National Guard who, in the line of duty and while in the active
37 service of the state, was killed, died of a disability resulting from
38 an event that occurred while in the active service of the state, or
39 is permanently disabled as a result of an event that occurred while
40 in the active service of the state. “Active service of the state,” for

1 the purposes of this subdivision, refers to a member of the
2 California National Guard activated pursuant to Section 146 of
3 the Military and Veterans Code.

4 (i) The fee requirements of this section shall be waived for any
5 student who is the surviving spouse or the child, natural or adopted,
6 of a deceased person who met all of the requirements of Section
7 68120.

8 (j) The fee requirements of this section shall be waived for any
9 student in an undergraduate program, including a student who has
10 previously graduated from another undergraduate or graduate
11 program, who is the dependent of any individual killed in the
12 September 11, 2001, terrorist attacks on the World Trade Center
13 and the Pentagon or the crash of United Airlines Flight 93 in
14 southwestern Pennsylvania, if that dependent meets the financial
15 need requirements set forth in Section 69432.7 for the Cal Grant
16 A Program and either of the following applies:

17 (1) The dependent was a resident of California on September
18 11, 2001.

19 (2) The individual killed in the attacks was a resident of
20 California on September 11, 2001.

21 (k) A determination of whether a person is a resident of
22 California on September 11, 2001, for purposes of subdivision (j)
23 shall be based on the criteria set forth in Chapter 1 (commencing
24 with Section 68000) of Part 41 of Division 5 for determining
25 nonresident and resident tuition.

26 (l) (1) “Dependent,” for purposes of subdivision (j), is a person
27 who, because of his or her relationship to an individual killed as
28 a result of injuries sustained during the terrorist attacks of
29 September 11, 2001, qualifies for compensation under the federal
30 September 11th Victim Compensation Fund of 2001 (Title IV
31 (commencing with Section 401) of Public Law 107-42).

32 (2) A dependent who is the surviving spouse of an individual
33 killed in the terrorist attacks of September 11, 2001, is entitled to
34 the waivers provided in this section until January 1, 2013.

35 (3) A dependent who is the surviving child, natural or adopted,
36 of an individual killed in the terrorist attacks of September 11,
37 2001, is entitled to the waivers under subdivision (j) until that
38 person attains 30 years of age.

39 (4) A dependent of an individual killed in the terrorist attacks
40 of September 11, 2001, who is determined to be eligible by the

1 California Victim Compensation and Government Claims Board,
2 is also entitled to the waivers provided in this section until January
3 1, 2013.

4 (m) (1) It is the intent of the Legislature that sufficient funds
5 be provided to support the provision of a fee waiver for every
6 student who demonstrates eligibility pursuant to subdivisions (g)
7 to (j), inclusive.

8 (2) From funds provided in the annual Budget Act, the board
9 of governors shall allocate to community college districts, pursuant
10 to this subdivision, an amount equal to 2 percent of the fees waived
11 pursuant to subdivisions (g) to (j), inclusive. From funds provided
12 in the annual Budget Act, the board of governors shall allocate to
13 community college districts, pursuant to this subdivision, an
14 amount equal to ninety-one cents (\$0.91) per credit unit waived
15 pursuant to subdivisions (g) to (j), inclusive. It is the intent of the
16 Legislature that funds provided pursuant to this subdivision be
17 used to support the determination of financial need and delivery
18 of student financial aid services, on the basis of the number of
19 students for whom fees are waived. It also is the intent of the
20 Legislature that the funds provided pursuant to this subdivision
21 directly offset mandated costs claimed by community college
22 districts pursuant to Commission on State Mandates consolidated
23 Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15
24 (Enrollment Fee Waivers). Funds allocated to a community college
25 district for determination of financial need and delivery of student
26 financial aid services shall supplement, and shall not supplant, the
27 level of funds allocated for the administration of student financial
28 aid programs during the 1992–93 fiscal year.

29 (n) The board of governors shall adopt regulations implementing
30 this section.

31 (o) This section shall become operative on May 1, 2012, only
32 if subdivision (b) of Section 3.94 of the Budget Act of 2011 is
33 operative.

34 SEC. 43. Section 89918 of the Education Code is amended to
35 read:

36 89918. (a) Notwithstanding any other provision of law, and
37 except as provided for in subdivision (c), whenever an auxiliary
38 organization discloses a record it maintains that is otherwise
39 exempt from this article, this disclosure shall constitute a waiver
40 of the exemptions specified in this article.

1 (b) For purposes of this section, “auxiliary organization”
2 includes a member, agent, volunteer, or officer of the auxiliary
3 organization acting within the scope of his or her affiliation with
4 the organization.

5 (c) Subdivision (a) shall not apply to the following disclosures:

6 (1) Disclosures made to a donor or prospective donor with regard
7 to that donor’s donation or prospective donation to an auxiliary
8 organization.

9 (2) Disclosures made to a volunteer or prospective volunteer
10 with respect to that volunteer’s services being provided to the
11 auxiliary organization.

12 (3) Disclosures made through other legal proceedings or as
13 otherwise required by law.

14 (4) Disclosures within the scope of a disclosure required by law
15 that limits disclosure of specified writings to certain purposes.

16 (5) Disclosures described in subdivision (a) of Section 89916
17 to an auditor conducting an audit.

18 (6) Disclosures described in subdivision (a) of Section 89916
19 to a bank or similar financial institution in the course of ordinary
20 financial transactions, or in response to a request from the bank
21 or other financial institution relating to the ordinary delivery of
22 financial services.

23 SEC. 44. Section 2168 of the Elections Code, as added by
24 Section 2 of Chapter 912 of the Statutes of 1995, is repealed.

25 SEC. 45. Section 2196 of the Elections Code is amended to
26 read:

27 2196. (a) (1) Notwithstanding any other provision of law, a
28 person who is qualified to register to vote and who has a valid
29 California driver’s license or state identification card may submit
30 an affidavit of voter registration electronically on the Internet Web
31 site of the Secretary of State.

32 (2) An affidavit submitted pursuant to this section is effective
33 upon receipt of the affidavit by the Secretary of State if the affidavit
34 is received on or before the last day to register for an election to
35 be held in the precinct of the person submitting the affidavit.

36 (3) The affiant shall affirmatively attest to the truth of the
37 information provided in the affidavit.

38 (4) For voter registration purposes, the applicant shall
39 affirmatively assent to the use of his or her signature from his or
40 her driver’s license or state identification card.

1 (5) For each electronic affidavit, the Secretary of State shall
2 obtain an electronic copy of the applicant's signature from his or
3 her driver's license or state identification card directly from the
4 Department of Motor Vehicles.

5 (6) The Secretary of State shall require a person who submits
6 an affidavit pursuant to this section to submit all of the following:

7 (A) The number from his or her California driver's license or
8 state identification card.

9 (B) His or her date of birth.

10 (C) The last four digits of his or her social security number.

11 (D) Any other information the Secretary of State deems
12 necessary to establish the identity of the affiant.

13 (7) Upon submission of an affidavit pursuant to this section, the
14 electronic voter registration system shall provide for immediate
15 verification of both of the following:

16 (A) That the applicant has a California driver's license or state
17 identification card and that the number for that driver's license or
18 identification card provided by the applicant matches the number
19 for that person's driver's license or identification card that is on
20 file with the Department of Motor Vehicles.

21 (B) That the date of birth provided by the applicant matches the
22 date of birth for that person that is on file with the Department of
23 Motor Vehicles.

24 (8) The Secretary of State shall employ security measures to
25 ensure the accuracy and integrity of voter registration affidavits
26 submitted electronically pursuant to this section.

27 (b) The Department of Motor Vehicles shall utilize the electronic
28 voter registration system required by this section to comply with
29 its duties and responsibilities as a voter registration agency pursuant
30 to the federal National Voter Registration Act of 1993 (42 U.S.C.
31 Sec. 1973gg et seq.).

32 (c) The Department of Motor Vehicles and the Secretary of
33 State shall develop a process and the infrastructure to allow the
34 electronic copy of the applicant's signature and other information
35 required under this section that is in the possession of the
36 department to be transferred to the Secretary of State and to the
37 county election management systems to allow a person who is
38 qualified to register to vote in California to register to vote under
39 this section.

1 (d) If an applicant cannot electronically submit the information
2 required pursuant to paragraph (6) of subdivision (a), he or she
3 shall nevertheless be able to complete the affidavit of voter
4 registration electronically on the Secretary of State’s Internet Web
5 site, print a hard copy of the completed affidavit, and mail or
6 deliver the hard copy of the completed affidavit to the Secretary
7 of State or the appropriate county elections official.

8 (e) This chapter shall become operative upon the date that either
9 of the following occurs:

10 (1) The Secretary of State certifies that the state has a statewide
11 voter registration database that complies with the requirements of
12 the federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301
13 et seq.).

14 (2) The Secretary of State executes a declaration stating that all
15 of the following conditions have occurred:

16 (A) The United States Election Assistance Commission has
17 approved the use of the federal Help America Vote Act of 2002
18 (42 U.S.C. Sec. 15301) funding to provide online voter registration
19 in advance of the deployment of the statewide voter registration
20 database or other federal funding is available and approved for the
21 same purpose.

22 (B) The Department of Motor Vehicles and the Secretary of
23 State have developed a process and the infrastructure necessary
24 to implement paragraph (5) of subdivision (a).

25 (C) All county election management systems have been modified
26 to receive and store electronic voter registration information
27 received from the Secretary of State in order to allow a person
28 who is qualified to register to vote in California to register to vote
29 under this section.

30 (f) For purposes of implementing this chapter as expeditiously
31 as possible, if it becomes operative pursuant to paragraph (2) of
32 subdivision (e), the Secretary of State’s office shall be exempt
33 from information technology requirements included in Sections
34 11545, 11546, and 11547 of the Government Code and Section
35 12100 of the Public Contract Code, and from information
36 technology project and funding approvals included in any other
37 provision of law.

38 SEC. 46. Section 3206 of the Elections Code is amended to
39 read:

1 3206. A voter whose name appears on the permanent vote by
2 mail voter list shall remain on the list and shall be mailed a vote
3 by mail ballot for each election conducted within the precinct in
4 which he or she is eligible to vote. If the voter fails to return an
5 executed vote by mail ballot in four consecutive statewide general
6 elections in accordance with Section 3017, the voter's name shall
7 be deleted from the list.

8 SEC. 47. Section 18106 of the Elections Code is amended to
9 read:

10 18106. Every person is punishable by imprisonment pursuant
11 to subdivision (h) of Section 1170 of the Penal Code for 16 months
12 or two or three years, or in a county jail for not more than one year
13 who, without the specific consent of the affiant, willfully and with
14 the intent to affect the affiant's voting rights, causes, procures, or
15 allows the completion, alteration, or defacement of the affiant's
16 party affiliation declaration contained in an executed, or partially
17 executed, affidavit of registration pursuant to paragraph (8) of
18 subdivision (a) of Section 2150 and Section 2151.

19 This section shall not apply to a county elections official carrying
20 out his or her official duties.

21 SEC. 48. Section 9213 of the Family Code is amended and
22 renumbered to read:

23 9321.5. (a) Notwithstanding Section 9321, a person who is a
24 resident of this state may file a petition for adult adoption with the
25 court in any of the following:

26 (1) The county in which the prospective adoptive parent resides.

27 (2) The county in which the proposed adoptee was born or
28 resides at the time the petition was filed.

29 (3) The county in which an office of the public or private agency
30 that placed the proposed adoptee for foster care or adoption as a
31 minor or dependent child is located.

32 (b) A petitioner who is not a resident of this state may file a
33 petition for adult adoption with the court in a county specified in
34 paragraph (3) of subdivision (a).

35 SEC. 49. Section 14101.6 of the Financial Code is amended
36 to read:

37 14101.6. (a) Every credit union shall, within 90 days after the
38 filing of its original articles and annually thereafter during the
39 applicable filing period in each year, file, in a form prescribed by
40 the Secretary of State, a statement containing: (1) the name of the

1 credit union and the Secretary of State's file number; (2) the names
2 and complete business or residence addresses of its chief executive
3 officers, secretary, and chief financial officer; (3) the street address
4 of its principal office, if any; (4) if the credit union chooses to
5 receive renewal notices and any other notifications from the
6 Secretary of State by electronic mail instead of by United States
7 mail, a valid electronic mail address for the credit union or for the
8 credit union's designee to receive those notices; and (5) the mailing
9 address of the credit union, if different from the street address of
10 its principal office.

11 (b) The statement required by subdivision (a) shall also
12 designate, as the agent of the credit union for the purpose of service
13 of process, a natural person residing in this state or any domestic
14 or foreign business corporation that has complied with Section
15 1505 of the Corporations Code and whose capacity to act as an
16 agent has not terminated. If a natural person is designated, the
17 statement shall set forth that person's complete business or
18 residence street address. If a corporate agent is designated, no
19 address for it shall be set forth.

20 (c) For the purposes of this section, the applicable filing period
21 for a credit union shall be the calendar month during which its
22 original articles were filed and the immediately preceding five
23 calendar months. The Secretary of State shall provide a notice to
24 each credit union to comply with this section approximately three
25 months prior to the close of the applicable filing period. The notice
26 shall state the due date for compliance and shall be sent to the last
27 address of the credit union according to the records of the Secretary
28 of State if the credit union has elected to receive notices from the
29 Secretary of State by electronic mail. Neither the failure of the
30 Secretary of State to provide the notice nor the failure of the credit
31 union to receive it is an excuse for failure to comply with this
32 section.

33 (d) Whenever any of the information required by subdivision
34 (a) is changed, the credit union may file a current statement
35 containing all the information required thereby. In order to change
36 its agent for service of process or the address of the agent, the
37 corporation must file a current statement containing all the
38 information required by subdivisions (a) and (b). Whenever any
39 statement is filed pursuant to this section, it supersedes any

1 previously filed statement and the statement in the articles as to
2 the agent for service of process and the address of the agent.

3 (e) An agent designated for service of process pursuant to
4 subdivision (b) may file a signed and acknowledged written
5 statement of resignation as such agent. Thereupon the authority
6 of the agent to act in such capacity shall cease and the Secretary
7 of State forthwith shall notify the credit union of the filing of the
8 statement of resignation.

9 (f) If a natural person who has been designated agent for service
10 of process pursuant to subdivision (b) dies or resigns or no longer
11 resides in the state, or if the corporate agent for such purpose
12 resigns, dissolves, withdraws from the state, forfeits its right to
13 transact intrastate business, has its corporate rights, powers, and
14 privileges suspended or ceases to exist, the credit union shall
15 forthwith file a new statement designating a new agent conforming
16 to the requirements of subdivision (a).

17 (g) Under regulations adopted by the Secretary of State, the
18 resignation of an agency may be effective if the agent disclaims
19 having been properly appointed as the agent.

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

23 (i) This section shall not be construed to place any person
24 dealing with the credit union on notice of or in any duty to inquire
25 about the existence or content of the statement filed pursuant to
26 this section.

27 SEC. 50. Section 8276.5 of the Fish and Game Code is
28 amended to read:

29 8276.5. (a) In consultation with the Dungeness crab task force,
30 or its appointed representatives, the director shall adopt a program,
31 by March 31, 2013, for Dungeness crab trap limits for all California
32 permits. Unless the director finds that there is consensus in the
33 Dungeness crab industry that modifications to the following
34 requirements are more desirable, with evidence of consensus,
35 including, but not limited to, the record of the Dungeness crab task
36 force, the program shall include all of the following requirements:

37 (1) The program shall contain seven tiers of Dungeness crab
38 trap limits based on California landings receipts under California
39 permits between November 15, 2003, and July 15, 2008, as follows:

1 (A) The 55 California permits with the highest California
2 landings shall receive a maximum allocation of 500 trap tags.

3 (B) The 55 California permits with the next highest California
4 landings to those in subparagraph (A) shall receive a maximum
5 allocation of 450 trap tags.

6 (C) The 55 California permits with the next highest California
7 landings to those in subparagraph (B) shall receive a maximum
8 allocation of 400 trap tags.

9 (D) The 55 California permits with the next highest California
10 landings to those in subparagraph (C) shall receive a maximum
11 allocation of 350 trap tags.

12 (E) The 55 California permits with the next highest California
13 landings to those in subparagraph (D) shall receive a maximum
14 allocation of 300 trap tags.

15 (F) The remaining California permits with the next highest
16 California landings to those in subparagraph (E), which are not
17 described in paragraph (1) or (2) of subdivision (g) of Section
18 8276.4, shall receive a maximum allocation of 250 trap tags.

19 (G) The California permits described in paragraphs (1) and (2)
20 of subdivision (g) of Section 8276.4 shall receive a maximum
21 allocation of 175 tags. The tags in this tier shall not be transferable
22 for the first two years of the program.

23 (2) Notwithstanding paragraph (1), the director shall not remove
24 a permitholder from a tier described in paragraph (1), if after an
25 allocation is made pursuant to paragraph (1) an appeal pursuant
26 to paragraph (6) places a permitholder in a tier different than the
27 original allocation.

28 (3) Participants in the program shall meet all of the following
29 requirements:

30 (A) Pay a biennial fee for each trap tag issued pursuant to this
31 section to pay the pro rata share of costs of the program, including,
32 but not limited to, informing permitholders of the program,
33 collecting fees, acquiring and sending trap tags to permitholders,
34 paying for a portion of enforcement costs, and monitoring the
35 results of the program. The fee shall not exceed five dollars (\$5)
36 per trap, per two-year period. All of the trap tags allocated to each
37 permit pursuant to subdivision (a) shall be purchased by the
38 permitholder or the permit shall be void.

1 (B) Purchase a biennial crab trap limit permit of not more than
2 one thousand dollars (\$1,000) per two-year period to pay for the
3 department's reasonable regulatory costs.

4 (C) Not lease a crab trap tag, and transfer a tag only as part of
5 a transaction to purchase a California permitted crab vessel.

6 (D) A Dungeness crab trap that is fished shall contain a trap tag
7 that is fastened to the main buoy, and an additional tag provided
8 by the permitholder attached to the trap. The department shall
9 mandate the information that is required to appear on both buoy
10 and trap tags.

11 (4) The department shall annually provide an accounting of all
12 costs associated with the crab trap limit program. Excess funds
13 collected by the department shall be used to reduce the cost of the
14 crab trap limit permit fee or tag fee in subsequent years of the
15 program.

16 (5) Permitholders may replace lost tags by application to the
17 department and payment of a fee not to exceed the reasonable costs
18 incurred by the department. The department may waive or reduce
19 a fee in the case of catastrophic loss of tags.

20 (6) An individual may submit an appeal of a trap tag allocation
21 received pursuant to this section, by March 31, 2014, to the director
22 on a permit-by-permit basis for the purpose of revising upward or
23 downward any trap tag allocation based on evidence that a permit's
24 California landings during the period between November 15, 2003,
25 and July 15, 2008, inclusive, were reduced as a result of unusual
26 circumstances and that these circumstances constitute an unfair
27 hardship, taking into account the overall California landings history
28 as indicated by landing receipts associated with the permit. The
29 director shall initiate the appeal process within 12 months of
30 receiving an appeal request. The appeal shall be heard and decided
31 by an administrative law judge of the Office of Administrative
32 Hearings, whose decision shall constitute the final administrative
33 decision. An individual requesting an appeal shall pay all expenses,
34 including a nonrefundable filing fee, as determined by the
35 department, to pay for the department's reasonable costs associated
36 with the appeal process described in this paragraph.

37 (b) (1) In addition to criminal penalties authorized by law, a
38 violation of the requirements of the program created pursuant to
39 this section shall be subject to the following civil penalties:

1 (A) Conviction of a first offense shall result in a fine of not less
2 than two hundred fifty dollars (\$250) and not more than one
3 thousand dollars (\$1,000) per illegal trap or fraudulent tag.

4 (B) Conviction of a second offense shall result in a fine of not
5 less than five hundred dollars (\$500) and not more than two
6 thousand five hundred dollars (\$2,500) per illegal trap or fraudulent
7 tag, and the permit may be suspended for one year.

8 (C) Conviction of a third offense shall result in a fine of not less
9 than one thousand dollars (\$1,000) and not more than five thousand
10 dollars (\$5,000) per illegal trap or fraudulent tag, and the permit
11 may be permanently revoked.

12 (2) The severity of a penalty within the ranges described in this
13 subdivision shall be based on a determination whether the violation
14 was willful or negligent and other factors.

15 (3) The portion of monetary judgments for noncompliance that
16 are paid to the department shall be deposited in the Dungeness
17 Crab Account created pursuant to subdivision (e).

18 (c) For the purposes of this section, a proposed recommendation
19 that receives an affirmative vote of at least 15 of the non-ex officio
20 members of the Dungeness crab task force may be transmitted to
21 the director or the Legislature as a recommendation, shall be
22 considered to be the consensus of the task force, and shall be
23 considered to be evidence of consensus in the Dungeness crab
24 industry. Any proposed recommendation that does not receive a
25 vote sufficient to authorize transmittal to the director or Legislature
26 as a recommendation shall be evidence of a lack of consensus by
27 the Dungeness crab task force, and shall be considered to be
28 evidence of a lack of consensus in the crab industry.

29 (d) (1) The director shall submit a proposed program pursuant
30 to this section to the Dungeness crab task force for review, and
31 shall not implement the program until the task force has had 60
32 days or more to review the proposed program and recommend any
33 proposed changes. The director may implement the program earlier
34 than 60 days after it is submitted to the Dungeness crab task force
35 for review, if recommended by the task force.

36 (2) After the program is implemented pursuant to paragraph
37 (1), the director may modify the program, if consistent with the
38 requirements of this section, after consultation with the Dungeness
39 crab task force or its representatives and after the task force has
40 had 60 days or more to review the proposed modifications and

1 recommend any proposed changes. The director may implement
2 the modifications earlier than 60 days after it is sent to the
3 Dungeness crab task force for review, if recommended by the task
4 force.

5 (e) The Dungeness Crab Account is hereby established in the
6 Fish and Game Preservation Fund and the fees collected pursuant
7 to this section shall be deposited in that account. The money in
8 the account shall be used by the department, upon appropriation
9 by the Legislature, for administering and enforcing the program.

10 (f) For purposes of meeting the necessary expenses of initial
11 organization and operation of the program until fees may be
12 collected, or other funding sources may be received, the department
13 may borrow money as needed for these expenses from the council.
14 The borrowed money shall be repaid within one year from the fees
15 collected or other funding sources received. The council shall give
16 high priority to providing funds or services to the department, in
17 addition to loans, to assist in the development of the program,
18 including, but not limited to, the costs of convening the Dungeness
19 crab task force, environmental review, and the department's costs
20 of attending meetings with task force members.

21 (g) (1) It is the intent of the Legislature that the department,
22 the council, and the Dungeness crab task force work with the
23 Pacific States Marine Fisheries Commission and the Tri-State
24 Dungeness Crab Commission to resolve any issues pertaining to
25 moving the fair start line south to the border of California and
26 Mexico.

27 (2) For the purposes of this subdivision, the resolution of issues
28 pertaining to the fair start line shall be limited to assessing the
29 positive and negative implications of including District 10 in the
30 tri-state agreement, including working with the Tri-State Dungeness
31 Crab Commission to amend Oregon and Washington laws to
32 include District 10 in the regular season fair start clause, and
33 discussion of providing different rules for District 10 with regard
34 to preseason quality testing.

35 (h) For purposes of this section, "council" means the Ocean
36 Protection Council established pursuant to Section 35600 of the
37 Public Resources Code.

38 (i) This section shall become inoperative on April 1, 2019, and,
39 as of January 1, 2020, is repealed, unless a later enacted statute,

1 that becomes operative on or before January 1, 2020, deletes or
2 extends the dates on which it becomes inoperative and is repealed.

3 SEC. 51. Section 27551 of the Food and Agricultural Code is
4 amended to read:

5 27551. The following persons shall pay to the secretary a
6 maximum fee of fifteen cents (\$0.15) for each 30 dozen eggs sold
7 as provided below:

8 (a) California egg handlers shall pay the fee on all egg sales
9 from their own production, on eggs purchased or acquired from
10 California egg producers, and on eggs processed into egg products.
11 California egg handlers shall not pay a fee on eggs purchased from
12 out-of-state egg handlers or egg producers.

13 (b) California egg producers shall pay the fee on all egg sales
14 to anyone not registered under this chapter as an egg handler, to
15 out-of-state purchasers, and to egg breaking plants.

16 (c) Out-of-state egg handlers and producers shall report and pay
17 the fee on egg sales into California sold to a retailer, producer,
18 handler, or breaking plant, and on egg products brought into the
19 state, at a maximum rate of fifteen cents (\$0.15) for each equivalent
20 of 30 dozen eggs.

21 (d) Shipments of eggs that are accompanied by a United States
22 Department of Agriculture certificate of grade and sold to the
23 federal government or its agencies are exempt from these fees.

24 (e) Eggs sold to household consumers on the premises where
25 produced from a total flock size of 500 hens or fewer are exempt
26 from these fees.

27 (f) The assessment provided for in this section shall be paid
28 only once on any particular egg.

29 SEC. 52. Section 30801 of the Food and Agricultural Code is
30 amended to read:

31 30801. (a) A board of supervisors may provide for the issuance
32 of serially numbered metallic dog licenses pursuant to this section.
33 The dog licenses shall be stamped with the name of the county
34 and the year of issue.

35 (b) The board of supervisors or animal control department may
36 authorize veterinarians to issue the licenses to owners of dogs who
37 apply.

38 (c) The licenses shall be issued for a period of not to exceed
39 two years.

1 (d) In addition to the authority provided in subdivisions (a), (b),
2 and (c), a license may be issued, as provided by this section, by a
3 board of supervisors for a period not to exceed three years for dogs
4 that have attained the age of 12 months, or older, and who have
5 been vaccinated against rabies. The person to whom the license is
6 to be issued pursuant to this subdivision may choose a license
7 period as established by the board of supervisors of up to one, two,
8 or three years. However, when issuing a license pursuant to this
9 subdivision, the license period shall not extend beyond the
10 remaining period of validity for the current rabies vaccination.

11 SEC. 53. Section 1322 of the Government Code is amended
12 to read:

13 1322. In addition to any other statutory provisions requiring
14 confirmation by the Senate of officers appointed by the Governor,
15 the appointments by the Governor of the following officers and
16 the appointments by him or her to the listed boards and
17 commissions are subject to confirmation by the Senate:

- 18 (a) California Horse Racing Board.
- 19 (b) Court Reporters Board of California.
- 20 (c) Chief, Division of Occupational Safety and Health.
- 21 (d) Chief, Division of Labor Standards Enforcement.
- 22 (e) Commissioner of Corporations.
- 23 (f) Contractors' State License Board.
- 24 (g) Director of Fish and Game.
- 25 (h) Director of Health Care Services.
- 26 (i) Chief Deputy, State Department of Health Care Services.
- 27 (j) Real Estate Commissioner.
- 28 (k) State Athletic Commissioner.
- 29 (l) State Board of Barbering and Cosmetology.
- 30 (m) State Librarian.
- 31 (n) Director of Social Services.
- 32 (o) Chief Deputy, State Department of Social Services.
- 33 (p) Director of Mental Health.
- 34 (q) Chief Deputy, State Department of Mental Health.
- 35 (r) Director of Developmental Services.
- 36 (s) Chief Deputy, State Department of Developmental Services.
- 37 (t) Director of Alcohol and Drug Programs.
- 38 (u) Director of Rehabilitation.
- 39 (v) Chief Deputy, Department of Rehabilitation.
- 40 (w) Director of Statewide Health Planning and Development.

- 1 (x) Deputy, California Health and Human Services Agency.
- 2 (y) Director of the Department of Managed Health Care.
- 3 (z) Patient Advocate, California Health and Human Services
- 4 Agency.

5 (aa) State Public Health Officer, State Department of Public

6 Health.

7 (ab) Chief Deputy, State Department of Public Health.

8 SEC. 54. Section 3540.1 of the Government Code is amended

9 to read:

10 3540.1. As used in this chapter:

11 (a) “Board” means the Public Employment Relations Board

12 created pursuant to Section 3541.

13 (b) “Certified organization” or “certified employee organization”

14 means an organization that has been certified by the board as the

15 exclusive representative of the public school employees in an

16 appropriate unit after a proceeding under Article 5 (commencing

17 with Section 3544).

18 (c) “Confidential employee” means an employee who is required

19 to develop or present management positions with respect to

20 employer-employee relations or whose duties normally require

21 access to confidential information that is used to contribute

22 significantly to the development of management positions.

23 (d) “Employee organization” means an organization that

24 includes employees of a public school employer and that has as

25 one of its primary purposes representing those employees in their

26 relations with that public school employer. “Employee

27 organization” shall also include any person of the organization

28 authorized to act on its behalf.

29 (e) “Exclusive representative” means the employee organization

30 recognized or certified as the exclusive negotiating representative

31 of public school employees, as “public school employee” is defined

32 in subdivision (j), in an appropriate unit of a public school

33 employer.

34 (f) “Impasse” means that the parties to a dispute over matters

35 within the scope of representation have reached a point in meeting

36 and negotiating at which their differences in positions are so

37 substantial or prolonged that future meetings would be futile.

38 (g) “Management employee” means an employee in a position

39 having significant responsibilities for formulating district policies

40 or administering district programs. Management positions shall

1 be designated by the public school employer subject to review by
2 the Public Employment Relations Board.

3 (h) “Meeting and negotiating” means meeting, conferring,
4 negotiating, and discussing by the exclusive representative and
5 the public school employer in a good faith effort to reach agreement
6 on matters within the scope of representation and the execution,
7 if requested by either party, of a written document incorporating
8 any agreements reached, which document shall, when accepted
9 by the exclusive representative and the public school employer,
10 become binding upon both parties and, notwithstanding Section
11 3543.7, is not subject to subdivision 2 of Section 1667 of the Civil
12 Code. The agreement may be for a period of not to exceed three
13 years.

14 (i) “Organizational security” is within the scope of
15 representation, and means either of the following:

16 (1) An arrangement pursuant to which a public school employee
17 may decide whether or not to join an employee organization, but
18 which requires him or her, as a condition of continued employment,
19 if he or she does join, to maintain his or her membership in good
20 standing for the duration of the written agreement. However, an
21 arrangement shall not deprive the employee of the right to terminate
22 his or her obligation to the employee organization within a period
23 of 30 days following the expiration of a written agreement.

24 (2) An arrangement that requires an employee, as a condition
25 of continued employment, either to join the recognized or certified
26 employee organization, or to pay the organization a service fee in
27 an amount not to exceed the standard initiation fee, periodic dues,
28 and general assessments of the organization for the duration of the
29 agreement, or a period of three years from the effective date of the
30 agreement, whichever comes first.

31 (j) “Public school employee” or “employee” means a person
32 employed by a public school employer except persons elected by
33 popular vote, persons appointed by the Governor of this state,
34 management employees, and confidential employees.

35 (k) “Public school employer” or “employer” means the
36 governing board of a school district, a school district, a county
37 board of education, a county superintendent of schools, a charter
38 school that has declared itself a public school employer pursuant
39 to subdivision (b) of Section 47611.5 of the Education Code, an
40 auxiliary organization established pursuant to Article 6

1 (commencing with Section 72670) of Chapter 6 of Part 45 of
2 Division 7 of Title 3 of the Education Code, except an auxiliary
3 organization solely formed as or operating a student body
4 association or student union, or a joint powers agency, except a
5 joint powers agency established solely to provide services pursuant
6 to Section 990.8, if all the following apply to the joint powers
7 agency:

8 (1) It is created as an agency or entity that is separate from the
9 parties to the joint powers agreement pursuant to Section 6503.5.

10 (2) It has its own employees separate from employees of the
11 parties to the joint powers agreement.

12 (3) Any of the following are true:

13 (A) It provides educational services primarily performed by a
14 school district, county board of education, or county superintendent
15 of schools.

16 (B) A school district, county board of education, or county
17 superintendent of schools is designated in the joint powers
18 agreement pursuant to Section 6509.

19 (C) It is comprised solely of educational agencies.

20 (l) “Recognized organization” or “recognized employee
21 organization” means an employee organization that has been
22 recognized by an employer as the exclusive representative pursuant
23 to Article 5 (commencing with Section 3544).

24 (m) “Supervisory employee” means an employee, regardless of
25 job description, having authority in the interest of the employer to
26 hire, transfer, suspend, lay off, recall, promote, discharge, assign,
27 reward, or discipline other employees, or the responsibility to
28 assign work to and direct them, or to adjust their grievances, or
29 effectively recommend that action, if, in connection with the
30 foregoing functions, the exercise of that authority is not of a merely
31 routine or clerical nature, but requires the use of independent
32 judgment.

33 SEC. 55. Section 6208.2 of the Government Code is amended
34 to read:

35 6208.2. (a) (1) No person shall post on the Internet, with the
36 intent that another person imminently use that information to
37 commit a crime involving violence or a threat of violence against
38 the participant or the program participant’s family members who
39 are participating in the program, the home address, the telephone
40 number, or personal identifying information of a program

1 participant or the program participant’s family members who are
2 participating in the program.

3 (2) A violation of this subdivision is a misdemeanor punishable
4 by a fine of up to two thousand five hundred dollars (\$2,500), or
5 imprisonment of up to six months in a county jail, or by both that
6 fine and imprisonment.

7 (3) A violation of this subdivision that leads to the bodily injury
8 of the program participant, or of any of the program participant’s
9 family members who are participating in the program, is a
10 misdemeanor punishable by a fine of up to five thousand dollars
11 (\$5,000), or imprisonment of up to one year in a county jail, or by
12 both that fine and imprisonment.

13 (b) Nothing in this section shall preclude prosecution under any
14 other provision of law.

15 SEC. 56. Section 6218.01 of the Government Code is amended
16 to read:

17 6218.01. (a) (1) No person shall post on the Internet, with the
18 intent that another person imminently use that information to
19 commit a crime involving violence or a threat of violence against
20 the provider, employee, volunteer, or patient of a reproductive
21 health service facility or other individuals residing at the same
22 home address, the home address, the telephone number, or personal
23 identifying information of a provider, employee, volunteer, or
24 patient of a reproductive health services facility or other individuals
25 residing at the same home address.

26 (2) A violation of this subdivision is a misdemeanor punishable
27 by a fine of up to two thousand five hundred dollars (\$2,500),
28 imprisonment of up to six months in a county jail, or by both that
29 fine and imprisonment.

30 (3) A violation of this subdivision that leads to the bodily injury
31 of the provider, employee, volunteer, or patient of a reproductive
32 health services facility or other individuals residing at the same
33 home address, is a misdemeanor punishable by a fine of up to five
34 thousand dollars (\$5,000), imprisonment of up to one year in a
35 county jail, or by both that fine and imprisonment.

36 (b) Nothing in this section shall preclude prosecution under any
37 other provision of law.

38 SEC. 57. Section 7572 of the Government Code is amended
39 to read:

1 7572. (a) A child shall be assessed in all areas related to the
2 suspected disability by those qualified to make a determination of
3 the child's need for the service before any action is taken with
4 respect to the provision of related services or designated instruction
5 and services to a child, including, but not limited to, services in
6 the areas of occupational therapy and physical therapy. All
7 assessments required or conducted pursuant to this section shall
8 be governed by the assessment procedures contained in Article 2
9 (commencing with Section 56320) of Chapter 4 of Part 30 of
10 Division 4 of Title 2 of the Education Code.

11 (b) Occupational therapy and physical therapy assessments shall
12 be conducted by qualified medical personnel as specified in
13 regulations developed by the State Department of Health Care
14 Services in consultation with the State Department of Education.

15 (c) A related service or designated instruction and service shall
16 only be added to the child's individualized education program by
17 the individualized education program team, as described in Part
18 30 (commencing with Section 56000) of Division 4 of Title 2 of
19 the Education Code, if a formal assessment has been conducted
20 pursuant to this section, and a qualified person conducting the
21 assessment recommended the service in order for the child to
22 benefit from special education. In no case shall the inclusion of
23 necessary related services in a pupil's individualized education
24 plan be contingent upon identifying the funding source. Nothing
25 in this section shall prevent a parent from obtaining an independent
26 assessment in accordance with subdivision (b) of Section 56329
27 of the Education Code, which shall be considered by the
28 individualized education program team.

29 (1) If an assessment has been conducted pursuant to subdivision
30 (b), the recommendation of the person who conducted the
31 assessment shall be reviewed and discussed with the parent and
32 with appropriate members of the individualized education program
33 team prior to the meeting of the individualized education program
34 team. When the proposed recommendation of the person has been
35 discussed with the parent and there is disagreement on the
36 recommendation pertaining to the related service, the parent shall
37 be notified in writing and may require the person who conducted
38 the assessment to attend the individualized education program
39 team meeting to discuss the recommendation. The person who
40 conducted the assessment shall attend the individualized education

1 program team meeting if requested. Following this discussion and
2 review, the recommendation of the person who conducted the
3 assessment shall be the recommendation of the individualized
4 education program team members who are attending on behalf of
5 the local educational agency.

6 (2) If an independent assessment for the provision of related
7 services or designated instruction and services is submitted to the
8 individualized education program team, review of that assessment
9 shall be conducted by the person specified in subdivision (b). The
10 recommendation of the person who reviewed the independent
11 assessment shall be reviewed and discussed with the parent and
12 with appropriate members of the individualized education program
13 team prior to the meeting of the individualized education program
14 team. The parent shall be notified in writing and may request the
15 person who reviewed the independent assessment to attend the
16 individualized education program team meeting to discuss the
17 recommendation. The person who reviewed the independent
18 assessment shall attend the individualized education program team
19 meeting if requested. Following this review and discussion, the
20 recommendation of the person who reviewed the independent
21 assessment shall be the recommendation of the individualized
22 education program team members who are attending on behalf of
23 the local educational agency.

24 (3) Any disputes between the parent and team members
25 representing the public agencies regarding a recommendation made
26 in accordance with paragraphs (1) and (2) shall be resolved
27 pursuant to Chapter 5 (commencing with Section 56500) of Part
28 30 of Division 4 of Title 2 of the Education Code.

29 (d) Whenever a related service or designated instruction and
30 service specified in subdivision (b) is to be considered for inclusion
31 in the child's individualized educational program, the local
32 educational agency shall invite the responsible public agency
33 representative to meet with the individualized education program
34 team to determine the need for the service and participate in
35 developing the individualized education program. If the responsible
36 public agency representative cannot meet with the individualized
37 education program team, then the representative shall provide
38 written information concerning the need for the service pursuant
39 to subdivision (c). Conference calls, together with written
40 recommendations, are acceptable forms of participation. If the

1 responsible public agency representative will not be available to
2 participate in the individualized education program team meeting,
3 the local educational agency shall ensure that a qualified substitute
4 is available to explain and interpret the evaluation pursuant to
5 subdivision (d) of Section 56341 of the Education Code. A copy
6 of the information shall be provided by the responsible public
7 agency to the parents or any adult pupil for whom no guardian or
8 conservator has been appointed.

9 SEC. 58. Section 7582 of the Government Code is amended
10 to read:

11 7582. Assessments and therapy treatment services provided
12 under programs of the State Department of Health Care Services,
13 or its designated local agencies, rendered to a child referred by a
14 local educational agency for an assessment or a disabled child or
15 youth with an individualized education program, shall be exempt
16 from financial eligibility standards and family repayment
17 requirements for these services when rendered pursuant to this
18 chapter.

19 SEC. 59. Section 8310.7 of the Government Code is amended
20 to read:

21 8310.7. (a) This section shall only apply to the following state
22 agencies:

23 (1) The Department of Industrial Relations.

24 (2) The Department of Fair Employment and Housing.

25 (b) In addition to the duties imposed under Section 8310.5, the
26 state agencies described in subdivision (a), in the course of
27 collecting demographic data directly or by contract as to the
28 ancestry or ethnic origin of California residents, shall collect and
29 tabulate data for the following:

30 (1) Additional major Asian groups, including, but not limited
31 to, Bangladeshi, Hmong, Indonesian, Malaysian, Pakistani, Sri
32 Lankan, Taiwanese, and Thai.

33 (2) Additional major Native Hawaiian and other Pacific Islander
34 groups, including, but not limited to, Fijian and Tongan.

35 (c) The state agencies identified in subdivision (a) shall make
36 any data collected pursuant to subdivision (b) publicly available,
37 except for personal identifying information, which shall be deemed
38 confidential, by posting the data on the Internet Web site of the
39 agency on or before July 1, 2012, and annually thereafter. This
40 subdivision shall not be construed to prevent any other state agency

1 from posting data collected pursuant to subdivision (b) on the
2 agency's Internet Web site, in the manner prescribed by this
3 section.

4 (d) The state agencies identified in subdivision (a) shall, within
5 18 months after the decennial United States Census for the year
6 2020 is released to the public, update their data collection to reflect
7 the additional Asian groups and additional Native Hawaiian and
8 Pacific Islander groups as they are reported by the United States
9 Census Bureau.

10 SEC. 60. Section 12011.5 of the Government Code is amended
11 to read:

12 12011.5. (a) In the event of a vacancy in a judicial office to
13 be filled by appointment of the Governor, or in the event that a
14 declaration of candidacy is not filed by a judge and the Governor
15 is required under subdivision (d) of Section 16 of Article VI of the
16 California Constitution to nominate a candidate, the Governor
17 shall first submit to a designated agency of the State Bar of
18 California the names of all potential appointees or nominees for
19 the judicial office for evaluation of their judicial qualifications.

20 (b) The membership of the designated agency of the State Bar
21 responsible for evaluation of judicial candidates shall consist of
22 attorney members and public members with the ratio of public
23 members to attorney members determined, to the extent practical,
24 by the ratio established in Section 6013.5 of the Business and
25 Professions Code. It is the intent of this subdivision that the
26 designated agency of the State Bar responsible for evaluation of
27 judicial candidates shall be broadly representative of the ethnic,
28 gender, and racial diversity of the population of California and
29 composed in accordance with Sections 11140 and 11141. The
30 further intent of this subdivision is to establish a selection process
31 for membership on the designated agency of the State Bar
32 responsible for evaluation of judicial candidates under which no
33 member of that agency shall provide inappropriate, multiple
34 representation for purposes of this subdivision. Each member of
35 the designated agency of the State Bar responsible for evaluation
36 of judicial candidates shall complete a minimum of 60 minutes of
37 training in the areas of fairness and bias in the judicial
38 appointments process at an orientation for new members. If the
39 member serves more than one term, the member shall complete
40 an additional 60 minutes of that training during the member's

1 service on the designated agency of the State Bar responsible for
2 evaluation of judicial candidates.

3 (c) Upon receipt from the Governor of the names of candidates
4 for judicial office and their completed personal data questionnaires,
5 the State Bar shall employ appropriate confidential procedures to
6 evaluate and determine the qualifications of each candidate with
7 regard to his or her ability to discharge the judicial duties of the
8 office to which the appointment or nomination shall be made.
9 Within 90 days of submission by the Governor of the name of a
10 potential appointee for judicial office, the State Bar shall report in
11 confidence to the Governor its recommendation whether the
12 candidate is exceptionally well qualified, well qualified, qualified,
13 or not qualified and the reasons therefor, and may report, in
14 confidence, other information as the State Bar deems pertinent to
15 the qualifications of the candidate.

16 (d) In determining the qualifications of a candidate for judicial
17 office, the State Bar shall consider, among other appropriate
18 factors, his or her industry, judicial temperament, honesty,
19 objectivity, community respect, integrity, health, ability, and legal
20 experience. The State Bar shall consider legal experience broadly,
21 including, but not limited to, litigation and nonlitigation experience,
22 legal work for a business or nonprofit entity, experience as a law
23 professor or other academic position, legal work in any of the three
24 branches of government, and legal work in dispute resolution.

25 (e) The State Bar shall establish and promulgate rules and
26 procedures regarding the investigation of the qualifications of
27 candidates for judicial office by the designated agency. These rules
28 and procedures shall establish appropriate, confidential methods
29 for disclosing to the candidate the subject matter of substantial and
30 credible adverse allegations received regarding the candidate's
31 health, physical or mental condition, or moral turpitude which,
32 unless rebutted, would be determinative of the candidate's
33 unsuitability for judicial office. No provision of this section shall
34 be construed as requiring that any rule or procedure be adopted
35 that permits the disclosure to the candidate of information from
36 which the candidate may infer the source, and no information shall
37 either be disclosed to the candidate nor be obtainable by any
38 process that would jeopardize the confidentiality of
39 communications from persons whose opinion has been sought on
40 the candidate's qualifications.

1 (f) All communications, written, verbal, or otherwise, of and to
2 the Governor, the Governor’s authorized agents or employees,
3 including, but not limited to, the Governor’s Legal Affairs
4 Secretary and Appointments Secretary, or of and to the State Bar
5 in furtherance of the purposes of this section are absolutely
6 privileged from disclosure and confidential, and any
7 communication made in the discretion of the Governor or the State
8 Bar with a candidate or person providing information in furtherance
9 of the purposes of this section shall not constitute a waiver of the
10 privilege or a breach of confidentiality.

11 (g) If the Governor has appointed a person to a trial court who
12 has been found not qualified by the designated agency, the State
13 Bar may make public this fact after due notice to the appointee of
14 its intention to do so, but that notice or disclosure shall not
15 constitute a waiver of privilege or breach of confidentiality with
16 respect to communications of or to the State Bar concerning the
17 qualifications of the appointee.

18 (h) If the Governor has nominated or appointed a person to the
19 Supreme Court or court of appeal in accordance with subdivision
20 (d) of Section 16 of Article VI of the California Constitution, the
21 Commission on Judicial Appointments may invite, or the State
22 Bar’s governing board or its designated agency may submit to the
23 commission, its recommendation, and the reasons therefor, but
24 that disclosure shall not constitute a waiver of privilege or breach
25 of confidentiality with respect to communications of or to the State
26 Bar concerning the qualifications of the nominee or appointee.

27 (i) No person or entity shall be liable for any injury caused by
28 any act or failure to act, be it negligent, intentional, discretionary,
29 or otherwise, in the furtherance of the purposes of this section,
30 including, but not limited to, providing or receiving any
31 information, making any recommendations, and giving any reasons
32 therefor. As used in this section, the term “State Bar” means its
33 governing board and members thereof, the designated agency of
34 the State Bar and members thereof, and employees and agents of
35 the State Bar.

36 (j) At any time prior to the receipt of the report from the State
37 Bar specified in subdivision (c) the Governor may withdraw the
38 name of any person submitted to the State Bar for evaluation
39 pursuant to this section.

1 (k) A candidate for judicial office shall not be appointed until
2 the State Bar has reported to the Governor pursuant to this section,
3 or until 90 days have elapsed after submission of the candidate's
4 name to the State Bar, whichever occurs earlier. The requirement
5 of this subdivision shall not apply to any vacancy in judicial office
6 occurring within the 90 days preceding the expiration of the
7 Governor's term of office, provided, however, that with respect
8 to those vacancies and with respect to nominations pursuant to
9 subdivision (d) of Section 16 of Article VI of the California
10 Constitution, the Governor shall be required to submit any
11 candidate's name to the State Bar in order to provide an
12 opportunity, if time permits, to make an evaluation.

13 (l) Nothing in this section shall be construed as imposing an
14 additional requirement for an appointment or nomination to judicial
15 office, nor shall anything in this section be construed as adding
16 any additional qualifications for the office of a judge.

17 (m) The Board of Governors of the State Bar shall not conduct
18 or participate in, or authorize any committee, agency, employee,
19 or commission of the State Bar to conduct or participate in, any
20 evaluation, review, or report on the qualifications, integrity,
21 diligence, or judicial ability of any specific justice of a court
22 provided for in Section 2 or 3 of Article VI of the California
23 Constitution without prior review and statutory authorization by
24 the Legislature, except an evaluation, review, or report on potential
25 judicial appointees or nominees as authorized by this section.

26 The provisions of this subdivision shall not be construed to
27 prohibit a member of the State Bar from conducting or participating
28 in an evaluation, review, or report in his or her individual capacity.

29 (n) (1) Notwithstanding any other provision of this section, but
30 subject to paragraph (2), on or before March 1 of each year for the
31 prior calendar year, all of the following shall occur:

32 (A) The Governor shall collect and release, on an aggregate
33 statewide basis, all of the following:

34 (i) Demographic data provided by all judicial applicants relative
35 to ethnicity, race, gender, gender identity, and sexual orientation.

36 (ii) Demographic data relative to ethnicity, race, gender, gender
37 identity, and sexual orientation as provided by all judicial
38 applicants, both as to those judicial applicants who have been and
39 those who have not been submitted to the State Bar for evaluation.

1 (iii) Demographic data relative to ethnicity, race, gender, gender
2 identity, and sexual orientation of all judicial appointments or
3 nominations as provided by the judicial appointee or nominee.

4 (B) The designated agency of the State Bar responsible for
5 evaluation of judicial candidates shall collect and release both of
6 the following on an aggregate statewide basis:

7 (i) Statewide demographic data provided by all judicial
8 applicants reviewed relative to ethnicity, race, gender, gender
9 identity, sexual orientation, and areas of legal practice and
10 employment.

11 (ii) The statewide summary of the recommendations of the
12 designated agency of the State Bar by ethnicity, race, gender,
13 gender identity, sexual orientation, and areas of legal practice and
14 employment.

15 (C) The Administrative Office of the Courts shall collect and
16 release the demographic data provided by justices and judges
17 described in Article VI of the California Constitution relative to
18 ethnicity, race, gender, gender identity, and sexual orientation by
19 specific jurisdiction.

20 (2) For purposes of subparagraph (A) of paragraph (1), in the
21 year following a general election or recall election that will result
22 in a new Governor taking office prior to March 1, the departing
23 Governor shall provide all of the demographic data collected for
24 the year by that Governor pursuant to this subdivision to the
25 incoming Governor. The incoming Governor shall then be
26 responsible for releasing the provided demographic data, and the
27 demographic data collected by that incoming Governor, if any,
28 prior to the March 1 deadline imposed pursuant to this subdivision.

29 (3) Any demographic data disclosed or released pursuant to this
30 subdivision shall disclose only aggregated statistical data and shall
31 not identify any individual applicant, justice, or judge.

32 (4) The State Bar and the Administrative Office of the Courts
33 shall use the following ethnic and racial categories: American
34 Indian or Alaska Native, Asian, Black or African American,
35 Hispanic or Latino, Native Hawaiian or other Pacific Islander,
36 White, some other race, and more than one race, as those categories
37 are defined by the United States Census Bureau for the 2010
38 Census for reporting purposes.

1 (5) Any demographic data disclosed or released pursuant to this
2 subdivision shall also indicate the percentage of respondents who
3 declined to respond.

4 (o) Members of judicial selection advisory committees are
5 encouraged to recommend candidates from diverse backgrounds
6 and cultures reflecting the demographics of California.

7 (p) If any provision of this section other than a provision relating
8 to or providing for confidentiality or privilege from disclosure of
9 any communication or matter, or the application of the provision
10 to any person or circumstances, is held invalid, the remainder of
11 this section to the extent it can be given effect, or the application
12 of the provision to persons or circumstances other than those as
13 to which it is held invalid, shall not be affected thereby, and to this
14 extent the provisions of this section are severable. If any other act
15 of the Legislature conflicts with the provisions of this section, this
16 section shall prevail.

17 SEC. 61. Section 12172.5 of the Government Code is amended
18 to read:

19 12172.5. (a) The Secretary of State is the chief elections officer
20 of the state, and shall administer the provisions of the Elections
21 Code. The Secretary of State shall see that elections are efficiently
22 conducted and that state election laws are enforced. The Secretary
23 of State may require elections officers to make reports concerning
24 elections in their jurisdictions.

25 (b) If, at any time, the Secretary of State concludes that state
26 election laws are not being enforced, the Secretary of State shall
27 call the violation to the attention of the district attorney of the
28 county or to the Attorney General. In these instances, the Secretary
29 of State may assist the county elections officer in discharging his
30 or her duties.

31 (c) In order to determine whether an elections law violation has
32 occurred, the Secretary of State may examine voted, unvoted,
33 spoiled and canceled ballots, vote-counting computer programs,
34 vote by mail ballot envelopes and applications, and supplies
35 referred to in Section 14432 of the Elections Code. The Secretary
36 of State may also examine any other records of elections officials
37 as he or she finds necessary in making his or her determination,
38 subject to the restrictions set forth in Section 6253.5.

39 (d) The Secretary of State may adopt regulations to assure the
40 uniform application and administration of state election laws.

1 SEC. 62. Section 14502 of the Government Code is amended
2 to read:

3 14502. The commission consists of 13 members appointed as
4 follows:

5 (a) Nine members shall be appointed by the Governor with the
6 advice and consent of the Senate. One member shall be appointed
7 by the Speaker of the Assembly and one member shall be appointed
8 by the Senate Committee on Rules, with neither of these members
9 subject to confirmation by the Senate. A member appointed
10 pursuant to this subdivision shall not simultaneously hold an
11 elected public office, or serve on any local or regional public board
12 or commission with business before the commission.

13 (b) One Member of the Senate appointed by the Senate
14 Committee on Rules and one Member of the Assembly appointed
15 by the Speaker of the Assembly shall be ex officio members
16 without vote and shall participate in the activities of the
17 commission to the extent that such participation is not incompatible
18 with their positions as Members of the Legislature.

19 (c) Notwithstanding any other provision of law, a voting member
20 of the commission may serve on the High-Speed Rail Authority
21 as established in Division 19.5 (commencing with Section 185000)
22 of the Public Utilities Code.

23 SEC. 63. Section 17280.3 of the Government Code is amended
24 to read:

25 17280.3. (a) If a registered warrant, as defined in Section
26 17221, is issued for payment of any principal or interest due and
27 payable on a state bond that is held in book entry form by a
28 securities settlement system, the beneficial owner of the state bond
29 may offset the portion of the principal amount of the registered
30 warrant (exclusive of interest thereon) that is attributable to that
31 beneficial owner's beneficial interest in the state bond against an
32 existing tax liability, as defined in subdivision (a) of Section
33 17280.1, of that beneficial owner, in accordance with Sections
34 17280.1 and 17280.2, or otherwise in accordance with procedures
35 established by the Controller, notwithstanding that the securities
36 settlement system, or its nominee, is the registered owner of the
37 state bond or the named payee of the registered warrant. The
38 amount of that beneficial owner's tax liability that may be offset
39 pursuant to this section shall not exceed the portion of the principal
40 amount of the registered warrant, exclusive of interest thereon,

1 that is attributable to the taxpayer's beneficial ownership of the
2 state bond. Any beneficial owner who exercises the offset right
3 set forth in this section in payment of an existing tax liability shall
4 not be entitled to receive payment of any interest accruing on the
5 portion of the registered warrant attributable to that beneficial
6 owner's beneficial interest in the state bond after the date on which
7 the beneficial owner exercises the offset right in accordance with
8 the applicable procedures, and the beneficial owner shall be
9 required to promptly repay to the state any interest accruing on
10 the registered warrant after that date that may be paid to or
11 ultimately received by the beneficial owner, if any. The preceding
12 sentence shall apply even if the portion of the principal amount of
13 the registered warrant that is attributable to the beneficial owner's
14 ownership interest in the state bond is larger than the amount of
15 the tax liability offset by the beneficial owner with that registered
16 warrant. Upon exercising the right of offset pursuant to this
17 subdivision, the beneficial owner shall not be permitted to sell,
18 transfer, or assign his or her beneficial ownership of the applicable
19 state bond until the applicable registered warrant has been
20 redeemed by the state and the beneficial owner has repaid any
21 interest received on his or her portion of that registered warrant
22 attributable to the period after that beneficial owner's exercise of
23 the right of offset as provided in this subdivision. For purposes of
24 this subdivision and subdivision (b), "state bond" means any
25 general obligation bond or revenue anticipation note issued by the
26 state.

27 (b) No state entity shall take any action that would materially
28 adversely impair, limit, or restrict the rights of a beneficial owner
29 of a state bond, as set forth in this section, Section 17280.1, or
30 Section 17280.2, or any successor provisions, as those provisions
31 were in effect when the person or party became a beneficial owner
32 of the state bond, until the state bond is fully paid and discharged.

33 SEC. 64. Section 25825.5 of the Government Code is amended
34 to read:

35 25825.5. (a) The Legislature finds and declares all of the
36 following:

37 (1) There are ongoing discharges to the Los Osos Discharge
38 Prohibition Zone established in the Water Quality Control Plan
39 for the Central Coast Basin.

1 (2) The agency responsible for eliminating these discharges is
2 the Los Osos Community Services District, which is a relatively
3 new agency, formed in 1998.

4 (3) The Central Coast Regional Water Quality Control Board
5 has imposed substantial fines on the Los Osos Community Services
6 District for failing to make adequate progress toward eliminating
7 these discharges.

8 (4) The Los Osos Community Services District has a relatively
9 small staff that has no experience of successfully designing and
10 constructing facilities of the size and type needed to eliminate
11 these discharges.

12 (5) The County of San Luis Obispo has a larger staff that has
13 experience in successfully designing large public works projects.

14 (6) There is an urgent need to protect the public health and safety
15 by eliminating these discharges and the most feasible alternative
16 is best accomplished by a temporary realignment of certain
17 wastewater collection and treatment powers between the Los Osos
18 Community Services District and the County of San Luis Obispo.

19 (7) It is the intent of the Legislature in enacting this section and
20 amending Section 61105 to authorize the County of San Luis
21 Obispo to design, construct, and operate a wastewater collection
22 and treatment project that will eliminate these discharges,
23 particularly in the prohibition zone, to avoid a wasteful duplication
24 of effort and funds, and to temporarily prohibit the Los Osos
25 Community Services District from exercising those powers.

26 (b) As used in this section, the following definitions apply:

27 (1) "Board" means the Board of Supervisors of the County of
28 San Luis Obispo.

29 (2) "County" means the County of San Luis Obispo.

30 (3) "District" means the Los Osos Community Services District,
31 formed pursuant to the Community Services District Law (Division
32 3 (commencing with Section 61000) of Title ~~3~~ 6) located in San
33 Luis Obispo County.

34 (4) "Prohibition zone" means that territory within the Baywood
35 Park-Los Osos area of the county that is subject to the wastewater
36 discharge prohibition imposed by the Central Coast Regional Water
37 Quality Control Board pursuant to Resolution 83-13.

38 (c) The county may undertake any efforts necessary to construct
39 and operate a community wastewater collection and treatment
40 system to meet the wastewater collection and treatment needs

1 within the district. These efforts may include programs and projects
2 for recharging aquifers, preventing saltwater intrusion, and
3 managing groundwater resources to the extent that they are related
4 to the construction and operation of the community wastewater
5 collection and treatment system. These efforts shall include any
6 services that the county deems necessary, including, but not limited
7 to, any planning, design, engineering, financial analysis, pursuit
8 of grants to mitigate affordability issues, administrative support,
9 project management, and environmental review and compliance
10 services. The county shall not exercise any powers authorized by
11 this section outside the district.

12 (d) Nothing in this section shall affect the district’s power to do
13 any of the following:

14 (1) Operate wastewater collection and treatment facilities within
15 the district that the district was operating on January 1, 2006.

16 (2) Provide facilities and services, other than wastewater
17 collection and treatment.

18 (e) To finance the construction and operation of a wastewater
19 collection and treatment system, the county may levy benefit
20 assessments consistent with the requirements of Article XIII D of
21 the California Constitution, pursuant to any of the following:

22 (1) The Improvement Act of 1911 (Division 7 (commencing
23 with Section 5000) of the Streets and Highways Code).

24 (2) The Improvement Bond Act of 1915 (Division 10
25 (commencing with Section 8500) of the Streets and Highways
26 Code).

27 (3) The Municipal Improvement Act of 1913 (Division 12
28 (commencing with Section 10000) of the Streets and Highways
29 Code).

30 (f) The county may charge standby charges for sewer services,
31 consistent with the requirements of Article XIID of the California
32 Constitution, pursuant to the Uniform Standby Charge Procedures
33 Act (Chapter 12.4 (commencing with Section 54984) of Part 1 of
34 Division 2 of Title 5).

35 (g) The county may develop a program to offset assessments,
36 standby charges, or user fees and charges that are authorized
37 pursuant to subdivisions (e), (f), and (h) for very low or low-income
38 households with funding sources, including, but not limited to,
39 grants, principal forgiveness, and noncounty funds from
40 low-interest loans approved for the project by the State Water

1 Resources Control Board or the United States Department of
2 Agriculture. The county shall not include in an assessment or
3 charge an amount to cover the costs to the county in carrying out
4 this subdivision.

5 (h) The county may impose and collect user fees and charges
6 and any other sources of revenue permitted by law sufficient to
7 cover the reasonable costs of any wastewater collection or treatment
8 services provided pursuant to this section.

9 (i) Promptly upon the adoption of a resolution by the board
10 requesting this action, the board of directors of the district shall
11 convey to the county any requested retained rights-of-way, licenses,
12 funds, and permits previously acquired by the district in connection
13 with construction projects for which the district awarded contracts
14 in 2005. The county shall use those fee interests, rights-of-way,
15 licenses, and funds for the purpose of furthering the construction
16 and operation of a wastewater collection and treatment system
17 pursuant to this section.

18 (j) After the approval of a benefit assessment, the board shall
19 complete a due diligence review before deciding to proceed with
20 the construction and operation of a wastewater collection and
21 treatment system. The board shall consider any relevant factors,
22 including, but not limited to, the prompt availability of reasonable
23 and sufficient financing, the status of enforcement actions, the
24 successful development of reasonable project technology and
25 location options, the availability of any necessary permits and
26 other approvals, and the absence of other significant impediments.
27 At the completion of this due diligence review, the board shall
28 adopt a resolution declaring its intention to proceed or not proceed
29 with the construction and operation of the wastewater collection
30 and treatment system.

31 (k) Collection of assessments may not commence until the
32 adoption of the resolution to proceed pursuant to subdivision (i).

33 (l) The county shall have no power or responsibility to construct
34 and operate a wastewater collection and treatment system pursuant
35 to this section and the district shall resume that power and
36 responsibility when any of the following occurs:

37 (1) If the board adopts a resolution not to hold a benefit
38 assessment election pursuant to subdivision (e).

1 (2) If there is a majority protest to a benefit assessment proposed
2 by the county, on the date of the resolution adopted by the board
3 determining that the majority protest exists.

4 (3) If there is not a majority protest, but the board adopts a
5 resolution, pursuant to subdivision (i), which declares that the
6 county will no longer exercise its powers pursuant to this section,
7 on the date specified in the board’s resolution.

8 (4) If the county constructs and operates a wastewater collection
9 and treatment system pursuant to this section, not less than three
10 years after the operation of the system commences, the board and
11 the board of directors of the district shall mutually apply to the
12 Central Coast Regional Water Quality Control Board for a
13 modification of the waste discharge permit, requesting permission
14 to transfer responsibility to operate the wastewater collection and
15 treatment system from the county to the district. Consistent with
16 that modification, the board shall adopt a resolution that specifies
17 the date on which the county will no longer exercise its powers
18 pursuant to this section.

19 (m) When the power and responsibility to construct and operate
20 a wastewater collection and treatment system transfers from the
21 county to the district pursuant to subdivision (k), the county shall
22 do all of the following:

23 (1) Promptly convey to the district any remaining retained fee
24 interests in any real property, rights-of-way, licenses, other interests
25 in real property, funds, and other personal property that the county
26 previously acquired pursuant to subdivision (h).

27 (2) Promptly convey to the district the wastewater collection
28 and treatment system that the county constructed pursuant to this
29 section.

30 (3) Continue to collect any necessary assessments and use them
31 to repay any indebtedness incurred by the county to finance the
32 construction of the wastewater collection and treatment system
33 pursuant to this section.

34 (4) The county shall cease collecting any benefit assessments
35 after repayment of any indebtedness incurred by the county to
36 finance the construction of the wastewater collection and treatment
37 system.

38 (n) Nothing in this section shall be construed as imposing upon
39 the county any liability for any district decisions or actions, or
40 failures to act, or imposing upon the county any liability for any

1 decisions or actions, or failures to act, by any district officers,
2 employees, or agents. In addition, nothing in this section shall be
3 construed as imposing upon the county any liability for any prior
4 or subsequent district liabilities, whether liquidated or contingent,
5 or any prior or subsequent liabilities of district officers, employees,
6 or agents, whether liquidated or contingent.

7 SEC. 65. Section 30025 of the Government Code is amended
8 to read:

9 30025. (a) The Local Revenue Fund 2011 is hereby created
10 in the State Treasury and shall receive all revenues, less refunds,
11 derived from the taxes described in Sections 6051.15 and 6201.15;
12 revenues as may be allocated to the fund pursuant to Sections
13 11001.5 and 11005 of the Revenue and Taxation Code; and other
14 moneys that may be specifically appropriated to the fund.

15 (b) The Trial Court Security Account, the Local Community
16 Corrections Account, the Local Law Enforcement Services
17 Account, the Mental Health Account, the District Attorney and
18 Public Defender Account, the Juvenile Justice Account, the Health
19 and Human Services Account, the Reserve Account, and the
20 Undistributed Account are hereby created within the Local Revenue
21 Fund 2011.

22 (c) The Youthful Offender Block Grant Subaccount and the
23 Juvenile Reentry Grant Subaccount are hereby created within the
24 Juvenile Justice Account.

25 (d) The Adult Protective Services Subaccount, the Foster Care
26 Assistance Subaccount, the Foster Care Administration Subaccount,
27 the Child Welfare Services Subaccount, the Adoptions Subaccount,
28 the Adoption Assistance Program Subaccount, the Child Abuse
29 Prevention Subaccount, the Women and Children's Residential
30 Treatment Services Subaccount, the Drug Court Subaccount, the
31 Nondrug Medi-Cal Substance Abuse Treatment Services
32 Subaccount, and the Drug Medi-Cal Subaccount are hereby created
33 within the Health and Human Services Account within the Local
34 Revenue Fund 2011.

35 (e) Funds transferred to the Local Revenue Fund 2011 and its
36 accounts and subaccounts are, notwithstanding Section 13340,
37 continuously appropriated and shall be allocated pursuant to statute
38 exclusively for Public Safety Services as defined in subdivision
39 (i) and as further limited by statute. The moneys derived from
40 taxes described in subdivision (a) and deposited in the Local

1 Revenue Fund 2011 shall be available to reimburse the General
2 Fund for moneys that are advanced to the Local Revenue Fund
3 2011. Additionally, all funds deposited in the Local Revenue Fund
4 2011 and its accounts shall be available to pay for state costs
5 incurred during the 2011–12 fiscal year from state agency or
6 department appropriations authorized in the Budget Act of 2011
7 for the realignment of Public Safety Services programs during the
8 2011–12 legislative session. The Department of Finance is
9 authorized to determine the time, manner, and amount to be
10 reimbursed pursuant to this subdivision.

11 (f) (1) Each county treasurer, city and county treasurer, or other
12 appropriate official shall create a County Local Revenue Fund
13 2011 for the county or city and county and shall create the Local
14 Community Corrections Account, the Trial Court Security Account,
15 the District Attorney and Public Defender Account, the Juvenile
16 Justice Account, the Health and Human Services Account, and the
17 Supplemental Law Enforcement Services Account within the
18 County Local Revenue Fund 2011 for the county or city and
19 county.

20 (2) The moneys in the County Local Revenue Fund 2011 for
21 each county or city and county and its accounts shall be exclusively
22 used for Public Safety Services as defined in subdivision (i) and
23 as further described in this section.

24 (3) The moneys in the Trial Court Security Account shall be
25 used exclusively to fund trial court security provided by county
26 sheriffs. General county administrative costs shall not be charged
27 to this account, including, but not limited to, the costs of
28 administering the account.

29 (4) The moneys in the Local Community Corrections Account
30 shall be used exclusively to fund the provisions of Chapter 15 of
31 the Statutes of 2011. The moneys within this account shall not be
32 used by local agencies to supplant other funding for Public Safety
33 Services. This account shall be the source of funding for the
34 Postrelease Community Supervision Act of 2011, as enacted by
35 Section 479 of Chapter 15 of the Statutes of 2011, and to fund the
36 housing of parolees in county jails.

37 (5) The moneys in the District Attorney and Public Defender
38 Account shall be used exclusively to fund costs associated with
39 revocation proceedings involving persons subject to state parole
40 and the Postrelease Community Supervision Act of 2011 (Title

1 2.05 (commencing with Section 3450) of Part 3 of the Penal Code).
 2 The moneys shall be allocated equally by the county or city and
 3 county to the district attorney’s office and county public defender’s
 4 office, or where no public defender’s office is established, to the
 5 county for distribution for the same purpose.

6 (6) The moneys in the Juvenile Justice Account shall only be
 7 used to fund activities in connection with the grant programs
 8 described in this paragraph.

9 (A) The Youthful Offender Block Grant Subaccount shall be
 10 used to fund grants solely to enhance the capacity of county
 11 probation, mental health, drug and alcohol, and other county
 12 departments to provide appropriate rehabilitative, housing, and
 13 supervision services to youthful offenders, subject to Sections
 14 731.1, 733, 1766, and 1767.35 of the Welfare and Institutions
 15 Code. Counties, in expending an allocation from this subaccount,
 16 shall provide all necessary services related to the custody and
 17 parole of the offenders.

18 (B) The Juvenile Reentry Grant Subaccount shall be used to
 19 fund grants exclusively to address local program needs for persons
 20 discharged from the custody of the Department of Corrections and
 21 Rehabilitation, Division of Juvenile Facilities. County probation
 22 departments, in expending the Juvenile Reentry Grant allocation,
 23 shall provide evidence-based supervision and detention practices
 24 and rehabilitative services to persons who are subject to the
 25 jurisdiction of the juvenile court, and who were committed to and
 26 discharged from the Department of Corrections and Rehabilitation,
 27 Division of Juvenile Facilities. “Evidence-based” refers to
 28 supervision and detention policies, procedures, programs, and
 29 practices demonstrated by scientific research to reduce recidivism
 30 among individuals on probation or under postrelease supervision.
 31 The funds allocated from this subaccount shall supplement existing
 32 services and shall not be used by local agencies to supplant any
 33 existing funding for existing services provided by those entities.
 34 The funding provided from this subaccount is intended to provide
 35 payment in full for all local government costs of the supervision,
 36 programming, education, incarceration, or any other cost resulting
 37 from persons discharged from custody or held in local facilities
 38 pursuant to the provisions of Chapter 729 of the Statutes of 2010.

39 (7) The Health and Human Services Account and its subaccounts
 40 described in subdivision (d) shall be used only to fund activities

1 performed in connection with the programs described in this
2 subdivision. The subaccounts shall be used exclusively as follows:

3 (A) The Adult Protective Services Subaccount shall be used to
4 fund adult protective services described in statute and regulation.

5 (B) The Foster Care Assistance Subaccount shall be used to
6 fund the cost of foster care grants and services as those services
7 are described in statute and regulation, including the costs for the
8 Title IV-E Child Welfare Waiver Demonstration Capped Allocation
9 Project.

10 (C) The Foster Care Administration Subaccount shall be used
11 to fund the administrative costs of foster care services as those
12 services are described in statute and regulation, including the costs
13 for the Title IV-E Child Welfare Waiver Demonstration Capped
14 Allocation Project.

15 (D) The Child Welfare Services Subaccount shall be used to
16 fund the costs of child welfare services as those services are
17 described in statute and regulation, including the costs for the Title
18 IV-E Child Welfare Waiver Demonstration Capped Allocation
19 Project.

20 (E) The Adoptions Subaccount shall be used to fund the costs
21 connected with providing adoptive services, including agency
22 adoptions, as described in statute and regulation, including the
23 costs incurred by the county or city and county if the county or
24 city and county elects to contract with the state to provide those
25 services.

26 (F) The Child Abuse Prevention Subaccount shall be used to
27 fund the costs of child abuse prevention, intervention, and treatment
28 services as those costs and services are described in statute and
29 regulation.

30 (G) The Adoption Assistance Program Subaccount shall be used
31 to fund the administrative costs and payments for families adopting
32 children with special needs.

33 (H) The Women and Children's Residential Treatment Services
34 Subaccount shall be used to fund the costs of residential perinatal
35 drug services and treatment as those services and treatment are
36 described in statute and regulation.

37 (I) The Drug Court Subaccount shall be used to fund the costs
38 of drug court operations and services as those costs are currently
39 permitted and described by statute and regulation.

1 (J) The Nondrug Medi-Cal Substance Abuse Treatment Services
2 Subaccount shall be used to fund the costs of nondrug Medi-Cal
3 substance abuse treatment programs, as described in statute and
4 regulation.

5 (K) The Drug Medi-Cal Subaccount shall be used to fund the
6 costs of the Drug Medi-Cal program as that program is described
7 in statute, regulation, or the current State Plan Amendment.

8 (g) The moneys in the Reserve Account shall be used to fund
9 entitlements paid from the Foster Care Assistance Subaccount, the
10 Drug Medi-Cal Subaccount and the Adoption Assistance Program
11 Subaccount of the Health and Human Services Account.

12 (h) The moneys in the Undistributed Account shall be used to
13 reimburse the General Fund for costs incurred and expenditures
14 made by the state on behalf of any local government entity in
15 providing Public Safety Services, as defined in subdivision (i),
16 and are available for transfer to the Local Law Enforcement
17 Services Account to permit the full allocation as described in
18 subdivision (e) of Section 30029.

19 (i) For purposes of this section, “Public Safety Services” shall
20 include all of the following:

21 (1) Employing public safety officials, prosecutors, public
22 defenders, and court security staff.

23 (2) Managing local jails, housing and treating youthful offenders,
24 and providing services for, and overseeing the supervised release
25 of, offenders.

26 (3) Preventing child abuse, providing services to children who
27 are abused, neglected, or exploited, providing services to vulnerable
28 children and their families, and providing adult protective services.

29 (4) Providing mental health services to children and adults in
30 order to reduce failure in school, harm to themselves and others,
31 homelessness, and preventable incarceration.

32 (5) Preventing, treating, and providing recovery services for
33 alcohol and drug abuse.

34 (j) The realignment moneys collected by the state and distributed
35 to the local governmental entities pursuant to this article shall be
36 considered state funds for the purposes of the political subdivision
37 provision of the nonfederal share of Medicaid expenditures for
38 purposes of Section 5001(g)(2) of the federal American Recovery
39 and Reinvestment Act of 2009 (P.L. 111-5) and Section

1 10201(c)(6) of the federal Patient Protection and Affordable Care
2 Act (P.L. 111-148).

3 SEC. 66. Section 53395.3.5 of the Government Code is
4 amended to read:

5 53395.3.5. Notwithstanding subdivision (b) of Section 53395.3,
6 a district may reimburse a developer of a project that is located
7 entirely within the boundaries of that district for any permit
8 expenses incurred and to offset additional expenses incurred by
9 the developer in constructing affordable housing units pursuant to
10 the Transit Priority Project Program established in Section 65470.

11 SEC. 67. Section 53395.81 of the Government Code is amended
12 to read:

13 53395.81. (a) This section shall apply only to a special
14 waterfront district.

15 (b) A special waterfront district may be created as a waterfront
16 district pursuant to, and shall be subject to, all applicable
17 requirements of Sections 53395.3 and 53395.8, except as provided
18 in this section.

19 (c) (1) The special waterfront district ERAF share produced in
20 a Port America's Cup district with a special waterfront district
21 enhanced financing plan shall be used only to finance the
22 following:

23 (A) Construction of the port's maritime facilities at Pier 27.

24 (B) Planning and design work that is directly related to the port's
25 maritime facilities at Pier 27.

26 (C) Planning, design, and construction of improvements to
27 publicly owned waterfront lands held by trustee agencies, such as
28 the National Park Service and the California State Parks, and used
29 as public spectator viewing sites for America's Cup-related events,
30 including the San Francisco Bay Trail along the Marina Green.

31 (D) Future installations of shoreside power facilities on port
32 maritime facilities.

33 (2) A special waterfront district enhanced financing plan for a
34 Port America's Cup district shall provide that the proceeds of
35 special waterfront district ERAF-secured debt are restricted for
36 use to finance directly, reimburse the port for its costs related to,
37 or refinance other debt incurred in, the construction of the port's
38 maritime facilities at Pier 27, including public access and public
39 open-space improvements.

1 (3) Twenty percent in the aggregate of the special waterfront
2 district ERAF share allocated to a Port America's Cup district
3 under this section shall be set aside to finance costs of
4 improvements to federally or state-owned waterfront lands
5 approved by trustee agencies such as the National Park Service or
6 the California State Parks as provided in subparagraph (C) of
7 paragraph (1).

8 (4) The 20 percent set-aside requirements applicable to a special
9 waterfront district set forth in paragraph (3) are in lieu of the
10 set-aside requirement set forth in clause (ii) of subparagraph (C)
11 of paragraph (3) of subdivision (g) of Section 53395.8.

12 (d) (1) Before adopting the resolution authorizing the first debt
13 issuance by a Port America's Cup district with a special waterfront
14 district enhanced financing plan authorized by this section, the
15 board of supervisors shall submit a fiscal analysis to the California
16 Infrastructure and Economic Development Bank for review and
17 approval.

18 (2) The bank may circulate the fiscal analysis to other state
19 agencies, including, but not limited to, the Department of Finance,
20 the Department of Housing and Community Development, and
21 the Office of Planning and Research, and solicit their comments
22 and recommendations. After considering the comments and
23 recommendations of other state agencies, if any, the bank shall
24 take one of the following actions:

25 (A) Approve the fiscal analysis if the bank makes the finding
26 required pursuant to paragraph (4).

27 (B) Return the fiscal analysis to the board of supervisors with
28 specific recommendations for changes that would allow the bank
29 to approve the fiscal analysis.

30 (3) The bank shall have 90 days from the receipt of the fiscal
31 analysis to act pursuant to this subdivision. If the bank does not
32 act within 90 days, the fiscal analysis shall be deemed approved.

33 (4) For bank approval, the fiscal analysis shall demonstrate to
34 the bank's reasonable satisfaction a reasonable probability that the
35 economic activity proposed to occur as a result of hosting the
36 America's Cup event in California would result in an amount of
37 revenue to the General Fund with a net present value that is greater
38 than the net present value of the amount of property tax increment
39 revenues that would be diverted from ERAF over the term of the
40 Port America's Cup district, taking into consideration all pertinent

1 data. In reviewing the board’s fiscal analysis, the bank shall
2 consider only those General Fund revenues that would occur
3 because of economic activity proposed to occur as a result of
4 hosting the America’s Cup event in California. The bank shall not
5 consider those General Fund revenues that would have occurred
6 if the America’s Cup event were not held in California.

7 (5) The legislative body shall reimburse the bank for the
8 reasonable cost of the review and approval of the fiscal analysis.

9 (e) The county auditor or officer responsible for the payment
10 of taxes into the funds of the respective taxing entities shall allocate
11 and pay to a special waterfront district the portion of taxes required
12 to be allocated pursuant to an approved special waterfront district
13 enhanced financing plan. If the plan allocates 100 percent of the
14 incremental tax revenue of San Francisco that is available under
15 applicable law to be allocated to the special waterfront district,
16 then the special waterfront district shall not make a payment to
17 ERAF, but if the plan allocates less than 100 percent of the
18 incremental tax revenue of San Francisco that is available under
19 applicable law to be allocated to a special waterfront district then
20 the special waterfront district shall pay a proportionate share of
21 incremental tax revenue into ERAF. The special waterfront district
22 shall file a statement of indebtedness and a reconciliation statement
23 annually in the same manner as described in subdivision (i) of
24 Section 53395.8. It is the intent of this subdivision that any special
25 waterfront district shall be deemed to be a district formed pursuant
26 to subparagraph (D) of paragraph (3) of subdivision (g) of Section
27 53395.8 for purposes of allocation and payment of taxes by the
28 county auditor as set forth in subdivision (i) of Section 53395.8.

29 (f) This section implements and fulfills the intent of Article 2
30 (commencing with Section 53395.10) of this chapter and of Article
31 XIII B of the California Constitution and is consistent with the
32 conclusion of California courts that tax increment revenues are
33 not “proceeds of taxes” for purposes of the latter. The allocation
34 and payment to a special waterfront district of the special
35 waterfront district ERAF share for the purpose of paying principal
36 of, or interest on, loans, advances, or indebtedness incurred for
37 facilities or the cost of acquisition and construction of facilities
38 under this section shall not be deemed the receipt by the special
39 waterfront district of proceeds of taxes levied by or on behalf of
40 the special waterfront district within the meaning or for the

1 purposes of Article XIII B of the California Constitution, nor shall
2 this portion of taxes be deemed the receipt of proceeds of taxes
3 by, or an appropriation subject to limitation of, any other public
4 body within the meaning or for purposes of Article XIII B of the
5 California Constitution or any statutory provision enacted in
6 implementation of Article XIII B. The allocation and payment to
7 a special waterfront district of this portion of taxes shall not be
8 deemed the appropriation by a special waterfront district of
9 proceeds of taxes levied by or on behalf of a district within the
10 meaning or for purposes of Article XIII B of the California
11 Constitution.

12 (g) For purposes of this section, the meanings set forth in
13 subdivision (c) of Section 53395.8 shall apply as appropriate, and
14 the following terms have the following meanings, except as
15 otherwise provided:

16 (1) “Port America’s Cup district” means a special waterfront
17 district in the City and County of San Francisco designated as
18 America’s Cup venues, excluding any venues within the Rincon
19 Point-South Beach Redevelopment Project Area.

20 (2) “Special waterfront district” means a waterfront district in
21 San Francisco that may comprise some or all of the America’s
22 Cup venues or potential venues.

23 (3) “Special waterfront district enhanced financing plan” means
24 an infrastructure financing plan for a special waterfront district
25 that contains a provision substantially similar to that authorized
26 for a Pier 70 district under subparagraph (D) of paragraph (3) of
27 subdivision (g) of Section 55395.8, with only those changes
28 deemed necessary by the legislative body of the special waterfront
29 district to implement the financing of the improvements described
30 in paragraph (1) of subdivision (c).

31 (4) “Special waterfront district ERAF-secured debt” means debt
32 incurred in accordance with a special waterfront district enhanced
33 financing plan that is secured by and will be repaid from the special
34 waterfront district ERAF share. For a Port America’s Cup district,
35 special waterfront district ERAF-secured debt includes the portion
36 of any debt that is payable from the special waterfront district
37 ERAF share as long as the same percentage of debt proceeds will
38 be used for the purposes authorized by paragraph (2) of subdivision
39 (c).

1 (5) (A) “Special waterfront district ERAF share” means the
2 county ERAF portion of incremental tax revenue committed, as
3 applicable, to a special waterfront district under a special waterfront
4 district enhanced financing plan.

5 (B) Notwithstanding any other provision of this chapter, the
6 maximum amount of the county ERAF portion of incremental tax
7 revenues committed to a special waterfront district under this
8 section shall not exceed one million dollars (\$1,000,000) in any
9 fiscal year.

10 SEC. 68. Section 53760.3 of the Government Code is amended
11 to read:

12 53760.3. (a) A local public entity may initiate the neutral
13 evaluation process if the local public entity is or likely will become
14 unable to meet its financial obligations as and when those
15 obligations are due or become due and owing. The local public
16 entity shall initiate the neutral evaluation by providing notice by
17 certified mail of a request for neutral evaluation to all interested
18 parties as defined in Section 53760.1.

19 (b) Interested parties shall respond within 10 business days of
20 receipt of notice of the local public entity’s request for neutral
21 evaluation.

22 (c) (1) The local public entity and the interested parties agreeing
23 to participate in the neutral evaluation shall, through a mutually
24 agreed-upon process, select the neutral evaluator to oversee the
25 neutral evaluation process and facilitate all discussions in an effort
26 to resolve their disputes.

27 (2) If the local public entity and interested parties fail to agree
28 on a neutral evaluator within seven days after the interested parties
29 have responded to the notification sent by the public entity, the
30 public entity shall select five qualified neutral evaluators and
31 provide their names, references, and backgrounds to the
32 participating interested parties. Within three business days, a
33 majority of participating interested parties may strike up to four
34 names from the list. If a majority of participating interested parties
35 strikes four names, the remaining candidate shall be the neutral
36 evaluator. If the majority of participating parties strikes fewer than
37 four names, the local public entity may choose which of the
38 remaining candidates shall be the neutral evaluator.

1 (d) A neutral evaluator shall have experience and training in
2 conflict resolution and alternative dispute resolution and shall meet
3 at least one of the following qualifications:

4 (1) At least 10 years of high-level business or legal practice
5 involving bankruptcy or service as a United States Bankruptcy
6 Judge.

7 (2) Professional experience or training in municipal finance and
8 one or more of the following issue areas:

- 9 (A) Municipal organization.
10 (B) Municipal debt restructuring.
11 (C) Municipal finance dispute resolution.
12 (D) Chapter 9 bankruptcy.
13 (E) Public finance.
14 (F) Taxation.
15 (G) California constitutional law.
16 (H) California labor law.
17 (I) Federal labor law.

18 (e) The neutral evaluator shall be impartial, objective,
19 independent, and free from prejudice. The neutral evaluator shall
20 not act with partiality or prejudice based on any participant's
21 personal characteristics, background, values or beliefs, or
22 performance during the neutral evaluation process.

23 (f) The neutral evaluator shall avoid a conflict of interest or the
24 appearance of a conflict of interest during the neutral evaluation
25 process. The neutral evaluator shall make a reasonable inquiry to
26 determine whether there are any facts that a reasonable individual
27 would consider likely to create a potential or actual conflict of
28 interest. Notwithstanding subdivision (n), if the neutral evaluator
29 is informed of the existence of any facts that a reasonable
30 individual would consider likely to create a potential or actual
31 conflict of interest, the neutral evaluator shall disclose these facts
32 in writing to the local public entity and all interested parties
33 involved in the neutral evaluation. If any party to the neutral
34 evaluation objects to the neutral evaluator, that party shall notify
35 all other parties to the neutral evaluation, including the neutral
36 evaluator, within 15 days of receipt of the notice from the neutral
37 evaluator, the neutral evaluator shall withdraw and a new neutral
38 evaluator shall be selected.

39 (g) Prior to the neutral evaluation process, the neutral evaluator
40 shall not establish another relationship with any of the parties in

1 a manner that would raise questions about the integrity of the
2 neutral evaluation, except that the neutral evaluator may conduct
3 further neutral evaluations regarding other potential local public
4 entities that may involve some of the same or similar constituents
5 to a prior mediation.

6 (h) The neutral evaluator shall conduct the neutral evaluation
7 process in a manner that promotes voluntary, uncoerced
8 decisionmaking in which each party makes free and informed
9 choices regarding the process and outcome.

10 (i) The neutral evaluator shall not impose a settlement on the
11 parties. The neutral evaluator shall use his or her best efforts to
12 assist the parties to reach a satisfactory resolution of their disputes.
13 Subject to the discretion of the neutral evaluator, the neutral
14 evaluator may make oral or written recommendations for settlement
15 or plan of readjustment to a party privately or to all parties jointly.

16 (j) The neutral evaluator shall inform the local public entity and
17 all parties of the provisions of Chapter 9 relative to other chapters
18 of the bankruptcy codes. This instruction shall highlight the limited
19 authority of United States bankruptcy judges in Chapter 9 such as
20 the lack of flexibility available to judges to reduce or cram down
21 debt repayments and similar efforts not available to reorganize the
22 operations of the city that may be available to a corporate entity.

23 (k) The neutral evaluator may request from the parties
24 documentation and other information that the neutral evaluator
25 believes may be helpful in assisting the parties to address the
26 obligations between them. This documentation may include the
27 status of funds of the local public entity that clearly distinguishes
28 between general funds and special funds, and the proposed plan
29 of readjustment prepared by the local public entity.

30 (l) The neutral evaluator shall provide counsel and guidance to
31 all parties, shall not be a legal representative of any party, and shall
32 not have a fiduciary duty to any party.

33 (m) In the event of a settlement with all interested parties, the
34 neutral evaluator may assist the parties in negotiating a
35 prepetitioned, preagreed plan of readjustment in connection with
36 a potential Chapter 9 filing.

37 (n) If at any time during the neutral evaluation process the local
38 public entity and a majority of the representatives of the interested
39 parties participating in the neutral evaluation wish to remove the
40 neutral evaluator, the local public entity or any interested party

1 may make a request to the other interested parties to remove the
2 neutral evaluator. If the local public entity and the majority of the
3 interested parties agree that the neutral evaluator should be
4 removed, the parties shall select a new neutral evaluator.

5 (o) The local public entity and all interested parties participating
6 in the neutral evaluation process shall negotiate in good faith.

7 (p) The local public entity and interested parties shall provide
8 a representative of each party to attend all neutral evaluation
9 sessions. Each representative shall have the authority to settle and
10 resolve disputes or shall be in a position to present any proposed
11 settlement or plan of readjustment to the parties participating in
12 the neutral evaluation.

13 (q) The parties shall maintain the confidentiality of the neutral
14 evaluation process and shall not disclose statements made,
15 information disclosed, or documents prepared or produced, during
16 the neutral evaluation process, at the conclusion of the neutral
17 evaluation process or during any bankruptcy proceeding unless
18 either of the following occur:

19 (1) All persons that conduct or otherwise participate in the
20 neutral evaluation expressly agree in writing, or orally pursuant
21 to Section 1118 of the Evidence Code, to disclosure of the
22 communication, document, or writing.

23 (2) The information is deemed necessary by a judge presiding
24 over a bankruptcy proceeding pursuant to Chapter 9 of Title 11 of
25 the United States Code to determine eligibility of a municipality
26 to proceed with a bankruptcy proceeding pursuant to Section 109(c)
27 of Title 11 of the United States Code.

28 (r) The neutral evaluation established by this process shall not
29 last for more than 60 days following the date the evaluator is
30 selected, unless the local public entity or a majority of participating
31 interested parties elects to extend the process for up to 30 additional
32 days. The neutral evaluation process shall not last for more than
33 90 days following the date the evaluator is selected unless the local
34 public entity and a majority of the interested parties agree to an
35 extension.

36 (s) The local public entity shall pay 50 percent of the costs of
37 neutral evaluation, including, but not limited to, the fees of the
38 evaluator, and the creditors shall pay the balance, unless otherwise
39 agreed to by the parties.

1 (t) The neutral evaluation process shall end if any of the
2 following occur:

3 (1) The parties execute a settlement agreement.

4 (2) The parties reach an agreement or proposed plan of
5 readjustment that requires the approval of a bankruptcy judge.

6 (3) The neutral evaluation process has exceeded 60 days
7 following the date the neutral evaluator was selected, the parties
8 have not reached an agreement, and neither the local public entity
9 or a majority of the interested parties elects to extend the neutral
10 evaluation process past the initial 60-day time period.

11 (4) The local public entity initiated the neutral evaluation process
12 pursuant to subdivision (a) and received no responses from
13 interested parties within the time specified in subdivision (b).

14 (5) The fiscal condition of the local public entity deteriorates
15 to the point that a fiscal emergency is declared pursuant to Section
16 53760.5 and necessitates the need to file a petition and exercise
17 powers pursuant to applicable federal bankruptcy law.

18 (u) If the 60-day time period for neutral evaluation has expired,
19 including any extension of the neutral evaluation past the initial
20 60-day time period pursuant to subdivision (r), and the neutral
21 evaluation is complete with differences resolved, the neutral
22 evaluation shall be concluded. If the neutral evaluation process
23 does not resolve all pending disputes with creditors the local public
24 entity may file a petition and exercise powers pursuant to applicable
25 federal bankruptcy law if, in the opinion of the governing board
26 of the local public entity, a bankruptcy filing is necessary.

27 SEC. 69. Section 53891 of the Government Code is amended
28 to read:

29 53891. The officer of each local agency who has charge of the
30 financial records shall furnish to the Controller a report of all the
31 financial transactions of the local agency during the next preceding
32 fiscal year. The report shall be furnished within 90 days after the
33 close of each fiscal year and shall be in the form required by the
34 Controller. If the report is filed in electronic format as prescribed
35 by the Controller, the report shall be furnished within 110 days
36 after the close of each fiscal year. However, whenever a local
37 agency files annual financial materials with the Office of Statewide
38 Health Planning and Development or any successor thereto
39 pursuant to Section 128735 of the Health and Safety Code, the
40 audited report shall be furnished within 120 days after the close

1 of each fiscal year. Further, whenever a community redevelopment
2 agency files an annual report with the Controller pursuant to
3 Section 33080 of the Health and Safety Code, the report shall be
4 furnished within six months of the end of the agency's fiscal year.

5 The Controller shall prescribe uniform accounting and reporting
6 procedures that shall be applicable to all local agencies except
7 cities, counties, and school districts, and except for local agencies
8 that substantially follow a system of accounting prescribed by the
9 Public Utilities Commission of the State of California or the
10 Federal Energy Regulatory Commission. The procedures shall be
11 adopted under the provisions of Chapter 3.5 (commencing with
12 Section 11340) of Part 1 of Division 3 of Title 2. The Controller
13 shall prescribe the procedures only after consultation with and
14 approval of a local governmental advisory committee established
15 pursuant to Section 12463.1. Approval of the procedures shall be
16 by majority vote of the members present at a meeting of the
17 committee called by the chairperson thereof.

18 SEC. 70. Section 57077 of the Government Code is amended
19 to read:

20 57077. (a) If a change of organization consists of a dissolution,
21 disincorporation, incorporation, establishment of a subsidiary
22 district, consolidation, or merger, the commission shall do either
23 of the following:

24 (1) Order the change of organization subject to confirmation of
25 the voters, or in the case of a landowner-voter district, subject to
26 confirmation by the landowners, unless otherwise stated in the
27 formation provisions of the enabling statute of the district or
28 otherwise authorized pursuant to Section 56854.

29 (2) Order the change of organization without election if it is a
30 change of organization that meets the requirements of Section
31 56854, 57081, 57102, or 57107; otherwise, the commission shall
32 take the action specified in paragraph (1).

33 (b) Notwithstanding subdivision (a) or Section 57102, if a
34 change of organization consists of the dissolution of a district that
35 is consistent with a prior action of the commission pursuant to
36 Section 56378, 56425, or 56430, the commission may do either
37 of the following:

38 (1) If the dissolution is initiated by the district board,
39 immediately order the dissolution without an election or protest
40 proceeding pursuant to this part.

1 (2) If the dissolution is initiated by an affected local agency, by
2 the commission pursuant to Section 56375, or by petition pursuant
3 to Section 56650, order the dissolution after holding at least one
4 noticed public hearing, and after conducting protest proceedings
5 in accordance with this part. Notwithstanding any other provision
6 of law, the commission shall terminate proceedings if a majority
7 protest exists in accordance with Section 57078. If a majority
8 protest is not found, the commission shall order the dissolution
9 without an election.

10 (c) If a reorganization consists of one or more dissolutions,
11 incorporations, formations, disincorporations, mergers,
12 establishments of subsidiary districts, consolidations, or any
13 combination of those proposals, the commission shall do either of
14 the following:

15 (1) Order the reorganization subject to confirmation of the
16 voters, or in the case of landowner-voter districts, subject to
17 confirmation by the landowners, unless otherwise authorized
18 pursuant to Section 56854.

19 (2) Order the reorganization without election if it is a
20 reorganization that meets the requirements of Section 56853.5,
21 56853.6, 56854, 57081, 57102, 57107, or 57111; otherwise, the
22 commission shall take the action specified in paragraph (1).

23 SEC. 71. Section 57150 of the Government Code is amended
24 to read:

25 57150. All proper expenses incurred in conducting elections
26 for a change of organization or reorganization pursuant to this
27 chapter shall be paid, unless otherwise provided by agreement
28 between the commission and the proponents, as follows:

29 (a) In the case of annexation or detachment proceedings, by the
30 local agency to or from which territory is annexed, or from which
31 territory is detached, or was proposed to be annexed or detached.

32 (b) In the case of incorporation or formation proceedings, by
33 the newly incorporated city or the newly formed district, if
34 successful, or by the county within which the proposed city or
35 district is located, if the incorporation or formation proceedings
36 are terminated. In the case of a separate election for city officers
37 held following the election for incorporation pursuant to Section
38 56724, by the newly incorporated city.

39 (c) In the case of disincorporation or dissolution proceedings,
40 from the remaining assets of the disincorporated city or dissolved

1 district or by the city proposed to be disincorporated or the district
2 proposed to be dissolved if disincorporation or dissolution
3 proceedings are terminated.

4 (d) In the case of consolidation proceedings, by the successor
5 city or district or by the local agencies proposed to be consolidated,
6 to be paid by those local agencies in proportion to their respective
7 assessed values, if proceedings are terminated.

8 (e) In the case of a reorganization, by either of the following:

9 (1) If the reorganization is ordered, by the subject local agencies
10 or successor local agencies, as the case may be, for any of the
11 changes of organization specified in subdivisions (a) to (d),
12 inclusive, that may be included in the particular reorganization, to
13 be paid by those local agencies in proportion to their assessed
14 value.

15 (2) If the reorganization proceedings are terminated or the
16 proposal is defeated, by the county or counties within which the
17 subject local agency is located.

18 SEC. 72. Section 57534 of the Government Code is amended
19 to read:

20 57534. On and after the effective date of an order establishing
21 a district as a subsidiary district of a city, the city council shall be
22 designated, and empowered to act, ex officio as the board of
23 directors of the district. The district shall continue in existence
24 with all of the powers, rights, duties, obligations, and functions
25 provided for by the principal act, except for any provisions relating
26 to the selection or removal of the members of the board of directors
27 of the district.

28 SEC. 73. Section 61105 of the Government Code is amended
29 to read:

30 61105. (a) The Legislature finds and declares that the unique
31 circumstances that exist in certain communities justify the
32 enactment of special statutes for specific districts. In enacting this
33 section, the Legislature intends to provide specific districts with
34 special statutory powers to provide special services and facilities
35 that are not available to other districts.

36 (b) (1) The Los Osos Community Services District may borrow
37 money from public or private lenders and lend those funds to
38 property owners within the district to pay for the costs of
39 decommissioning septic systems and constructing lateral
40 connections on private property to facilitate the connection of those

1 properties to the district’s wastewater treatment system. The district
2 shall lend money for this purpose at rates not to exceed its cost of
3 borrowing and the district’s cost of making the loans. The district
4 may require that the borrower pay the district’s reasonable
5 attorney’s fees and administrative costs in the event that the district
6 is required to take legal action to enforce the provisions of the
7 contract or note securing the loan. The district may elect to have
8 the debt payments or any delinquency collected on the tax roll
9 pursuant to Section 61116. To secure the loan as a lien on real
10 property, the district shall follow the procedures for the creation
11 of special tax liens in Section 53328.3 of this code and Section
12 3114.5 of the Streets and Highways Code.

13 (2) (A) (i) Except as otherwise provided in this paragraph, on
14 and after January 1, 2007, the Los Osos Community Services
15 District shall not undertake any efforts to design, construct, and
16 operate a community wastewater collection and treatment system
17 within, or for the benefit of, the district. The district shall resume
18 those powers on the date specified in any resolution adopted
19 pursuant to subdivision (l) of Section 25825.5.

20 (ii) Upon resuming the powers pursuant to subdivision (i), the
21 Los Osos Community Services District may continue the program
22 to offset assessments or charges for very low or low-income
23 households with funding sources, including, but not limited to,
24 grants, adopted pursuant to subdivision (g) of Section 25825.5. If
25 the county has not implemented that program, the Los Osos
26 Community Services District may adopt a program that complies
27 with subdivision (g) of Section 25825.5 to offset assessments or
28 charges for very low or low-income households. The Los Osos
29 Community Services District shall not include in an assessment
30 or charge an amount to cover the costs to the county in carrying
31 out the offset program.

32 (B) Nothing in this paragraph shall affect the district’s power
33 to do any of the following:

34 (i) Operate wastewater collection and treatment facilities within
35 the district that the district was operating on January 1, 2006.

36 (ii) Provide facilities and services in the territory that is within
37 the district, but outside the prohibition zone.

38 (iii) Provide facilities and services, other than wastewater
39 collection and treatment, within the prohibition zone.

1 (C) Promptly upon the adoption of a resolution by the Board of
2 Supervisors of the County of San Luis Obispo requesting this
3 action pursuant to subdivision (i) of Section 25825.5, the district
4 shall convey to the County of San Luis Obispo all retained
5 rights-of-way, licenses, other interests in real property, funds, and
6 other personal property previously acquired by the district in
7 connection with construction projects for which the district awarded
8 contracts in 2005.

9 (c) The Heritage Ranch Community Services District may
10 acquire, construct, improve, maintain, and operate petroleum
11 storage tanks and related facilities for its own use, and sell those
12 petroleum products to the district's property owners, residents,
13 and visitors. The authority granted by this subdivision shall expire
14 when a private person or entity is ready, willing, and able to
15 acquire, construct, improve, maintain, and operate petroleum
16 storage tanks and related facilities, and sell those petroleum
17 products to the district and its property owners, residents, and
18 visitors. At that time, the district shall either (1) diligently transfer
19 its title, ownership, maintenance, control, and operation of those
20 petroleum tanks and related facilities at a fair market value to that
21 private person or entity, or (2) lease the operation of those
22 petroleum tanks and related facilities at a fair market value to that
23 private person or entity.

24 (d) The Wallace Community Services District may acquire,
25 own, maintain, control, or operate the underground gas distribution
26 pipeline system located and to be located within Wallace Lake
27 Estates for the purpose of allowing a privately owned provider of
28 liquefied petroleum gas to use the underground gas distribution
29 system pursuant to a mutual agreement between the private
30 provider and the district or the district's predecessor in interest.
31 The district shall require and receive payment from the private
32 provider for the use of that system. The authority granted by this
33 subdivision shall expire when the Pacific Gas and Electric
34 Company is ready, willing, and able to provide natural gas service
35 to the residents of Wallace Lake Estates. At that time, the district
36 shall diligently transfer its title, ownership, maintenance, control,
37 and operation of the system to the Pacific Gas and Electric
38 Company.

39 (e) The Cameron Park Community Services District, the El
40 Dorado Hills Community Services District, the Golden Hills

1 Community Services District, the Mountain House Community
2 Services District, the Rancho Murieta Community Services District,
3 the Salton Community Services District, the Stallion Springs
4 Community Services District, and the Tenaja Meadows Community
5 Services District, which enforced covenants, conditions, and
6 restrictions prior to January 1, 2006, pursuant to former Section
7 61601.7 and former Section 61601.10, may continue to exercise
8 the powers set forth in former Section 61601.7 and former Section
9 61601.10.

10 (f) The Bear Valley Community Services District, the Bell
11 Canyon Community Services District, the Cameron Estates
12 Community Services District, the Lake Sherwood Community
13 Services District, the Saddle Creek Community Services District,
14 the Wallace Community Services District, and the Santa Rita Hills
15 Community Services District may, for roads owned by the district
16 and that are not formally dedicated to or kept open for use by the
17 public for the purpose of vehicular travel, by ordinance, limit access
18 to and the use of those roads to the landowners and residents of
19 that district.

20 (g) Notwithstanding any other provision of law, the transfer of
21 the assets of the Stonehouse Mutual Water Company, including
22 its lands, easements, rights, and obligations to act as sole agent of
23 the stockholders in exercising the riparian rights of the
24 stockholders, and rights relating to the ownership, operation, and
25 maintenance of those facilities serving the customers of the
26 company, to the Hidden Valley *Lake* Community Services District
27 is not a transfer subject to taxes imposed by Part 11 (commencing
28 with Section 23001) of Division 2 of the Revenue and Taxation
29 Code.

30 (h) The El Dorado Hills Community Services District and the
31 Rancho Murieta Community Services District may each acquire,
32 construct, improve, maintain, and operate television receiving,
33 translating, or distribution facilities, provide television and
34 television-related services to the district and its residents, or
35 authorize the construction and operation of a cable television
36 system to serve the district and its residents by franchise or license.
37 In authorizing the construction and operation of a cable television
38 system by franchise or license, the district shall have the same
39 powers as a city or county under Section 53066.

1 (i) The Mountain House Community Services District may
2 provide facilities for television and telecommunications systems,
3 including the installation of wires, cables, conduits, fiber optic
4 lines, terminal panels, service space, and appurtenances required
5 to provide television, telecommunication, and data transfer services
6 to the district and its residents, and provide facilities for a cable
7 television system, including the installation of wires, cables,
8 conduits, and appurtenances to service the district and its residents
9 by franchise or license, except that the district may not provide or
10 install any facilities pursuant to this subdivision unless one or more
11 cable franchises or licenses have been awarded under Section
12 53066 and the franchised or licensed cable television and
13 telecommunications services providers are permitted equal access
14 to the utility trenches, conduits, service spaces, easements, utility
15 poles, and rights-of-way in the district necessary to construct their
16 facilities concurrently with the construction of the district's
17 facilities. The district shall not have the authority to operate
18 television, cable, or telecommunications systems, except as
19 provided in Section 61100. The district shall have the same powers
20 as a city or county under Section 53066 in granting a franchise or
21 license for the operation of a cable television system.

22 SEC. 74. Section 65863.10 of the Government Code is amended
23 to read:

24 65863.10. (a) As used in this section, the following terms have
25 the following meanings:

26 (1) "Affected public entities" means the mayor of the city in
27 which the assisted housing development is located, or, if located
28 in an unincorporated area, the chair of the board of supervisors of
29 the county; the appropriate local public housing authority, if any;
30 and the Department of Housing and Community Development.

31 (2) "Affected tenant" means a tenant household residing in an
32 assisted housing development, as defined in paragraph (3), at the
33 time notice is required to be provided pursuant to this section, that
34 benefits from the government assistance.

35 (3) "Assisted housing development" means a multifamily rental
36 housing development that receives governmental assistance under
37 any of the following programs:

38 (A) New construction, substantial rehabilitation, moderate
39 rehabilitation, property disposition, and loan management set-aside
40 programs, or any other program providing project-based assistance,

1 under Section 8 of the United States Housing Act of 1937, as
2 amended (42 U.S.C. Sec. 1437f).

3 (B) The following federal programs:

4 (i) The Below-Market-Interest-Rate Program under Section
5 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715 l(d)(3)
6 and (5)).

7 (ii) Section 236 of the National Housing Act (12 U.S.C. Sec.
8 1715z-1).

9 (iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec.
10 1701q).

11 (C) Programs for rent supplement assistance under Section 101
12 of the Housing and Urban Development Act of 1965, as amended
13 (12 U.S.C. Sec. 1701s).

14 (D) Programs under Sections 514, 515, 516, 533, and 538 of
15 the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

16 (E) Section 42 of the Internal Revenue Code.

17 (F) Section 142(d) of the Internal Revenue Code (tax-exempt
18 private activity mortgage revenue bonds).

19 (G) Section 147 of the Internal Revenue Code (Section 501(c)(3)
20 bonds).

21 (H) Title I of the Housing and Community Development Act
22 of 1974, as amended (Community Development Block Grant
23 Program).

24 (I) Title II of the ~~Cranston-Gonzales~~ *Cranston-Gonzalez*
25 National Affordable Housing Act of 1990, as amended (HOME
26 Investment Partnership Program).

27 (J) Titles IV and V of the McKinney-Vento Homeless Assistance
28 Act of 1987, as amended, including the Department of Housing
29 and Urban Development's Supportive Housing Program, Shelter
30 Plus Care Program, and surplus federal property disposition
31 program.

32 (K) Grants and loans made by the Department of Housing and
33 Community Development, including the Rental Housing
34 Construction Program, CHRP-R, and other rental housing finance
35 programs.

36 (L) Chapter 1138 of the Statutes of 1987.

37 (M) The following assistance provided by counties or cities in
38 exchange for restrictions on the maximum rents that may be
39 charged for units within a multifamily rental housing development
40 and on the maximum tenant income as a condition of eligibility

1 for occupancy of the unit subject to the rent restriction, as reflected
2 by a recorded agreement with a county or city:

3 (i) Loans or grants provided using tax increment financing
4 pursuant to the Community Redevelopment Law (Part 1
5 (commencing with Section 33000) of Division 24 of the Health
6 and Safety Code).

7 (ii) Local housing trust funds, as referred to in paragraph (3) of
8 subdivision (a) of Section 50843 of the Health and Safety Code.

9 (iii) The sale or lease of public property at or below market
10 rates.

11 (iv) The granting of density bonuses, or concessions or
12 incentives, including fee waivers, parking variances, or
13 amendments to general plans, zoning, or redevelopment project
14 area plans, pursuant to Chapter 4.3 (commencing with Section
15 65915).

16 Assistance pursuant to this subparagraph shall not include the
17 use of tenant-based Housing Choice Vouchers (Section 8(o) of the
18 United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o),
19 excluding subparagraph (13) relating to project-based assistance).
20 Restrictions shall not include any rent control or rent stabilization
21 ordinance imposed by a county, city, or city and county.

22 (4) “City” means a general law city, a charter city, or a city and
23 county.

24 (5) “Expiration of rental restrictions” means the expiration of
25 rental restrictions for an assisted housing development described
26 in paragraph (3) unless the development has other recorded
27 agreements restricting the rent to the same or lesser levels for at
28 least 50 percent of the units.

29 (6) “Low or moderate income” means having an income as
30 defined in Section 50093 of the Health and Safety Code.

31 (7) “Prepayment” means the payment in full or refinancing of
32 the federally insured or federally held mortgage indebtedness prior
33 to its original maturity date, or the voluntary cancellation of
34 mortgage insurance, on an assisted housing development described
35 in paragraph (3) that would have the effect of removing the current
36 rent or occupancy or rent and occupancy restrictions contained in
37 the applicable laws and the regulatory agreement.

38 (8) “Termination” means an owner’s decision not to extend or
39 renew its participation in a federal, state, or local government
40 subsidy program or private, nongovernmental subsidy program

1 for an assisted housing development described in paragraph (3),
2 either at or prior to the scheduled date of the expiration of the
3 contract, that may result in an increase in tenant rents or a change
4 in the form of the subsidy from project-based to tenant-based.

5 (9) “Very low income” means having an income as defined in
6 Section 50052.5 of the Health and Safety Code.

7 (b) (1) At least 12 months prior to the anticipated date of the
8 termination of a subsidy contract, the expiration of rental
9 restrictions, or prepayment on an assisted housing development,
10 the owner proposing the termination or prepayment of
11 governmental assistance or the owner of an assisted housing
12 development in which there will be the expiration of rental
13 restrictions shall provide a notice of the proposed change to each
14 affected tenant household residing in the assisted housing
15 development at the time the notice is provided and to the affected
16 public entities. An owner who meets the requirements of Section
17 65863.13 shall be exempt from providing that notice. The notice
18 shall contain all of the following:

19 (A) In the event of termination, a statement that the owner
20 intends to terminate the subsidy contract or rental restrictions upon
21 its expiration date, or the expiration date of any contract extension
22 thereto.

23 (B) In the event of the expiration of rental restrictions, a
24 statement that the restrictions will expire, and in the event of
25 prepayment, termination, or the expiration of rental restrictions
26 whether the owner intends to increase rents during the 12 months
27 following prepayment, termination, or the expiration of rental
28 restrictions to a level greater than permitted under Section 42 of
29 the Internal Revenue Code.

30 (C) In the event of prepayment, a statement that the owner
31 intends to pay in full or refinance the federally insured or federally
32 held mortgage indebtedness prior to its original maturity date, or
33 voluntarily cancel the mortgage insurance.

34 (D) The anticipated date of the termination, prepayment of the
35 federal or other program or expiration of rental restrictions, and
36 the identity of the federal or other program described in subdivision
37 (a).

38 (E) A statement that the proposed change would have the effect
39 of removing the current low-income affordability restrictions in
40 the applicable contract or regulatory agreement.

1 (F) A statement of the possibility that the housing may remain
2 in the federal or other program after the proposed date of
3 termination of the subsidy contract or prepayment if the owner
4 elects to do so under the terms of the federal government's or other
5 program operator's offer.

6 (G) A statement whether other governmental assistance will be
7 provided to tenants residing in the development at the time of the
8 termination of the subsidy contract or prepayment.

9 (H) A statement that a subsequent notice of the proposed change,
10 including anticipated changes in rents, if any, for the development,
11 will be provided at least six months prior to the anticipated date
12 of termination of the subsidy contract, or expiration of rental
13 restrictions, or prepayment.

14 (I) A statement of notice of opportunity to submit an offer to
15 purchase, as required in Section 65863.11.

16 (2) Notwithstanding paragraph (1), if an owner provides a copy
17 of a federally required notice of termination of a subsidy contract
18 or prepayment at least 12 months prior to the proposed change to
19 each affected tenant household residing in the assisted housing
20 development at the time the notice is provided and to the affected
21 public entities, the owner shall be deemed in compliance with this
22 subdivision, if the notice is in compliance with all federal laws.
23 However, the federally required notice does not satisfy the
24 requirements of Section 65863.11.

25 (c) (1) At least six months prior to the anticipated date of
26 termination of a subsidy contract, expiration of rental restrictions
27 or prepayment on an assisted housing development, the owner
28 proposing the termination or prepayment of governmental
29 assistance or the owner of an assisted housing development in
30 which there will be the expiration of rental restrictions shall provide
31 a notice of the proposed change to each affected tenant household
32 residing in the assisted housing development at the time the notice
33 is provided and to the affected public entities. An owner who meets
34 the requirements of Section 65863.13 shall be exempt from
35 providing that notice.

36 (2) The notice to the tenants shall contain all of the following:

37 (A) The anticipated date of the termination or prepayment of
38 the federal or other program, or the expiration of rental restrictions,
39 and the identity of the federal or other program, as described in
40 subdivision (a).

1 (B) The current rent and rent anticipated for the unit during the
2 12 months immediately following the date of the prepayment or
3 termination of the federal or other program, or expiration of rental
4 restrictions.

5 (C) A statement that a copy of the notice will be sent to the city,
6 county, or city and county, where the assisted housing development
7 is located, to the appropriate local public housing authority, if any,
8 and to the Department of Housing and Community Development.

9 (D) A statement of the possibility that the housing may remain
10 in the federal or other program after the proposed date of subsidy
11 termination or prepayment if the owner elects to do so under the
12 terms of the federal government's or other program administrator's
13 offer or that a rent increase may not take place due to the expiration
14 of rental restrictions.

15 (E) A statement of the owner's intention to participate in any
16 current replacement subsidy program made available to the affected
17 tenants.

18 (F) The name and telephone number of the city, county, or city
19 and county, the appropriate local public housing authority, if any,
20 the Department of Housing and Community Development, and a
21 legal services organization, that can be contacted to request
22 additional written information about an owner's responsibilities
23 and the rights and options of an affected tenant.

24 (3) In addition to the information provided in the notice to the
25 affected tenant, the notice to the affected public entities shall
26 contain information regarding the number of affected tenants in
27 the project, the number of units that are government assisted and
28 the type of assistance, the number of the units that are not
29 government assisted, the number of bedrooms in each unit that is
30 government assisted, and the ages and income of the affected
31 tenants. The notice shall briefly describe the owner's plans for the
32 project, including any timetables or deadlines for actions to be
33 taken and specific governmental approvals that are required to be
34 obtained, the reason the owner seeks to terminate the subsidy
35 contract or prepay the mortgage, and any contacts the owner has
36 made or is making with other governmental agencies or other
37 interested parties in connection with the notice. The owner shall
38 also attach a copy of any federally required notice of the
39 termination of the subsidy contract or prepayment that was
40 provided at least six months prior to the proposed change. The

1 information contained in the notice shall be based on data that is
2 reasonably available from existing written tenant and project
3 records.

4 (d) The owner proposing the termination or prepayment of
5 governmental assistance or the owner of an assisted housing
6 development in which there will be the expiration of rental
7 restrictions shall provide additional notice of any significant
8 changes to the notice required by subdivision (c) within seven
9 business days to each affected tenant household residing in the
10 assisted housing development at the time the notice is provided
11 and to the affected public entities. “Significant changes” shall
12 include, but not be limited to, any changes to the date of
13 termination or prepayment, or expiration of rental restrictions or
14 the anticipated new rent.

15 (e) An owner who is subject to the requirements of this section
16 shall also provide a copy of any notices issued to existing tenants
17 pursuant to subdivision (b), (c), or (d) to any prospective tenant at
18 the time he or she is interviewed for eligibility.

19 (f) This section shall not require the owner to obtain or acquire
20 additional information that is not contained in the existing tenant
21 and project records, or to update any information in his or her
22 records. The owner shall not be held liable for any inaccuracies
23 contained in these records or from other sources, nor shall the
24 owner be liable to any party for providing this information.

25 (g) For purposes of this section, service of the notice to the
26 affected tenants, the city, county, or city and county, the appropriate
27 local public housing authority, if any, and the Department of
28 Housing and Community Development by the owner pursuant to
29 subdivisions (b) to (e), inclusive, shall be made by first-class mail
30 postage prepaid.

31 (h) Nothing in this section shall enlarge or diminish the
32 authority, if any, that a city, county, city and county, affected
33 tenant, or owner may have, independent of this section.

34 (i) If, prior to January 1, 2001, the owner has already accepted
35 a bona fide offer from a qualified entity, as defined in subdivision
36 (c) of Section 65863.11, and has complied with this section as it
37 existed prior to January 1, 2001, at the time the owner decides to
38 sell or otherwise dispose of the development, the owner shall be
39 deemed in compliance with this section.

1 (j) Injunctive relief shall be available to any party identified in
2 paragraph (1) or (2) of subdivision (a) who is aggrieved by a
3 violation of this section.

4 (k) The Director of Housing and Community Development shall
5 approve forms to be used by owners to comply with subdivisions
6 (b) and (c). Once the director has approved the forms, an owner
7 shall use the approved forms to comply with subdivisions (b) and
8 (c).

9 SEC. 75. Section 65863.11 of the Government Code is amended
10 to read:

11 65863.11. (a) Terms used in this section shall be defined as
12 follows:

13 (1) “Assisted housing development” and “development” mean
14 a multifamily rental housing development as defined in paragraph
15 (3) of subdivision (a) of Section 65863.10.

16 (2) “Owner” means an individual, corporation, association,
17 partnership, joint venture, or business entity that holds title to an
18 assisted housing development.

19 (3) “Tenant” means a tenant, subtenant, lessee, sublessee, or
20 other person legally in possession or occupying the assisted housing
21 development.

22 (4) “Tenant association” means a group of tenants who have
23 formed a nonprofit corporation, cooperative corporation, or other
24 entity or organization, or a local nonprofit, regional, or national
25 organization whose purpose includes the acquisition of an assisted
26 housing development and that represents the interest of at least a
27 majority of the tenants in the assisted housing development.

28 (5) “Low or moderate income” means having an income as
29 defined in Section 50093 of the Health and Safety Code.

30 (6) “Very low income” means having an income as defined in
31 Section 50105 of the Health and Safety Code.

32 (7) “Local nonprofit organizations” means not-for-profit
33 corporations organized pursuant to Division 2 (commencing with
34 Section 5000) of Title 1 of the Corporations Code that have as
35 their principal purpose the ownership, development, or
36 management of housing or community development projects for
37 persons and families of low or moderate income and very low
38 income, and which have a broadly representative board, a majority
39 of whose members are community based and have a proven track
40 record of local community service.

1 (8) “Local public agencies” means housing authorities,
2 redevelopment agencies, or any other agency of a city, county, or
3 city and county, whether general law or chartered, which are
4 authorized to own, develop, or manage housing or community
5 development projects for persons and families of low or moderate
6 income and very low income.

7 (9) “Regional or national organizations” means not-for-profit,
8 charitable corporations organized on a multicounty, state, or
9 multistate basis that have as their principal purpose the ownership,
10 development, or management of housing or community
11 development projects for persons and families of low or moderate
12 income and very low income.

13 (10) “Regional or national public agencies” means multicounty,
14 state, or multistate agencies that are authorized to own, develop,
15 or manage housing or community development projects for persons
16 and families of low or moderate income and very low income.

17 (11) “Use restriction” means any federal, state, or local statute,
18 regulation, ordinance, or contract that, as a condition of receipt of
19 any housing assistance, including a rental subsidy, mortgage
20 subsidy, or mortgage insurance, to an assisted housing
21 development, establishes maximum limitations on tenant income
22 as a condition of eligibility for occupancy of the units within a
23 development, imposes any restrictions on the maximum rents that
24 could be charged for any of the units within a development; or
25 requires that rents for any of the units within a development be
26 reviewed by any governmental body or agency before the rents
27 are implemented.

28 (12) “Profit-motivated organizations and individuals” means
29 individuals or two or more persons organized pursuant to Division
30 1 (commencing with Section 100) of Title 1 of, Division 3
31 (commencing with Section 1200) of Title 1 of, or Chapter 5
32 (commencing with Section 16100) of Title 2 of, the Corporations
33 Code, that carry on as a business for profit.

34 (13) “Department” means the Department of Housing and
35 Community Development.

36 (14) “Offer to purchase” means an offer from a qualified or
37 nonqualified entity that is nonbinding on the owner.

38 (15) “Expiration of rental restrictions” has the meaning given
39 in paragraph (5) of subdivision (a) of Section 65863.10.

1 (b) An owner of an assisted housing development shall not
2 terminate a subsidy contract or prepay the mortgage pursuant to
3 Section 65863.10, unless the owner or its agent shall first have
4 provided each of the entities listed in subdivision (d) an opportunity
5 to submit an offer to purchase the development, in compliance
6 with subdivisions (g) and (h). An owner of an assisted housing
7 development in which there will be the expiration of rental
8 restrictions shall also provide each of the entities listed in
9 subdivision (d) an opportunity to submit an offer to purchase the
10 development, in compliance with subdivisions (g) and (h). An
11 owner who meets the requirements of Section 65863.13 shall be
12 exempt from this requirement.

13 (c) An owner of an assisted housing development shall not sell,
14 or otherwise dispose of, the development at any time within the
15 five years prior to the expiration of rental restrictions or at any
16 time if the owner is eligible for prepayment or termination within
17 five years unless the owner or its agent shall first have provided
18 each of the entities listed in subdivision (d) an opportunity to
19 submit an offer to purchase the development, in compliance with
20 this section. An owner who meets the requirements of Section
21 65863.13 shall be exempt from this requirement.

22 (d) The entities to whom an opportunity to purchase shall be
23 provided include only the following:

- 24 (1) The tenant association of the development.
- 25 (2) Local nonprofit organizations and public agencies.
- 26 (3) Regional or national nonprofit organizations and regional
27 or national public agencies.
- 28 (4) Profit-motivated organizations or individuals.

29 (e) For the purposes of this section, to qualify as a purchaser of
30 an assisted housing development, an entity listed in subdivision
31 (d) shall do all of the following:

- 32 (1) Be capable of managing the housing and related facilities
33 for its remaining useful life, either by itself or through a
34 management agent.
- 35 (2) Agree to obligate itself and any successors in interest to
36 maintain the affordability of the assisted housing development for
37 households of very low, low, or moderate income for either a
38 30-year period from the date that the purchaser took legal
39 possession of the housing or the remaining term of the existing
40 federal government assistance specified in subdivision (a) of

1 Section 65863.10, whichever is greater. The development shall be
2 continuously occupied in the approximate percentages that those
3 households who have occupied that development on the date the
4 owner gave notice of intent or the approximate percentages
5 specified in existing use restrictions, whichever is higher. This
6 obligation shall be recorded prior to the close of escrow in the
7 office of the county recorder of the county in which the
8 development is located and shall contain a legal description of the
9 property, indexed to the name of the owner as grantor. An owner
10 that obligates itself to an enforceable regulatory agreement that
11 will ensure for a period of not less than 30 years that rents for units
12 occupied by low- and very low income households or that are
13 vacant at the time of executing a purchase agreement will conform
14 with restrictions imposed by Section 42(f) of the Internal Revenue
15 Code shall be deemed in compliance with this paragraph. In
16 addition, the regulatory agreement shall contain provisions
17 requiring the renewal of rental subsidies, should they be available,
18 provided that assistance is at a level to maintain the project's fiscal
19 viability.

20 (3) Local nonprofit organizations and public agencies shall have
21 no member among their officers or directorate with a financial
22 interest in assisted housing developments that have terminated a
23 subsidy contract or prepaid a mortgage on the development without
24 continuing the low-income restrictions.

25 (f) If an assisted housing development is not economically
26 feasible, as defined in paragraph (3) of subdivision (h) of Section
27 17058 of the Revenue and Taxation Code, a purchaser shall be
28 entitled to remove one or more units from the rent and occupancy
29 requirements as is necessary for the development to become
30 economically feasible, provided that once the development is again
31 economically feasible, the purchaser shall designate the next
32 available units as low-income units up to the original number of
33 those units.

34 (g) (1) If an owner decides to terminate a subsidy contract, or
35 prepay the mortgage pursuant to Section 65863.10, or sell or
36 otherwise dispose of the assisted housing development pursuant
37 to subdivision (b) or (c), or if the owner has an assisted housing
38 development in which there will be the expiration of rental
39 restrictions, the owner shall first give notice of the opportunity to
40 offer to purchase to each qualified entity on the list provided to

1 the owner by the department, in accordance with subdivision (o),
2 as well as to those qualified entities that directly contact the owner.
3 The notice of the opportunity to offer to purchase must be given
4 prior to or concurrently with the notice required pursuant to Section
5 65863.10 for a period of at least 12 months. The owner shall
6 contact the department to obtain the list of qualified entities. The
7 notice shall conform to the requirements of subdivision (h) and
8 shall be sent to the entities by registered or certified mail, return
9 receipt requested. The owner shall also post a copy of the notice
10 in a conspicuous place in the common area of the development.

11 (2) If the owner already has a bona fide offer to purchase from
12 an entity prior to January 1, 2001, at the time the owner decides
13 to sell or otherwise dispose of the development, the owner shall
14 not be required to comply with this subdivision. However, the
15 owner shall notify the department of this exemption and provide
16 the department a copy of the offer.

17 (h) The initial notice of a bona fide opportunity to submit an
18 offer to purchase shall contain all of the following:

19 (1) A statement addressing all of the following:

20 (A) Whether the owner intends to maintain the current number
21 of affordable units and level of affordability.

22 (B) Whether the owner has an interest in selling the property.

23 (C) Whether the owner has executed a contract or agreement
24 of at least five years' duration with a public entity to continue or
25 replace subsidies to the property and to maintain an equal or greater
26 number of units at an equal or deeper level of affordability and, if
27 so, the length of the contract or agreement.

28 (2) A statement that each of the type of entities listed in
29 subdivision (d) has the right to purchase the development under
30 this section.

31 (3) (A) Except as provided in subparagraph (B), a statement
32 that the owner will make available to each of the types of entities
33 listed in subdivision (d), within 15 business days of receiving a
34 request therefor, that includes all of the following:

35 (i) Itemized lists of monthly operating expenses for the property.

36 (ii) Capital improvements, as determined by the owner, made
37 within each of the two preceding calendar years at the property.

38 (iii) The amount of project property reserves.

1 (iv) Copies of the two most recent financial and physical
2 inspection reports on the property, if any, filed with a federal, state,
3 or local agency.

4 (v) The most recent rent roll for the property listing the rent
5 paid for each unit and the subsidy, if any, paid by a governmental
6 agency as of the date the notice of intent was made pursuant to
7 Section 65863.10.

8 (vi) A statement of the vacancy rate at the property for each of
9 the two preceding calendar years.

10 (vii) The terms of assumable financing, if any, the terms of the
11 subsidy contract, if any, and proposed improvements to the
12 property to be made by the owner in connection with the sale, if
13 any.

14 (B) Subparagraph (A) shall not apply if 25 percent or less of
15 the units on the property are subject to affordability restrictions or
16 a rent or mortgage subsidy contract.

17 (C) A corporation authorized pursuant to Section 52550 of the
18 Health and Safety Code or a public entity may share information
19 obtained pursuant to subparagraph (A) with other prospective
20 purchasers, and shall not be required to sign a confidentiality
21 agreement as a condition of receiving or sharing this information,
22 provided that the information is used for the purpose of attempting
23 to preserve the affordability of the property.

24 (4) A statement that the owner has satisfied all notice
25 requirements pursuant to subdivision (b) of Section 65863.10,
26 unless the notice of opportunity to submit an offer to purchase is
27 delivered more than 12 months prior to the anticipated date of
28 termination, prepayment, or expiration of rental restrictions.

29 (i) If a qualified entity elects to purchase an assisted housing
30 development, it shall make a bona fide offer to purchase the
31 development. A qualified entity's bona fide offer to purchase shall
32 identify whether it is a tenant association, nonprofit organization,
33 public agency, or profit-motivated organizations or individuals
34 and shall certify, under penalty of perjury, that it is qualified
35 pursuant to subdivision (e). During the first 180 days from the date
36 of an owner's bona fide notice of the opportunity to submit an
37 offer to purchase, an owner shall accept a bona fide offer to
38 purchase only from a qualified entity. During this 180-day period,
39 the owner shall not accept offers from any other entity.

1 (j) When a bona fide offer to purchase has been made to an
2 owner, and the offer is accepted, a purchase agreement shall be
3 executed.

4 (k) Either the owner or the qualified entity may request that the
5 fair market value of the property, as a development, be determined
6 by an independent appraiser qualified to perform multifamily
7 housing appraisals, who shall be selected and paid by the requesting
8 party. All appraisers shall possess qualifications equivalent to those
9 required by the members of the Appraisers Institute. This appraisal
10 shall be nonbinding on either party with respect to the sales price
11 of the development offered in the bona fide offer to purchase, or
12 the acceptance or rejection of the offer.

13 (l) During the 180-day period following the initial 180-day
14 period required pursuant to subdivision (i), an owner may accept
15 an offer from a person or an entity that does not qualify under
16 subdivision (e). This acceptance shall be made subject to the
17 owner's providing each qualified entity that made a bona fide offer
18 to purchase the first opportunity to purchase the development at
19 the same terms and conditions as the pending offer to purchase,
20 unless these terms and conditions are modified by mutual consent.
21 The owner shall notify in writing those qualified entities of the
22 terms and conditions of the pending offer to purchase, sent by
23 registered or certified mail, return receipt requested. The qualified
24 entity shall have 30 days from the date the notice is mailed to
25 submit a bona fide offer to purchase and that offer shall be accepted
26 by the owner. The owner shall not be required to comply with the
27 provisions of this subdivision if the person or the entity making
28 the offer during this time period agrees to maintain the development
29 for persons and families of very low, low, and moderate income
30 in accordance with paragraph (2) of subdivision (e). The owner
31 shall notify the department regarding how the buyer is meeting
32 the requirements of paragraph (2) of subdivision (e).

33 (m) This section shall not apply to any of the following: a
34 government taking by eminent domain or negotiated purchase; a
35 forced sale pursuant to a foreclosure; a transfer by gift, devise, or
36 operation of law; a sale to a person who would be included within
37 the table of descent and distribution if there were to be a death
38 intestate of an owner; or an owner who certifies, under penalty of
39 perjury, the existence of a financial emergency during the period
40 covered by the first right of refusal requiring immediate access to

1 the proceeds of the sale of the development. The certification shall
2 be made pursuant to subdivision (p).

3 (n) Prior to the close of escrow, an owner selling, leasing, or
4 otherwise disposing of a development to a purchaser who does not
5 qualify under subdivision (e) shall certify under penalty of perjury
6 that the owner has complied with all provisions of this section and
7 Section 65863.10. This certification shall be recorded and shall
8 contain a legal description of the property, shall be indexed to the
9 name of the owner as grantor, and may be relied upon by good
10 faith purchasers and encumbrances for value and without notice
11 of a failure to comply with the provisions of this section.

12 Any person or entity acting solely in the capacity of an escrow
13 agent for the transfer of real property subject to this section shall
14 not be liable for any failure to comply with this section unless the
15 escrow agent either had actual knowledge of the requirements of
16 this section or acted contrary to written escrow instructions
17 concerning the provisions of this section.

18 (o) The department shall undertake the following responsibilities
19 and duties:

20 (1) Maintain a form containing a summary of rights and
21 obligations under this section and make that information available
22 to owners of assisted housing developments as well as to tenant
23 associations, local nonprofit organizations, regional or national
24 nonprofit organizations, public agencies, and other entities with
25 an interest in preserving the state’s subsidized housing.

26 (2) Compile, maintain, and update a list of entities in subdivision
27 (d) that have either contacted the department with an expressed
28 interest in purchasing a development in the subject area or have
29 been identified by the department as potentially having an interest
30 in participating in a right-of-first-refusal program. The department
31 shall publicize the existence of the list statewide. Upon receipt of
32 a notice of intent under Section 65863.10, the department shall
33 make the list available to the owner proposing the termination,
34 prepayment, or removal of government assistance or to the owner
35 of an assisted housing development in which there will be the
36 expiration of rental restrictions. If the department does not make
37 the list available at any time, the owner shall only be required to
38 send a written copy of the opportunity to submit an offer to
39 purchase notice to the qualified entities which directly contact the

1 owner and to post a copy of the notice in the common area pursuant
2 to subdivision (g).

3 (p) (1) The provisions of this section may be enforced either
4 in law or in equity by any qualified entity entitled to exercise the
5 opportunity to purchase and right of first refusal under this section
6 that has been adversely affected by an owner's failure to comply
7 with this section.

8 (2) An owner may rely on the statements, claims, or
9 representations of any person or entity that the person or entity is
10 a qualified entity as specified in subdivision (d), unless the owner
11 has actual knowledge that the purchaser is not a qualified entity.

12 (3) If the person or entity is not an entity as specified in
13 subdivision (d), that fact, in the absence of actual knowledge as
14 described in paragraph (2), shall not give rise to any claim against
15 the owner for a violation of this section.

16 (q) It is the intent of the Legislature that the provisions of this
17 section are in addition to, but not preemptive of, applicable federal
18 laws governing the sale or other disposition of a development that
19 would result in either (1) a discontinuance of its use as an assisted
20 housing development or (2) the termination or expiration of any
21 low-income use restrictions that apply to the development.

22 SEC. 76. Section 66499.20¹/₄ of the Government Code is
23 amended and renumbered to read:

24 66499.20.1. A city or county may, by ordinance, authorize a
25 parcel map to be filed under the provisions of this chapter for the
26 purpose of reverting to acreage land previously subdivided and
27 consisting of four or less contiguous parcels under the same
28 ownership. Any map so submitted shall be accompanied by
29 evidence of title and nonuse or lack of necessity of any public
30 streets or public easements which are to be vacated or abandoned.
31 Any public streets or public easements to be left in effect after the
32 reversion shall be adequately delineated on the map. After approval
33 of the reversion by the governing body or advisory agency the map
34 shall be delivered to the county recorder. The filing of the map
35 shall constitute legal reversion to acreage of the land affected
36 thereby, and shall also constitute abandonment of all public streets
37 or public easements not shown on the map, provided however that
38 written notation of each abandonment is listed by reference to the
39 recording data creating those public streets or public easements
40 and certified to on the map by the clerk of the legislative body or

1 the designee of the legislative body approving the map. The filing
2 of the map shall also constitute a merger of the separate parcels
3 into one parcel for purposes of this chapter and shall thereafter be
4 shown as such on the assessment roll subject to the provisions of
5 Section 66445. Except as provided in subdivision (f) of Section
6 66445, on any parcel map used for reverting acreage, a certificate
7 shall appear signed and acknowledged by all parties having any
8 record title interest in the land being reverted, consenting to the
9 preparation and filing of the parcel map.

10 SEC. 77. Section 66499.20 $\frac{1}{2}$ of the Government Code is
11 amended and renumbered to read:

12 66499.20.2. Subdivided lands may be merged and resubdivided
13 without reverting to acreage by complying with all the applicable
14 requirements for the subdivision of land as provided by this
15 division and any local ordinances adopted pursuant thereto. The
16 filing of the final map or parcel map shall constitute legal merging
17 of the separate parcels into one parcel and the resubdivision of
18 such parcel, and the real property shall thereafter be shown with
19 the new lot or parcel boundaries on the assessment roll. Any unused
20 fees or deposits previously made pursuant to this division
21 pertaining to the property shall be credited pro rata towards any
22 requirements for the same purposes which are applicable at the
23 time of resubdivision. Any public streets or public easements to
24 be left in effect after the resubdivision shall be adequately
25 delineated on the map. After approval of the merger and
26 resubdivision by the governing body or advisory agency the map
27 shall be delivered to the county recorder. The filing of the map
28 shall constitute legal merger and resubdivision of the land affected
29 thereby, and shall also constitute abandonment of all public streets
30 and public easements not shown on the map, provided that a written
31 notation of each abandonment is listed by reference to the recording
32 data creating these public streets or public easements, and certified
33 to on the map by the clerk of the legislative body or the designee
34 of the legislative body approving the map.

35 SEC. 78. Section 66499.20 $\frac{3}{4}$ of the Government Code is
36 amended and renumbered to read:

37 66499.20.3. A city or county may, by ordinance, authorize the
38 merger of contiguous parcels under common ownership without
39 reverting to acreage. The ordinance shall require the recordation
40 of an instrument evidencing the merger.

1 SEC. 79. Section 76000.10 of the Government Code is amended
2 to read:

3 76000.10. (a) This section shall be known, and may be cited,
4 as the Emergency Medical Air Transportation Act.

5 (b) For purposes of this section:

6 (1) “Department” means the State Department of Health Care
7 Services.

8 (2) “Director” means the Director of Health Care Services.

9 (3) “Provider” means a provider of emergency medical air
10 transportation services.

11 (4) “Rotary wing” means a type of aircraft, commonly referred
12 to as a helicopter, that generates lift through the use of wings,
13 known as rotor blades, that revolve around a mast.

14 (5) “Fixed wing” means a type of aircraft, commonly referred
15 to as an airplane, that generates lift through the use of the forward
16 motion of the aircraft and wings that do not revolve around a mast
17 but are fixed in relation to the fuselage of the aircraft.

18 (6) “Air mileage rate” means the per-mileage reimbursement
19 rate paid for services rendered by rotary-wing and fixed-wing
20 providers.

21 (c) (1) For purposes of implementing this section, a penalty of
22 four dollars (\$4) shall be imposed upon every conviction for a
23 violation of the Vehicle Code or a local ordinance adopted pursuant
24 to the Vehicle Code, except parking offenses subject to Article 3
25 (commencing with Section 40200) of Chapter 1 of Division 17 of
26 the Vehicle Code.

27 (2) The penalty described in this subdivision shall be in addition
28 to the state penalty assessed pursuant to Section 1464 of the Penal
29 Code. However, this penalty shall not be included in the base fine
30 used to calculate the state penalty assessment pursuant to
31 subdivision (a) of Section 1464 of the Penal Code, the state
32 surcharge levied pursuant to Section 1465.7 of the Penal Code,
33 and the state court construction penalty pursuant to Section 70372
34 of this code, and to calculate the other additional penalties levied
35 pursuant to this chapter.

36 (d) The county or the court that imposed the fine shall, in
37 accordance with the procedures set out in Section 68101, transfer
38 moneys collected pursuant to this section to the Treasurer for
39 deposit into the Emergency Medical Air Transportation Act Fund,
40 which is hereby established in the State Treasury. Notwithstanding

1 Section 16305.7, the Emergency Medical Air Transportation Act
2 Fund shall include interest and dividends earned on money in the
3 fund.

4 (e) (1) The Emergency Medical Air Transportation Act Fund
5 shall be administered by the State Department of Health Care
6 Services. Moneys in the Emergency Medical Air Transportation
7 Act Fund shall be made available, upon appropriation by the
8 Legislature, to the department to be used as follows:

9 (A) For payment of the administrative costs of the department
10 in administering this section.

11 (B) Twenty percent of the fund remaining after payment of
12 administrative costs pursuant to subparagraph (A) shall be used
13 to offset the state portion of the Medi-Cal reimbursement rate for
14 emergency medical air transportation services.

15 (C) Eighty percent of the fund remaining after payment of
16 administrative costs pursuant to subparagraph (A) shall be used
17 to augment emergency medical air transportation reimbursement
18 payments made through the Medi-Cal program, as set forth in
19 paragraphs (2) and (3).

20 (2) (A) The department shall seek to obtain federal matching
21 funds by using the moneys in the Emergency Medical Air
22 Transportation Act Fund for the purpose of augmenting Medi-Cal
23 reimbursement paid to emergency medical air transportation
24 providers.

25 (B) The director shall do all of the following:

26 (i) By March 1, 2011, meet with medical air transportation
27 providers to determine the most appropriate methodology to
28 distribute the funds for medical air services.

29 (ii) Implement the methodology determined most appropriate
30 in a timely manner.

31 (iii) Develop the methodology in collaboration with the medical
32 air providers.

33 (iv) Submit any state plan amendments or waiver requests that
34 may be necessary to implement this section.

35 (v) Submit any state plan amendment or waiver request that
36 may be necessary to implement this section.

37 (vi) Seek federal approvals or waivers as may be necessary to
38 implement this section and to obtain federal financial participation
39 to the maximum extent possible for the payments under this
40 section. If federal approvals are not received, moneys in the fund

1 may be distributed pursuant to this section until federal approvals
2 are received.

3 (C) The director may give great weight to the needs of the
4 emergency medical air services providers, as discussed through
5 the development of the methodology.

6 (3) (A) Upon appropriation by the Legislature, the department
7 shall use moneys in the Emergency Medical Air Transportation
8 Act Fund and any federal matching funds to increase the Medi-Cal
9 reimbursement for emergency medical air transportation services
10 in an amount not to exceed normal and customary charges charged
11 by the providers.

12 (B) Notwithstanding any other provision of law, and pursuant
13 to this section, the department shall increase the Medi-Cal
14 reimbursement for emergency medical air transportation services
15 provided that both of the following conditions are met:

16 (i) Moneys in the Emergency Medical Air Transportation Act
17 Fund will cover the cost of increased payments pursuant to
18 subparagraph (A).

19 (ii) The state does not incur any General Fund expense to pay
20 for the Medi-Cal emergency medical air transportation services
21 increase.

22 (f) The assessment of penalties pursuant to this section shall
23 terminate commencing January 1, 2016. Penalties assessed prior
24 to January 1, 2016, shall continue to be collected, administered,
25 and distributed pursuant to this section until exhausted or until
26 June 30, 2017, whichever occurs first. On June 30, 2017, moneys
27 remaining unexpended and unencumbered in the Emergency
28 Medical Air Transportation Act Fund shall be transferred to the
29 General Fund, to be available, upon appropriation by the
30 Legislature, for the purposes of augmenting Medi-Cal
31 reimbursement for emergency medical air transportation and related
32 costs, generally.

33 (g) Notwithstanding the rulemaking provisions of Chapter 3.5
34 (commencing with Section 11340) of Part 1 of Division 3 of Title
35 2, the department may implement, interpret, or make specific this
36 section and any applicable federal waivers and state plan
37 amendments by means of all county letters, plan letters, plan or
38 provider bulletins, or similar instructions without taking regulatory
39 action.

1 (h) This section shall remain in effect until January 1, 2018, and
2 as of that date is repealed, unless a later enacted statute, that is
3 enacted before January 1, 2018, deletes or extends that date.

4 SEC. 80. Section 1156.6 of the Harbors and Navigation Code
5 is amended to read:

6 1156.6. (a) If suspected safety standard violations concerning
7 pilot hoists, pilot ladders, or the proper rigging of pilot hoists or
8 pilot ladders are reported to the board, the executive director shall
9 investigate the report. The executive director may personally
10 inspect or assign a commission investigator to personally inspect
11 the equipment for its compliance with the relevant safety standards
12 promulgated by the United States Coast Guard and the International
13 Maritime Organization. If, in the preliminary investigation, the
14 equipment is found to be in violation, or in likely violation in the
15 opinion of the executive director, of the relevant safety standards,
16 the executive director shall immediately alert the appropriate
17 United States Coast Guard office. The executive director shall
18 report his or her findings and recommendations, if any, to the
19 board. The board shall receive the executive director's findings,
20 which may include other reports, information, or statements from
21 interested parties. The board shall specify, by regulation, the
22 information that shall be contained in the report.

23 (b) This section applies to the pilotage grounds, as defined in
24 Section 1114.5. If a vessel passes outside of the pilotage grounds,
25 the executive director's report shall include that fact along with a
26 description of the incident.

27 (c) The record of the investigation and the board's findings and
28 recommendations, if any, shall be a public record maintained by
29 the board.

30 SEC. 81. Section 1367.241 of the Health and Safety Code is
31 amended to read:

32 1367.241. (a) Notwithstanding any other provision of law, on
33 and after January 1, 2013, a health care service plan that provides
34 prescription drug benefits shall accept only the prior authorization
35 form developed pursuant to subdivision (c) when requiring prior
36 authorization for prescription drug benefits. This section does not
37 apply in the event that a physician or physician group has been
38 delegated the financial risk for prescription drugs by a health care
39 service plan and does not use a prior authorization process. This
40 section does not apply to a health care service plan, or to its

1 affiliated providers, if the health care service plan owns and
2 operates its pharmacies and does not use a prior authorization
3 process for prescription drugs.

4 (b) If a health care service plan fails to utilize or accept the prior
5 authorization form, or fails to respond within two business days
6 upon receipt of a completed prior authorization request from a
7 prescribing provider, pursuant to the submission of the prior
8 authorization form developed as described in subdivision (c), the
9 prior authorization request shall be deemed to have been granted.
10 The requirements of this subdivision shall not apply to contracts
11 entered into pursuant to Article 2.7 (commencing with Section
12 14087.3), Article 2.8 (commencing with Section 14087.5), Article
13 2.81 (commencing with Section 14087.96), or Article 2.91
14 (commencing with Section 14089) of Chapter 7 of, or Chapter 8
15 (commencing with Section 14200) of, Part 3 of Division 9 of the
16 Welfare and Institutions Code.

17 (c) On or before July 1, 2012, the department and the
18 Department of Insurance shall jointly develop a uniform prior
19 authorization form. Notwithstanding any other provision of law,
20 on and after January 1, 2013, or six months after the form is
21 developed, whichever is later, every prescribing provider shall use
22 that uniform prior authorization form to request prior authorization
23 for coverage of prescription drug benefits and every health care
24 service plan shall accept that form as sufficient to request prior
25 authorization for prescription drug benefits.

26 (d) The prior authorization form developed pursuant to
27 subdivision (c) shall meet the following criteria:

28 (1) The form shall not exceed two pages.

29 (2) The form shall be made electronically available by the
30 department and the health care service plan.

31 (3) The completed form may also be electronically submitted
32 from the prescribing provider to the health care service plan.

33 (4) The department and the Department of Insurance shall
34 develop the form with input from interested parties from at least
35 one public meeting.

36 (5) The department and the Department of Insurance, in
37 development of the standardized form, shall take into consideration
38 the following:

1 (A) Existing prior authorization forms established by the federal
2 Centers for Medicare and Medicaid Services and the State
3 Department of Health Care Services.

4 (B) National standards pertaining to electronic prior
5 authorization.

6 (e) For purposes of this section, a “prescribing provider” shall
7 include a provider authorized to write a prescription, pursuant to
8 subdivision (a) of Section 4040 of the Business and Professions
9 Code, to treat a medical condition of an enrollee.

10 SEC. 82. Section 1374.74 of the Health and Safety Code is
11 amended to read:

12 1374.74. (a) The department, in consultation with the
13 Department of Insurance, shall convene an Autism Advisory Task
14 Force by February 1, 2012, in collaboration with other agencies,
15 departments, advocates, autism experts, health plan and health
16 insurer representatives, and other entities and stakeholders that it
17 deems appropriate. The Autism Advisory Task Force shall develop
18 recommendations regarding behavioral health treatment that is
19 medically necessary for the treatment of individuals with autism
20 or pervasive developmental disorder. The Autism Advisory Task
21 Force shall address all of the following:

22 (1) Interventions that have been scientifically validated and
23 have demonstrated clinical efficacy.

24 (2) Interventions that have measurable treatment outcomes.

25 (3) Patient selection, monitoring, and duration of therapy.

26 (4) Qualifications, training, and supervision of providers.

27 (5) Adequate networks of providers.

28 (b) The Autism Advisory Task Force shall also develop
29 recommendations regarding the education, training, and experience
30 requirements that unlicensed individuals providing autism services
31 shall meet in order to secure a license from the state.

32 (c) The department shall submit a report of the Autism Advisory
33 Task Force to the Governor, the President pro Tempore of the
34 Senate, the Speaker of the Assembly, and the Senate and Assembly
35 Committees on Health by December 31, 2012, on which date the
36 task force shall cease to exist.

37 SEC. 83. Section 1461 of the Health and Safety Code, as added
38 by Section 21 of Chapter 1136 of the Statutes of 1993, is repealed.

39 SEC. 84. Section 1527.3 of the Health and Safety Code is
40 amended to read:

1 1527.3. The fund shall not be liable for any of the following:

2 (a) Any loss arising out of a dishonest, fraudulent, criminal, or
3 intentional act.

4 (b) Any occurrence which does not arise from the foster-care
5 relationship.

6 (c) Any bodily injury arising out of the operation or use of any
7 motor vehicle, aircraft, or watercraft owned or operated by, or
8 rented or loaned to, any foster parent.

9 (d) Any loss arising out of licentious, immoral, or sexual
10 behavior on the part of a foster parent intended to lead to, or
11 culminating in, any sexual act.

12 (e) Any allegation of alienation of affection against a foster
13 parent.

14 (f) Any loss or damage arising out of occurrences prior to
15 October 1, 1986.

16 (g) Exemplary damages.

17 (h) Any liability of a foster parent which is uninsured due solely
18 to the foster parent's failure to obtain insurance specified in Section
19 676.7 of the Insurance Code. Nothing in this subdivision shall be
20 construed to expand the liability of the fund with respect to insured
21 foster parents.

22 SEC. 85. Section 11357.5 of the Health and Safety Code is
23 amended to read:

24 11357.5. (a) Every person who sells, dispenses, distributes,
25 furnishes, administers, or gives, or offers to sell, dispense,
26 distribute, furnish, administer, or give, or possesses for sale any
27 synthetic cannabinoid compound, or any synthetic cannabinoid
28 derivative, to any person, is guilty of a misdemeanor punishable
29 by imprisonment in a county jail not exceeding six months, or by
30 a fine not exceeding one thousand dollars (\$1,000), or by both that
31 fine and imprisonment.

32 (b) As used in this section, the term "synthetic cannabinoid
33 compound" refers to any of the following substances:

34 (1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018).

35 (2) 1-butyl-3-(1-naphthoyl)indole (JWH-073).

36 (3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole
37 (JWH-200).

38 (4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol
39 (CP-47,497).

1 (5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol
2 (cannabicyclohexanol; CP-47,497 C8 homologue).

3 SEC. 86. Section 11364 of the Health and Safety Code is
4 amended to read:

5 11364. (a) It is unlawful to possess an opium pipe or any
6 device, contrivance, instrument, or paraphernalia used for
7 unlawfully injecting or smoking (1) a controlled substance specified
8 in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of
9 Section 11054, specified in paragraph (14), (15), or (20) of
10 subdivision (d) of Section 11054, specified in subdivision (b) or
11 (c) of Section 11055, or specified in paragraph (2) of subdivision
12 (d) of Section 11055, or (2) a controlled substance which is a
13 narcotic drug classified in Schedule III, IV, or V.

14 (b) This section shall not apply to hypodermic needles or
15 syringes that have been containerized for safe disposal in a
16 container that meets state and federal standards for disposal of
17 sharps waste.

18 (c) Pursuant to authorization by a county, with respect to all of
19 the territory within the county, or a city, with respect to the territory
20 within the city, for the period commencing January 1, 2005, and
21 ending December 31, 2018, subdivision (a) shall not apply to the
22 possession solely for personal use of 10 or fewer hypodermic
23 needles or syringes if acquired from an authorized source.

24 (d) This section shall be inoperative until January 1, 2015.

25 SEC. 87. Section 25160 of the Health and Safety Code is
26 amended to read:

27 25160. (a) For purposes of this chapter, the following
28 definitions apply:

29 (1) “Manifest” means a shipping document originated and signed
30 by a generator of hazardous waste that contains all of the
31 information required by the department and that complies with all
32 applicable federal and state regulations.

33 (2) “California Uniform Hazardous Waste Manifest” means
34 either of the following:

35 (A) A manifest document printed and supplied by the state for
36 a shipment initiated on or before September 4, 2006.

37 (B) The Uniform Hazardous Waste Manifest printed by a source
38 registered with the United States Environmental Protection Agency
39 for a shipment initiated on or after September 5, 2006.

1 (3) For purposes of this section and Section 25205.15, a
2 shipment is initiated on the date when the manifest is signed by
3 the first transporter and the hazardous waste leaves the site where
4 it is generated.

5 (b) (1) Except as provided in Section 25160.2 or 25160.8, or
6 as otherwise authorized by a variance issued by the department, a
7 person generating hazardous waste that is transported, or submitted
8 for transportation, for offsite handling, treatment, storage, disposal,
9 or any combination thereof, shall complete a manifest prior to the
10 time the waste is transported or offered for transportation, and
11 shall designate on that manifest the facility to which the waste is
12 to be shipped for the handling, treatment, storage, disposal, or
13 combination thereof. The manifest shall be completed as required
14 by the department. The generator shall provide the manifest to the
15 person who will transport the hazardous waste, who is the driver,
16 if the hazardous waste will be transported by vehicle, or the person
17 designated by the railroad corporation or vessel operator, if the
18 hazardous waste will be transported by rail or vessel.

19 (A) The generator shall use the standard California Uniform
20 Hazardous Waste Manifest supplied by the department for all
21 shipments of hazardous waste initiated on and before September
22 4, 2006, for which a manifest is required, except as provided in
23 paragraph (2).

24 (B) The generator shall use the Uniform Hazardous Waste
25 Manifest printed by a source registered with the United States
26 Environmental Protection Agency for all shipments of hazardous
27 waste initiated on and after September 5, 2006, for which a
28 manifest is required.

29 (C) A manifest shall only be used for the purposes specified in
30 this chapter, including, but not limited to, identifying materials
31 that the person completing the manifest reasonably believes are
32 hazardous waste.

33 (D) Within 30 days from the date of transport, or submission
34 for transport, of hazardous waste, each generator of that hazardous
35 waste shall submit to the department a legible copy of each
36 manifest used. The copy submitted to the department shall contain
37 the signatures of the generator and the transporter.

38 (E) In lieu of submitting a copy of each manifest used, a
39 generator may submit an electronic report to the department
40 meeting the requirements of Section 25160.3.

1 (2) Except as provided in Section 25160.2 or 25160.8 or as
2 otherwise authorized by a variance issued by the department, a
3 person generating hazardous waste that is transported, or submitted
4 for transportation, for offsite handling, treatment, storage, disposal,
5 or any combination thereof, outside of the state, shall complete,
6 whether or not the waste is determined to be hazardous by the
7 importing country or state, a manifest in accordance with the
8 following conditions:

9 (A) The generator shall use the standard California Uniform
10 Hazardous Waste Manifest or the manifest required by the
11 receiving state for all shipments of hazardous waste initiated on
12 and before September 4, 2006, for which a manifest is required.

13 (B) The generator shall use the Uniform Hazardous Waste
14 Manifest printed by a source registered with the United States
15 Environmental Protection Agency for all shipments of hazardous
16 waste initiated on and after September 5, 2006, for which a
17 manifest is required.

18 (C) The generator shall submit a copy of the manifest specified
19 in subparagraph (A) or (B), as applicable, to the department within
20 30 days from the date of the transport, or submission for transport,
21 of the hazardous waste. In lieu of submitting a copy of each
22 manifest used, a generator may submit an electronic report to the
23 department meeting the requirements of Section 25160.3.

24 (3) Within 30 days from the date of transport, or submission for
25 transport, of hazardous waste out of state, each generator of that
26 hazardous waste shall submit to the department a legible copy of
27 each manifest used. The copy submitted to the department shall
28 contain the signatures of the generator, all transporters, excepting
29 intermediate rail transporters, and the out-of-state facility operator.
30 If within 35 days from the date of the initial shipment, or for
31 exports by water to foreign countries 60 days after the initial
32 shipment, the generator has not received a copy of the manifest
33 signed by all transporters and the facility operator, the generator
34 shall contact the owner or operator of the designated facility to
35 determine the status of the hazardous waste and to request that the
36 owner or operator immediately provide a signed copy of the
37 manifest to the generator. Except as provided otherwise in
38 paragraph (2) of subdivision (h) of Section 25123.3, if within 45
39 days from the date of the initial shipment or, for exports by water
40 to foreign countries, 90 days from the date of the initial shipment,

1 the generator has not received a copy of the signed manifest from
2 the facility owner or operator, the generator shall submit an
3 exception report to the department.

4 (4) For shipments of waste that do not require a manifest
5 pursuant to Title 40 of the Code of Federal Regulations, the
6 department, by regulation, may establish manifest requirements
7 that differ from the requirements of this section. The requirements
8 for an alternative form of manifest shall ensure that the hazardous
9 waste is transported by a registered hazardous waste transporter,
10 that the hazardous waste is tracked, and that human health and
11 safety and the environment are protected.

12 (5) (A) Notwithstanding any other provision of this section,
13 except as provided in subparagraph (B), the generator copy of the
14 manifest is not required to be submitted to the department for any
15 waste transported in compliance with the consolidated manifest
16 procedures in Section 25160.2 or with the procedures specified in
17 Section 25160.8, or when the transporter is operating pursuant to
18 a variance issued by the department pursuant to Section 25143
19 authorizing the use of a consolidated manifest for waste not listed
20 in Section 25160.2, if the generator, transporter, and facility are
21 all identified as the same company on the hazardous waste
22 manifest. If multiple identification numbers are used by a single
23 company, all of the company's identification numbers shall be
24 included in its annual transporter registration application, if those
25 numbers will be used with the consolidated manifest procedure.
26 Nothing in this paragraph affects the obligation of a facility
27 operator to submit to the department a copy of a manifest pursuant
28 to this section.

29 (B) If the waste subject to subparagraph (A) is transported out
30 of state, the generator shall either ensure that the facility operator
31 submits to the department a copy of the manifest or the generator
32 shall submit a copy to the department that contains the signatures
33 of the generator, all transporters, excepting intermediate rail
34 transporters, and the out-of-state facility operator pursuant to
35 paragraph (3).

36 (c) (1) The department shall determine the form and manner
37 in which a manifest shall be completed and the information that
38 the manifest shall contain. The information requested on the
39 manifest shall serve as the data dictionary for purposes of the
40 developing of an electronic reporting format pursuant to Section

1 71062 of the Public Resources Code. The form of each manifest
2 and the information requested on each manifest shall be the same
3 for all hazardous wastes, regardless of whether the hazardous
4 wastes are also regulated pursuant to the federal act or by
5 regulations adopted by the United States Department of
6 Transportation. However, the form of the manifest and the
7 information required shall be consistent with federal regulations.

8 (2) Pursuant to federal regulations, the department may require
9 information on the manifest in addition to the information required
10 by federal regulations.

11 (d) (1) A person who transports hazardous waste in a vehicle
12 shall have a manifest in his or her possession while transporting
13 the hazardous waste. The manifest shall be shown upon demand
14 to any representative of the department, any officer of the
15 Department of the California Highway Patrol, any local health
16 officer, any certified unified program agency, or any local public
17 officer designated by the director. If the hazardous waste is
18 transported by rail or vessel, the railroad corporation or vessel
19 operator shall comply with Subchapter C (commencing with
20 Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code
21 of Federal Regulations and shall also enter on the shipping papers
22 any information concerning the hazardous waste that the
23 department may require.

24 (2) Any person who transports a waste, as defined by Section
25 25124, and who is provided with a manifest for that waste shall,
26 while transporting that waste, comply with all requirements of this
27 chapter, and the regulations adopted pursuant thereto, concerning
28 the transportation of hazardous waste.

29 (3) A person who transports hazardous waste shall transfer a
30 copy of the manifest to the facility operator at the time of delivery,
31 or to the person who will subsequently transport the hazardous
32 waste in a vehicle. A person who transports hazardous waste and
33 then transfers custody of that hazardous waste to a person who
34 will subsequently transport that waste by rail or vessel shall transfer
35 a copy of the manifest to the person designated by the railroad
36 corporation or vessel operator, as specified by Subchapter C
37 (commencing with Section 171.1) of Chapter 1 of Subtitle B of
38 Title 49 of the Code of Federal Regulations.

39 (4) A person transporting hazardous waste by motor vehicle,
40 rail, or water shall certify to the department, at the time of initial

1 registration and at the time of renewal of that registration pursuant
2 to this article, that the transporter is familiar with the requirements
3 of this section, the department regulations, and federal laws and
4 regulations governing the use of manifests.

5 (e) (1) A facility operator in the state who receives hazardous
6 waste for handling, treatment, storage, disposal, or any combination
7 thereof, which was transported with a manifest pursuant to this
8 section, shall submit a copy of the manifest to the department
9 within 30 days from the date of receipt of the hazardous waste.
10 The copy submitted to the department shall contain the signatures
11 of the generator, all transporters, excepting intermediate rail
12 transporters, and the facility operator. In instances in which the
13 generator or transporter is not required by the generator's state or
14 federal law to sign the manifest, the facility operator shall require
15 the generator and all transporters, excepting intermediate rail
16 transporters, to sign the manifest before receiving the waste at any
17 facility in this state. In lieu of submitting a copy of each manifest
18 used, a facility operator may submit an electronic report to the
19 department meeting the requirements of Section 25160.3.

20 (2) Any treatment, storage, or disposal facility receiving
21 hazardous waste generated outside this state may only accept the
22 hazardous waste for treatment, storage, disposal, or any
23 combination thereof, if the hazardous waste is accompanied by a
24 completed standard California Uniform Hazardous Waste Manifest.

25 (3) A facility operator may accept hazardous waste generated
26 offsite that is not accompanied by a properly completed and signed
27 standard California Uniform Hazardous Waste Manifest if the
28 facility operator meets both of the following conditions:

29 (A) The facility operator is authorized to accept the hazardous
30 waste pursuant to a hazardous waste facilities permit or other grant
31 of authorization from the department.

32 (B) The facility operator is in compliance with the regulations
33 adopted by the department specifying the conditions and procedures
34 applicable to the receipt of hazardous waste under these
35 circumstances.

36 (4) This subdivision applies only to shipments of hazardous
37 waste for which a manifest is required pursuant to this section and
38 the regulations adopted pursuant to this section.

39 (f) A generator, transporter, or facility operator may comply
40 with the requirements of Sections 66262.40, 66263.22, 66264.71,

1 and 66265.71 of Title 22 of the California Code of Regulations by
2 storing manifest information electronically. A generator,
3 transporter, or facility operator who stores manifest information
4 electronically shall use the standardized electronic format and
5 protocol for the exchange of electronic data established by the
6 Secretary for Environmental Protection pursuant to Part 2
7 (commencing with Section 71050) of Division 34 of the Public
8 Resources Code and the stored information shall include all the
9 information required to be retained by the department, including
10 all signatures required by this section.

11 (g) The department shall make available for review, by any
12 interested party, the department's plans for revising and enhancing
13 its system for tracking hazardous waste for the purposes of
14 protecting human health and the environment, enforcing laws,
15 collecting revenue, and generating necessary reports.

16 SEC. 88. Section 34163 of the Health and Safety Code is
17 amended to read:

18 34163. Notwithstanding Part 1 (commencing with Section
19 33000), Part 1.5 (commencing with Section 34000), Part 1.6
20 (commencing with Section 34050), and Part 1.7 (commencing
21 with Section 34100), or any other law, commencing on the effective
22 date of this part, an agency shall not have the authority to, and
23 shall not, do any of the following:

24 (a) Make loans or advances or grant or enter into agreements
25 to provide funds or provide financial assistance of any sort to any
26 entity or person for any purpose, including, but not limited to, all
27 of the following:

28 (1) Loans of moneys or any other thing of value or commitments
29 to provide financing to nonprofit organizations to provide those
30 organizations with financing for the acquisition, construction,
31 rehabilitation, refinancing, or development of multifamily rental
32 housing or the acquisition of commercial property for lease, each
33 pursuant to Chapter 7.5 (commencing with Section 33741) of Part
34 1.

35 (2) Loans of moneys or any other thing of value for residential
36 construction, improvement, or rehabilitation pursuant to Chapter
37 8 (commencing with Section 33750) of Part 1. These include, but
38 are not limited to, construction loans to purchasers of residential
39 housing, mortgage loans to purchasers of residential housing, and

1 loans to mortgage lenders, or any other entity, to aid in financing
2 pursuant to Chapter 8 (commencing with Section 33750).

3 (3) The purchase, by an agency, of mortgage or construction
4 loans from mortgage lenders or from any other entities.

5 (b) Enter into contracts with, incur obligations, or make
6 commitments to, any entity, whether governmental, tribal, or
7 private, or any individual or groups of individuals for any purpose,
8 including, but not limited to, loan agreements, passthrough
9 agreements, regulatory agreements, services contracts, leases,
10 disposition and development agreements, joint exercise of powers
11 agreements, contracts for the purchase of capital equipment, and
12 agreements for redevelopment activities, including, but not limited
13 to, agreements for planning, design, redesign, development,
14 demolition, alteration, construction, reconstruction, rehabilitation,
15 site remediation, site development or improvement, removal of
16 graffiti, land clearance, and seismic retrofits.

17 (c) Amend or modify existing agreements, obligations, or
18 commitments with any entity, for any purpose, including, but not
19 limited to, any of the following:

20 (1) Renewing or extending the term of leases or other
21 agreements, except that the agency may extend lease space for its
22 own use to a date not to exceed six months after the effective date
23 of the act adding this part and for a rate no more than 5 percent
24 above the rate the agency currently pays on a monthly basis.

25 (2) Modifying terms and conditions of existing agreements,
26 obligations, or commitments.

27 (3) Forgiving all or any part of the balance owed to the agency
28 on existing loans or extend the term or change the terms and
29 conditions of existing loans.

30 (4) Increasing its deposits to the Low and Moderate Income
31 Housing Fund created pursuant to Section 33334.3 beyond the
32 minimum level that applied to it as of January 1, 2011.

33 (5) Transferring funds out of the Low and Moderate Income
34 Housing Fund, except to meet the minimum housing-related
35 obligations that existed as of January 1, 2011, to make required
36 payments under Sections 33690 and 33690.5, and to borrow funds
37 pursuant to Section 34168.5.

38 (d) Dispose of assets by sale, long-term lease, gift, grant,
39 exchange, transfer, assignment, or otherwise, for any purpose,
40 including, but not limited to, any of the following:

1 (1) Assets, including, but not limited to, real property, deeds of
2 trust, and mortgages held by the agency, moneys, accounts
3 receivable, contract rights, proceeds of insurance claims, grant
4 proceeds, settlement payments, rights to receive rents, and any
5 other rights to payment of whatever kind.

6 (2) Real property, including, but not limited to, land, land under
7 water and waterfront property, buildings, structures, fixtures, and
8 improvements on the land, any property appurtenant to, or used
9 in connection with, the land, every estate, interest, privilege,
10 easement, franchise, and right in land, including rights-of-way,
11 terms for years, and liens, charges, or encumbrances by way of
12 judgment, mortgage, or otherwise, and the indebtedness secured
13 by the liens.

14 (e) Acquire real property by any means for any purpose,
15 including, but not limited to, the purchase, lease, or exercising of
16 an option to purchase or lease, exchange, subdivide, transfer,
17 assume, obtain option upon, acquire by gift, grant, bequest, devise,
18 or otherwise acquire any real property, any interest in real property,
19 and any improvements on it, including the repurchase of developed
20 property previously owned by the agency and the acquisition of
21 real property by eminent domain, provided, however, that nothing
22 in this subdivision is intended to prohibit the acceptance or transfer
23 of title for real property acquired prior to the effective date of this
24 part.

25 (f) Transfer, assign, vest, or delegate any of its assets, funds,
26 rights, powers, ownership interests, or obligations for any purpose
27 to any entity, including, but not limited to, the community, the
28 legislative body, another member of a joint powers authority, a
29 trustee, a receiver, a partner entity, another agency, a nonprofit
30 corporation, a contractual counterparty, a public body, a
31 limited-equity housing cooperative, the state, a political subdivision
32 of the state, the federal government, any private entity, or an
33 individual or group of individuals.

34 (g) Accept financial or other assistance from the state or federal
35 government or any public or private source if the acceptance
36 necessitates or is conditioned upon the agency incurring
37 indebtedness as that term is described in this part.

38 SEC. 89. Section 34167.5 of the Health and Safety Code is
39 amended to read:

1 34167.5. Commencing on the effective date of the act adding
2 this part, the Controller shall review the activities of redevelopment
3 agencies in the state to determine whether an asset transfer has
4 occurred after January 1, 2011, between the city or county, or city
5 and county that created a redevelopment agency or any other public
6 agency, and the redevelopment agency. If such an asset transfer
7 did occur during that period and the government agency that
8 received the assets is not contractually committed to a third party
9 for the expenditure or encumbrance of those assets, to the extent
10 not prohibited by state and federal law, the Controller shall order
11 the available assets to be returned to the redevelopment agency
12 or, on or after October 1, 2011, to the successor agency, if a
13 successor agency is established pursuant to Part 1.85 (commencing
14 with Section 34170). Upon receiving that order from the Controller,
15 an affected local agency shall, as soon as practicable, reverse the
16 transfer and return the applicable assets to the redevelopment
17 agency or, on or after October 1, 2011, to the successor agency,
18 if a successor agency is established pursuant to Part 1.85
19 (commencing with Section 34170). The Legislature hereby finds
20 that a transfer of assets by a redevelopment agency during the
21 period covered in this section is deemed not to be in the furtherance
22 of the Community Redevelopment Law and is thereby
23 unauthorized.

24 SEC. 90. Section 34173 of the Health and Safety Code is
25 amended to read:

26 34173. (a) Successor agencies, as defined in this part, are
27 hereby designated as successor entities to the former redevelopment
28 agencies.

29 (b) Except for those provisions of the Community
30 Redevelopment Law that are repealed, restricted, or revised
31 pursuant to the act adding this part, all authority, rights, powers,
32 duties, and obligations previously vested with the former
33 redevelopment agencies, under the Community Redevelopment
34 Law, are hereby vested in the successor agencies.

35 (c) (1) Where the redevelopment agency was in the form of a
36 joint powers authority, and where the joint powers agreement
37 governing the formation of the joint powers authority addresses
38 the allocation of assets and liabilities upon dissolution of the joint
39 powers authority, then each of the entities that created the former
40 redevelopment agency may be a successor agency within the

1 meaning of this part and each shall have a share of assets and
2 liabilities based on the provisions of the joint powers agreement.

3 (2) Where the redevelopment agency was in the form of a joint
4 powers authority, and where the joint powers agreement governing
5 the formation of the joint powers authority does not address the
6 allocation of assets and liabilities upon dissolution of the joint
7 powers authority, each of the entities that created the former
8 redevelopment agency may be a successor agency within the
9 meaning of this part, a proportionate share of the assets and
10 liabilities shall be based on the assessed value in the project areas
11 within each entity's jurisdiction, as determined by the county
12 assessor, in its jurisdiction as compared to the assessed value of
13 land within the boundaries of the project areas of the former
14 redevelopment agency.

15 (d) (1) A city, county, city and county, or the entities forming
16 the joint powers authority that authorized the creation of each
17 redevelopment agency may elect not to serve as a successor agency
18 under this part. A city, county, city and county, or any member of
19 a joint powers authority that elects not to serve as a successor
20 agency under this part must file a copy of a duly authorized
21 resolution of its governing board to that effect with the county
22 auditor-controller no later than one month prior to the operative
23 date of this part.

24 (2) The determination of the first local agency that elects to
25 become the successor agency shall be made by the county
26 auditor-controller based on the earliest receipt by the county
27 auditor-controller of a copy of a duly adopted resolution of the
28 local agency's governing board authorizing such an election. As
29 used in this section, "local agency" means any city, county, city
30 and county, or special district in the county of the former
31 redevelopment agency.

32 (3) If no local agency elects to serve as a successor agency for
33 a dissolved redevelopment agency, a public body, referred to herein
34 as a "designated local authority" shall be immediately formed,
35 pursuant to this part, in the county and shall be vested with all the
36 powers and duties of a successor agency as described in this part.
37 The Governor shall appoint three residents of the county to serve
38 as the governing board of the authority. The designated local
39 authority shall serve as successor agency until a local agency elects
40 to become the successor agency in accordance with this section.

1 (e) The liability of any successor agency, acting pursuant to the
2 powers granted under the act adding this part, shall be limited to
3 the extent of the total sum of property tax revenues it receives
4 pursuant to this part and the value of assets transferred to it as a
5 successor agency for a dissolved redevelopment agency.

6 SEC. 91. Section 34176 of the Health and Safety Code is
7 amended to read:

8 34176. (a) The city, county, or city and county that authorized
9 the creation of a redevelopment agency may elect to retain the
10 housing assets and functions previously performed by the
11 redevelopment agency. If a city, county, or city and county elects
12 to retain the responsibility for performing housing functions
13 previously performed by a redevelopment agency, all rights,
14 powers, duties, and obligations, excluding any amounts on deposit
15 in the Low and Moderate Income Housing Fund, shall be
16 transferred to the city, county, or city and county.

17 (b) If a city, county, or city and county does not elect to retain
18 the responsibility for performing housing functions previously
19 performed by a redevelopment agency, all rights, powers, assets,
20 liabilities, duties, and obligations associated with the housing
21 activities of the agency, excluding any amounts in the Low and
22 Moderate Income Housing Fund, shall be transferred as follows:

23 (1) Where there is no local housing authority in the territorial
24 jurisdiction of the former redevelopment agency, to the Department
25 of Housing and Community Development.

26 (2) Where there is one local housing authority in the territorial
27 jurisdiction of the former redevelopment agency, to that local
28 housing authority.

29 (3) Where there is more than one local housing authority in the
30 territorial jurisdiction of the former redevelopment agency, to the
31 local housing authority selected by the city, county, or city and
32 county that authorized the creation of the redevelopment agency.

33 (c) Commencing on the operative date of this part, the entity
34 assuming the housing functions formerly performed by the
35 redevelopment agency may enforce affordability covenants and
36 perform related activities pursuant to applicable provisions of the
37 Community Redevelopment Law (Part 1 (commencing with
38 Section 33000)), including, but not limited to, Section 33418.

39 SEC. 92. Section 34188.8 of the Health and Safety Code is
40 amended to read:

1 34188.8. For purposes of a redevelopment agency that becomes
2 subject to this part pursuant to Section 34195, a date certain
3 identified in this chapter shall not be subject to Section 34191,
4 except for dates certain in Section 34182 and references to
5 “October 1, 2011,” or to the “operative date of this part.” However,
6 for purposes of those redevelopment agencies, a date certain
7 identified in this chapter shall be appropriately modified, as
8 necessary to reflect the appropriate fiscal year or portion of a fiscal
9 year.

10 SEC. 93. Section 34189 of the Health and Safety Code is
11 amended to read:

12 34189. (a) Commencing on the operative date of this part, all
13 provisions of the Community Redevelopment Law that depend on
14 the allocation of tax increment to redevelopment agencies,
15 including, but not limited to, Sections 33445, 33640, 33641, 33645,
16 and subdivision (b) of Section 33670, shall be inoperative, except
17 as those sections apply to a redevelopment agency operating
18 pursuant to Part 1.9 (commencing with Section 34192).

19 (b) The California Law Revision Commission shall draft a
20 Community Redevelopment Law cleanup bill for consideration
21 by the Legislature no later than January 1, 2013.

22 (c) To the extent that a provision of Part 1 (commencing with
23 Section 33000), Part 1.5 (commencing with Section 34000), Part
24 1.6 (commencing with Section 34050), and Part 1.7 (commencing
25 with Section 34100) conflicts with this part, the provisions of this
26 part shall control. Further, if a provision of Part 1 (commencing
27 with Section 33000), Part 1.5 (commencing with Section 34000),
28 Part 1.6 (commencing with Section 34050), or Part 1.7
29 (commencing with Section 34100) provides an authority that the
30 act adding this part is restricting or eliminating, the restriction and
31 elimination provisions of the act adding this part shall control.

32 (d) It is intended that the provisions of this part shall be read in
33 a manner as to avoid duplication of payments.

34 SEC. 94. Section 34194.4 of the Health and Safety Code is
35 amended to read:

36 34194.4. (a) The county auditor-controller in each county in
37 which a redevelopment agency exists shall establish in the county
38 treasury a Special District Allocation Fund. The county
39 auditor-controller shall deposit the following amounts into the
40 fund out of each annual remittance by a city or county that includes

1 a special district under this section paid pursuant to Section 34194
2 as follows:

3 (1) For the 2011–12 fiscal year, the amount shall be the city’s
4 or county’s remittance amount multiplied by the ratio of four
5 million three hundred thousand dollars (\$4,300,000) to one billion
6 seven hundred million dollars (\$1,700,000,000).

7 (2) For the 2012–13 fiscal year and each fiscal year thereafter,
8 the amount shall be the city’s or county’s remittance amount
9 multiplied by the ratio of sixty million dollars (\$60,000,000) to
10 four hundred million dollars (\$400,000,000).

11 (3) Amounts derived from the remittance payments of each city
12 or county shall be maintained in separate accounts in the fund.

13 (b) On or before May 15 each year, the county auditor-controller
14 shall make payments out of each account in the Special District
15 Allocation Fund to each special district the boundaries of which
16 include all or any portion of a redevelopment project area of the
17 city’s or county’s redevelopment agency for special district services
18 that the district determines further redevelopment purposes. Each
19 special district shall receive a proportionate share of the total annual
20 deposit in the account, determined as follows:

21 (1) For each special district, the auditor-controller shall
22 determine the annual amount of tax increment revenue of the city’s
23 or county’s redevelopment agency that is attributable to the special
24 district. This amount shall be the amount of additional property
25 tax revenue that the special district would have received in that
26 year had property tax collected on incremental assessed value
27 within the redevelopment project areas been allocated to the district
28 under the property tax allocation laws then in effect. From this
29 amount, the auditor-controller shall subtract any passthrough
30 payments received in that year by the special district from the
31 redevelopment agency.

32 (2) The county auditor-controller shall sum all of the annual
33 amounts for individual special districts determined in paragraph
34 (1).

35 (3) For each special district, the county auditor-controller shall
36 calculate the ratio of the amount determined for that special district
37 under paragraph (1) to the total amount determined in paragraph
38 (2). This ratio shall be each special district’s proportion of the total
39 payment from the account.

1 (c) For the purposes of this section, “special district” means a
 2 district that provides fire protection services and transit districts.
 3 A special district that has both excluded and nonexcluded functions
 4 and that serves nonexcluded functions within a redevelopment
 5 project area shall receive a prorated share proportionate to the
 6 special district’s overall share of countywide property tax that is
 7 received for its nonexcluded functions.

8 (d) The auditor-controller shall report the payments made to
 9 special districts pursuant to this section to the Controller by June
 10 30 each year in a form and manner as specified by the Controller.

11 (e) The county auditor-controller may require special districts
 12 to provide, as a condition of receiving payments from the Special
 13 District Allocation Fund, any relevant information necessary to
 14 the determination of the payments made pursuant to this section.

15 SEC. 95. Section 34195 of the Health and Safety Code is
 16 amended to read:

17 34195. In the event that a city or county fails to make the
 18 remittance required pursuant to the agreement specified in Section
 19 34194 or 34194.5 and the Director of Finance makes the
 20 determination described in subdivision (d) of Section 34194, the
 21 following shall apply:

22 (a) The city or county shall no longer be authorized to engage
 23 in voluntary redevelopment pursuant to this part and the
 24 redevelopment agency shall become immediately subject to the
 25 provisions of Part 1.8 (commencing with Section 34161) and Part
 26 1.85 (commencing with Section 34170).

27 (b) The state shall be entitled to an assignment of any rights of
 28 a city or county, as applicable, to any payments from the
 29 redevelopment agency to which the city or county is entitled, as
 30 described in subdivision (b) of Section 34193.2, for purposes of
 31 mitigating the fiscal impact to the state related to the failure of the
 32 city or county to make the required remittance payment.

33 SEC. 96. Section 100425 of the Health and Safety Code, as
 34 amended by Section 2 of Chapter 402 of the Statutes of 2011, is
 35 amended to read:

36 100425. (a) The fees or charges for the issuance or renewal
 37 of any permit, license, registration, or document pursuant to
 38 Sections 1639.5, 1676, 1677, 2805, 11839.25, 106700, 106890,
 39 106925, 107080, 107090, 107095, 107160, 110210, 110470,
 40 111130, 111140, 111630, 112405, 112510, 112750, 112755,

1 113060, 113065, 115035, 115065, 115080, 116200, 117923,
2 117995, 118045, 118210, and 118245 shall be adjusted annually
3 by the percentage change printed in the Budget Act for those items
4 appropriating funds to the state department. After the first annual
5 adjustment of fees or charges pursuant to this section, the fees or
6 charges subject to subsequent adjustment shall be the fees or
7 charges for the prior calendar year. The percentage change shall
8 be determined by the Department of Finance, and shall include at
9 least the total percentage change in salaries and operating expenses
10 of the state department. However, the total increase in amounts
11 collected under this section shall not exceed the total increased
12 cost of the program or service provided.

13 (b) The state department shall publish annually a list of the
14 actual numerical fee charges for each permit, license, certification,
15 or registration governed by this section.

16 (c) This adjustment of fees and publication of the fee list shall
17 not be subject to the requirements of Chapter 3.5 (commencing
18 with Section 11340) of Part 1 of Division 3 of Title 2 of the
19 Government Code.

20 (d) This section shall remain in effect only until January 1, 2014,
21 and as of that date is repealed, unless a later enacted statute, that
22 is enacted before January 1, 2014, deletes or extends that date.

23 SEC. 97. Section 100425 of the Health and Safety Code, as
24 added by Section 3 of Chapter 402 of the Statutes of 2011, is
25 amended to read:

26 100425. (a) The fees or charges for the issuance or renewal
27 of any permit, license, registration, or document pursuant to
28 Sections 1639.5, 1676, 1677, 2805, 11839.25, 103625, 106700,
29 106890, 106925, 107080, 107090, 107095, 107160, 110210,
30 110470, 111130, 111140, 111630, 112405, 112510, 112750,
31 112755, 113060, 113065, 114065, 115035, 115065, 115080,
32 117923, 117995, 118045, 118210, and 118245 shall be adjusted
33 annually by the percentage change printed in the Budget Act for
34 those items appropriating funds to the state department. After the
35 first annual adjustment of fees or charges pursuant to this section,
36 the fees or charges subject to subsequent adjustment shall be the
37 fees or charges for the prior calendar year. The percentage change
38 shall be determined by the Department of Finance, and shall
39 include at least the total percentage change in salaries and operating
40 expenses of the state department. However, the total increase in

1 amounts collected under this section shall not exceed the total
2 increased cost of the program or service provided.

3 (b) The state department shall publish annually a list of the
4 actual numerical fee charges for each permit, license, certification,
5 or registration governed by this section.

6 (c) This adjustment of fees and publication of the fee list shall
7 not be subject to the requirements of Chapter 3.5 (commencing
8 with Section 11340) of Part 1 of Division 3 of Title 2 of the
9 Government Code.

10 (d) With respect to the fees or charges pursuant to Section
11 103625, the actual dollar fee or charge shall be rounded to the
12 nearest whole dollar.

13 (e) This section shall become operative on January 1, 2014.

14 SEC. 98. Section 113789 of the Health and Safety Code is
15 amended to read:

16 113789. (a) “Food facility” means an operation that stores,
17 prepares, packages, serves, vends, or otherwise provides food for
18 human consumption at the retail level, including, but not limited
19 to, the following:

20 (1) An operation where food is consumed on or off the premises,
21 regardless of whether there is a charge for the food.

22 (2) Any place used in conjunction with the operations described
23 in this subdivision, including, but not limited to, storage facilities
24 for food-related utensils, equipment, and materials.

25 (b) “Food facility” includes permanent and nonpermanent food
26 facilities, including, but not limited to, the following:

27 (1) Public and private school cafeterias.

28 (2) Restricted food service facilities.

29 (3) Licensed health care facilities.

30 (4) Commissaries.

31 (5) Mobile food facilities.

32 (6) Mobile support units.

33 (7) Temporary food facilities.

34 (8) Vending machines.

35 (9) Certified farmers’ markets, for purposes of permitting and
36 enforcement pursuant to Section 114370.

37 (10) Farm stands, for purposes of permitting and enforcement
38 pursuant to Section 114375.

39 (c) “Food facility” does not include any of the following:

- 1 (1) A cooperative arrangement wherein no permanent facilities
2 are used for storing or handling food.
- 3 (2) A private home.
- 4 (3) A church, private club, or other nonprofit association that
5 gives or sells food to its members and guests, and not to the general
6 public, at an event that occurs not more than three days in any
7 90-day period.
- 8 (4) A for-profit entity that gives or sells food at an event that
9 occurs not more than three days in a 90-day period for the benefit
10 of a nonprofit association, if the for-profit entity receives no
11 monetary benefit, other than that resulting from recognition from
12 participating in an event.
- 13 (5) Premises set aside for wine tasting, as that term is used in
14 Section 23356.1 of the Business and Professions Code and in the
15 regulations adopted pursuant to that section, in compliance with
16 Section 118375, regardless of whether there is a charge for the
17 wine tasting, if no other beverage, except for bottles of wine and
18 prepackaged nonpotentially hazardous beverages, is offered for
19 sale for onsite consumption and no food, except for crackers, is
20 served.
- 21 (6) Premises operated by a producer, selling or offering for sale
22 only whole produce grown by the producer, or shell eggs, or both,
23 provided the sales are conducted on premises controlled by the
24 producer.
- 25 (7) A commercial food processing plant as defined in Section
26 111955.
- 27 (8) A child day care facility, as defined in Section 1596.750.
- 28 (9) A community care facility, as defined in Section 1502.
- 29 (10) A residential care facility for the elderly, as defined in
30 subdivision (k) of Section 1569.2.
- 31 (11) A residential care facility for the chronically ill, which has
32 the same meaning as a residential care facility, as defined in
33 subdivision (j) of Section 1568.01.
- 34 (12) Premises set aside by a beer manufacturer, as defined in
35 Section 25000.2 of the Business and Professions Code, in
36 compliance with Section 118375, for the purposes of beer tasting,
37 regardless of whether there is a charge for the beer tasting, if no
38 other beverage, except for beer and prepackaged nonpotentially
39 hazardous beverages, is offered for sale for onsite consumption,
40 and no food, except for crackers or pretzels, is served.

1 SEC. 99. Section 116565 of the Health and Safety Code is
2 amended to read:

3 116565. (a) Each public water system serving 1,000 or more
4 service connections, and any public water system that treats water
5 on behalf of one or more public water systems for the purpose of
6 rendering it safe for human consumption, shall reimburse the
7 department for the actual cost incurred by the department for
8 conducting those activities mandated by this chapter relating to
9 the issuance of domestic water supply permits, inspections,
10 monitoring, surveillance, and water quality evaluation that relate
11 to that specific public water system. The amount of reimbursement
12 shall be sufficient to pay, but in no event shall exceed, the
13 department's actual cost in conducting these activities.

14 (b) Each public water system serving fewer than 1,000 service
15 connections shall pay an annual drinking water operating fee to
16 the department as set forth in this subdivision for costs incurred
17 by the department for conducting those activities mandated by this
18 chapter relating to inspections, monitoring, surveillance, and water
19 quality evaluation relating to public water systems. The total
20 amount of fees shall be sufficient to pay, but in no event shall
21 exceed, the department's actual cost in conducting these activities.
22 Notwithstanding adjustment of actual fees collected pursuant to
23 Section 100425 as authorized pursuant to subdivision (d) of Section
24 106590, the amount that shall be paid annually by a public water
25 system pursuant to this section shall be as follows:

26 (1) Community water systems, six dollars (\$6) per service
27 connection, but not less than two hundred fifty dollars (\$250) per
28 water system, which may be increased by the department, as
29 provided for in subdivision (f), to ten dollars (\$10) per service
30 connection, but not less than two hundred fifty dollars (\$250) per
31 water system.

32 (2) Nontransient noncommunity water systems pursuant to
33 subdivision (k) of Section 116275, two dollars (\$2) per person
34 served, but not less than four hundred fifty-six dollars (\$456) per
35 water system, which may be increased by the department, as
36 provided for in subdivision (f), to three dollars (\$3) per person
37 served, but not less than four hundred fifty-six dollars (\$456) per
38 water system.

39 (3) Transient noncommunity water systems pursuant to
40 subdivision (o) of Section 116275, eight hundred dollars (\$800)

1 per water system, which may be increased by the department, as
2 provided for in subdivision (f), to one thousand three hundred
3 thirty-five dollars (\$1,335) per water system.

4 (4) Noncommunity water systems in possession of a current
5 exemption pursuant to former Section 116282 on January 1, 2012,
6 one hundred two dollars (\$102) per water system.

7 (c) For purposes of determining the fees provided for in
8 subdivision (a), the department shall maintain a record of its actual
9 costs for pursuing the activities specified in subdivision (a) relative
10 to each system required to pay the fees. The fee charged each
11 system shall reflect the department's actual cost, or in the case of
12 a local primacy agency the local primacy agency's actual cost, of
13 conducting the specified activities.

14 (d) The department shall submit an invoice for cost
15 reimbursement for the activities specified in subdivision (a) to the
16 public water systems no more than twice a year.

17 (1) The department shall submit one estimated cost invoice to
18 public water systems serving 1,000 or more service connections
19 and any public water system that treats water on behalf of one or
20 more public water systems for the purpose of rendering it safe for
21 human consumption. This invoice shall include the actual hours
22 expended during the first six months of the fiscal year. The hourly
23 cost rate used to determine the amount of the estimated cost invoice
24 shall be the rate for the previous fiscal year.

25 (2) The department shall submit a final invoice to the public
26 water system prior to October 1 following the fiscal year that the
27 costs were incurred. The invoice shall indicate the total hours
28 expended during the fiscal year, the reasons for the expenditure,
29 the hourly cost rate of the department for the fiscal year, the
30 estimated cost invoice, and payments received. The amount of the
31 final invoice shall be determined using the total hours expended
32 during the fiscal year and the actual hourly cost rate of the
33 department for the fiscal year. The payment of the estimated
34 invoice, exclusive of late penalty, if any, shall be credited toward
35 the final invoice amount.

36 (3) Payment of the invoice issued pursuant to paragraphs (1)
37 and (2) shall be made within 90 days of the date of the invoice.
38 Failure to pay the amount of the invoice within 90 days shall result
39 in a 10-percent late penalty that shall be paid in addition to the
40 invoiced amount.

1 (e) Any public water system under the jurisdiction of a local
2 primacy agency shall pay the fees specified in this section to the
3 local primacy agency in lieu of the department. This section shall
4 not preclude a local health officer from imposing additional fees
5 pursuant to Section 101325.

6 (f) The department may increase the fees established in
7 subdivision (b) as follows:

8 (1) By February 1 of the fiscal year prior to the fiscal year for
9 which fees are proposed to be increased, the department shall
10 publish a list of fees for the following fiscal year and a report
11 showing the calculation of the amount of the fees.

12 (2) The department shall make the report and the list of fees
13 available to the public by submitting them to the Legislature and
14 posting them on the department's Internet Web site.

15 (3) The department shall establish the amount of fee increases
16 subject to the approval and appropriation by the Legislature.

17 SEC. 100. Section 121690 of the Health and Safety Code is
18 amended to read:

19 121690. In rabies areas, all of the following shall apply:

20 (a) Every dog owner, after his or her dog attains the age of four
21 months, shall no less than once every two years secure a license
22 for the dog as provided by ordinance of the responsible city, city
23 and county, or county. License fees shall be fixed by the
24 responsible city, city and county, or county, at an amount not to
25 exceed limitations otherwise prescribed by state law or city, city
26 and county, or county charter.

27 (b) (1) Every dog owner, after his or her dog attains the age of
28 four months, shall, at intervals of time not more often than once a
29 year, as may be prescribed by the department, procure its
30 vaccination by a licensed veterinarian with a canine antirabies
31 vaccine approved by, and in a manner prescribed by, the
32 department, unless a licensed veterinarian determines, on an annual
33 basis, that a rabies vaccination would endanger the dog's life due
34 to disease or other considerations that the veterinarian can verify
35 and document. The responsible city, county, or city and county
36 may specify the means by which the dog owner is required to
37 provide proof of his or her dog's rabies vaccination, including, but
38 not limited to, by electronic transmission or facsimile.

39 (2) A request for an exemption from the requirements of this
40 subdivision shall be submitted on an approved form developed by

1 the department and shall include a signed statement by the
2 veterinarian explaining the inadvisability of the vaccination and a
3 signed statement by the dog owner affirming that the owner
4 understands the consequences and accepts all liability associated
5 with owning a dog that has not received the canine antirabies
6 vaccine. The request shall be submitted to the local health officer,
7 who may issue an exemption from the canine antirabies vaccine.

8 (3) The local health officer shall report exemptions issued
9 pursuant to this subdivision to the department.

10 (4) A dog that is exempt from the vaccination requirements of
11 this section shall be considered unvaccinated.

12 (5) A dog that is exempt from the vaccination requirements of
13 this section shall, at the discretion of the local health officer or the
14 officer's designee, be confined to the premises of the owner,
15 keeper, or harbinger and, when off the premises, shall be on a leash
16 the length of which shall not exceed six feet and shall be under
17 the direct physical control of an adult. A dog that is exempt from
18 the provisions of this section shall not have contact with a dog or
19 cat that is not currently vaccinated against rabies.

20 (c) All dogs under four months of age shall be confined to the
21 premises of, or kept under physical restraint by, the owner, keeper,
22 or harbinger. Nothing in this chapter and Section 120435 shall be
23 construed to prevent the sale or transportation of a puppy four
24 months old or younger.

25 (d) Any dog in violation of this chapter and any additional
26 provisions that may be prescribed by any local governing body
27 shall be impounded, as provided by local ordinance.

28 (e) The governing body of each city, city and county, or county
29 shall maintain or provide for the maintenance of a pound system
30 and a rabies control program for the purpose of carrying out and
31 enforcing this section.

32 (f) Each city, county, or city and county shall provide dog
33 vaccination clinics, or arrange for dog vaccination at clinics
34 operated by veterinary groups or associations, held at strategic
35 locations throughout each city, city and county, or county. The
36 vaccination and licensing procedures may be combined as a single
37 operation in the clinics. No charge in excess of the actual cost shall
38 be made for any one vaccination at a clinic. No owner of a dog
39 shall be required to have his or her dog vaccinated at a public clinic

1 if the owner elects to have the dog vaccinated by a licensed
2 veterinarian of the owner's choice.

3 All public clinics shall be required to operate under antiseptic
4 immunization conditions comparable to those used in the
5 vaccination of human beings.

6 (g) In addition to the authority provided in subdivision (a), the
7 ordinance of the responsible city, city and county, or county may
8 provide for the issuance of a license for a period not to exceed
9 three years for dogs that have attained the age of 12 months or
10 older and have been vaccinated against rabies or one year for dogs
11 exempted from the vaccination requirement pursuant to subdivision
12 (b). The person to whom the license is issued pursuant to this
13 subdivision may choose a license period as established by the
14 governing body of up to one, two, or three years. However, when
15 issuing a license pursuant to this subdivision, the license period
16 shall not extend beyond the remaining period of validity for the
17 current rabies vaccination and, if a dog is exempted from the
18 vaccination requirement pursuant to subdivision (b), the license
19 period shall not extend beyond one year. A dog owner who
20 complies with this subdivision shall be deemed to have complied
21 with the requirements of subdivision (a).

22 (h) All information obtained from a dog owner by compliance
23 with this chapter is confidential to the dog owner and proprietary
24 to the veterinarian. This information shall not be used, distributed,
25 or released for any purpose, except to ensure compliance with
26 existing federal, state, county, or city laws or regulations.

27 SEC. 101. Section 127405 of the Health and Safety Code is
28 amended to read:

29 127405. (a) (1) (A) Each hospital shall maintain an
30 understandable written policy regarding discount payments for
31 financially qualified patients as well as an understandable written
32 charity care policy. Uninsured patients or patients with high
33 medical costs who are at or below 350 percent of the federal
34 poverty level, as defined in subdivision (b) of Section 127400,
35 shall be eligible to apply for participation under a hospital's charity
36 care policy or discount payment policy. Notwithstanding any other
37 provision of this article, a hospital may choose to grant eligibility
38 for its discount payment policy or charity care policies to patients
39 with incomes over 350 percent of the federal poverty level. Both
40 the charity care policy and the discount payment policy shall state

1 the process used by the hospital to determine whether a patient is
2 eligible for charity care or discounted payment. In the event of a
3 dispute, a patient may seek review from the business manager,
4 chief financial officer, or other appropriate manager as designated
5 in the charity care policy and the discount payment policy.

6 (B) The written policy regarding discount payments shall also
7 include a statement that an emergency physician, as defined in
8 Section 127450, who provides emergency medical services in a
9 hospital that provides emergency care is also required by law to
10 provide discounts to uninsured patients or patients with high
11 medical costs who are at or below 350 percent of the federal
12 poverty level. This statement shall not be construed to impose any
13 additional responsibilities upon the hospital.

14 (2) Rural hospitals, as defined in Section 124840, may establish
15 eligibility levels for financial assistance and charity care at less
16 than 350 percent of the federal poverty level as appropriate to
17 maintain their financial and operational integrity.

18 (b) A hospital's discount payment policy shall clearly state
19 eligibility criteria based upon income consistent with the
20 application of the federal poverty level. The discount payment
21 policy shall also include an extended payment plan to allow
22 payment of the discounted price over time. The policy shall provide
23 that the hospital and the patient may negotiate the terms of the
24 payment plan.

25 (c) The charity care policy shall state clearly the eligibility
26 criteria for charity care. In determining eligibility under its charity
27 care policy, a hospital may consider income and monetary assets
28 of the patient. For purposes of this determination, monetary assets
29 shall not include retirement or deferred compensation plans
30 qualified under the Internal Revenue Code, or nonqualified deferred
31 compensation plans. Furthermore, the first ten thousand dollars
32 (\$10,000) of a patient's monetary assets shall not be counted in
33 determining eligibility, nor shall 50 percent of a patient's monetary
34 assets over the first ten thousand dollars (\$10,000) be counted in
35 determining eligibility.

36 (d) A hospital shall limit expected payment for services it
37 provides to a patient at or below 350 percent of the federal poverty
38 level, as defined in subdivision (b) of Section 127400, eligible
39 under its discount payment policy to the amount of payment the
40 hospital would expect, in good faith, to receive for providing

1 services from Medicare, Medi-Cal, the Healthy Families Program,
2 or another government-sponsored health program of health benefits
3 in which the hospital participates, whichever is greater. If the
4 hospital provides a service for which there is no established
5 payment by Medicare or any other government-sponsored program
6 of health benefits in which the hospital participates, the hospital
7 shall establish an appropriate discounted payment.

8 (e) A patient, or patient's legal representative, who requests a
9 discounted payment, charity care, or other assistance in meeting
10 his or her financial obligation to the hospital shall make every
11 reasonable effort to provide the hospital with documentation of
12 income and health benefits coverage. If the person requests charity
13 care or a discounted payment and fails to provide information that
14 is reasonable and necessary for the hospital to make a
15 determination, the hospital may consider that failure in making its
16 determination.

17 (1) For purposes of determining eligibility for discounted
18 payment, documentation of income shall be limited to recent pay
19 stubs or income tax returns.

20 (2) For purposes of determining eligibility for charity care,
21 documentation of assets may include information on all monetary
22 assets, but shall not include statements on retirement or deferred
23 compensation plans qualified under the Internal Revenue Code,
24 or nonqualified deferred compensation plans. A hospital may
25 require waivers or releases from the patient or the patient's family,
26 authorizing the hospital to obtain account information from
27 financial or commercial institutions, or other entities that hold or
28 maintain the monetary assets, to verify their value.

29 (3) Information obtained pursuant to paragraph (1) or (2) shall
30 not be used for collections activities. This paragraph does not
31 prohibit the use of information obtained by the hospital, collection
32 agency, or assignee independently of the eligibility process for
33 charity care or discounted payment.

34 (4) Eligibility for discounted payments or charity care may be
35 determined at any time the hospital is in receipt of information
36 specified in paragraph (1) or (2), respectively.

37 SEC. 102. Section 136000 of the Health and Safety Code is
38 amended to read:

39 136000. (a) (1) Effective July 1, 2012, there is hereby
40 transferred from the Department of Managed Health Care the

1 Office of Patient Advocate to be established within the California
2 Health and Human Services Agency, to provide assistance to, and
3 advocate on behalf of, individuals served by health care service
4 plans regulated by the Department of Managed Health Care,
5 insureds covered by health insurers regulated by the Department
6 of Insurance, and individuals who receive or are eligible for other
7 health care coverage in California, including coverage available
8 through the Medi-Cal program, the California Health Benefit
9 Exchange, the Healthy Families Program, or any other county or
10 state health care program. The goal of the office shall be to help
11 those individuals secure the health care services to which they are
12 entitled or for which they are eligible under the law.
13 Notwithstanding any provision of this division, each regulator and
14 health coverage program shall retain its respective authority,
15 including its authority to resolve complaints, grievances, and
16 appeals.

17 (2) The office shall be headed by a patient advocate appointed
18 by the Governor. The patient advocate shall serve at the pleasure
19 of the Governor.

20 (3) The provisions of this division affecting insureds covered
21 by health insurers regulated by the Department of Insurance and
22 individuals who receive or are eligible for coverage available
23 through the Medi-Cal program, the California Health Benefit
24 Exchange, the Healthy Families Program, or any other county or
25 state health care program shall commence on January 1, 2013,
26 except that for the period July 1, 2012, to January 1, 2013, the
27 office shall continue with any duties, responsibilities, or activities
28 of the office authorized as of July 1, 2011, shall continue to be
29 authorized.

30 (b) (1) The duties of the office shall include, but not be limited
31 to, all of the following:

32 (A) Developing, in consultation with the Managed Risk Medical
33 Insurance Board, the State Department of Health Care Services,
34 the California Health Benefit Exchange, the Department of
35 Managed Health Care, and the Department of Insurance,
36 educational and informational guides for consumers describing
37 their rights and responsibilities, and informing them on effective
38 ways to exercise their rights to secure health care coverage. The
39 guides shall be easy to read and understand and shall be made
40 available in English and other threshold languages, using an

1 appropriate literacy level, and in a culturally competent manner.
2 The informational guides shall be made available to the public by
3 the office, including being made accessible on the office's Internet
4 Web site and through public outreach and educational programs.

5 (B) Compiling an annual publication, to be made available on
6 the office's Internet Web site, of a quality of care report card,
7 including, but not limited to, health care service plans.

8 (C) Rendering assistance to consumers regarding procedures,
9 rights, and responsibilities related to the filing of complaints,
10 grievances, and appeals, including appeals of coverage denials and
11 information about any external appeal process.

12 (D) Making referrals to the appropriate state agency regarding
13 studies, investigations, audits, or enforcement that may be
14 appropriate to protect the interests of consumers.

15 (E) Coordinating and working with other government and
16 nongovernment patient assistance programs and health care
17 ombudsperson programs.

18 (2) The office shall employ necessary staff. The office may
19 employ or contract with experts when necessary to carry out the
20 functions of the office. The patient advocate shall make an annual
21 budget request for the office which shall be identified in the annual
22 Budget Act.

23 (3) Until January 1, 2013, the office shall have access to records
24 of the Department of Managed Health Care, including, but not
25 limited to, information related to health care service plan or health
26 insurer audits, surveys, and enrollee or insured grievances.

27 (4) The patient advocate shall annually issue a public report on
28 the activities of the office, and shall appear before the appropriate
29 policy and fiscal committees of the Senate and Assembly, if
30 requested, to report and make recommendations on the activities
31 of the office.

32 (5) The office shall adopt standards for the organizations with
33 which it contracts pursuant to this section to ensure compliance
34 with the privacy and confidentiality laws of this state, including,
35 but not limited to, the Information Practices Act of 1977 (Chapter
36 1 (commencing with Section 1798) of Division 3 of the Civil
37 Code). The office shall conduct privacy trainings as necessary,
38 and regularly verify that the organizations have measures in place
39 to ensure compliance with this provision.

1 (c) In enacting this act, the Legislature recognizes that, because
2 of the enactment of federal health care reform on March 23, 2010,
3 and the implementation of various provisions by January 1, 2014,
4 it is appropriate to transfer the Office of Patient Advocate and to
5 confer new responsibilities on the Office of Patient Advocate,
6 including assisting consumers in obtaining health care coverage
7 and obtaining health care through health coverage that is regulated
8 by multiple regulators, both state and federal. The new
9 responsibilities include assisting consumers in navigating both
10 public and private health care coverage and assisting consumers
11 in determining which regulator regulates the health care coverage
12 of a particular consumer. In order to assist in implementing federal
13 health care reform in California, commencing January 1, 2013,
14 the office, in addition to the duties set forth in subdivision (b),
15 shall also do all of the following:

16 (1) Receive and respond to all inquiries, complaints, and requests
17 for assistance from individuals concerning health care coverage
18 available in California.

19 (2) Provide, and assist in the provision of, outreach and
20 education about health care coverage options as set forth in
21 subparagraph (A) of paragraph (1) of subdivision (b), including,
22 but not limited to:

23 (A) Information regarding applying for coverage; the cost of
24 coverage; and renewal in, and transitions between, health coverage
25 programs.

26 (B) Information and assistance regarding public programs, such
27 as Medi-Cal, the Healthy Families Program, and Medicare; private
28 coverage, including employer-sponsored coverage, Exchange
29 coverage, and other sources of care if the consumer is not eligible
30 for coverage, such as county services, community clinics,
31 discounted hospital care, or charity care.

32 (3) Coordinate with other state and federal agencies engaged in
33 outreach and education regarding the implementation of federal
34 health care reform.

35 (4) Render assistance to, and advocate on behalf of, consumers
36 with problems related to health care services, including care and
37 service problems and claims or payment problems.

38 (5) Refer consumers to the appropriate regulator of their health
39 coverage programs for filing complaints, grievances, or claims, or
40 for payment problems.

1 (d) (1) Commencing January 1, 2013, the office shall track and
2 analyze data on problems and complaints by, and questions from,
3 consumers about health care coverage for the purpose of providing
4 public information about problems faced and information needed
5 by consumers in obtaining coverage and care. The data collected
6 shall include demographic data, source of coverage, regulator, and
7 resolution of complaints, including timeliness of resolution.

8 (2) The Department of Managed Health Care, the State
9 Department of Health Care Services, the Department of Insurance,
10 the Managed Risk Medical Insurance Board, the California Health
11 Benefit Exchange, and other public coverage programs shall
12 provide to the office data in the aggregate concerning consumer
13 complaints and grievances. For the purpose of publicly reporting
14 information about the problems faced by consumers in obtaining
15 care and coverage, the office shall analyze data on consumer
16 complaints and grievances resolved by these agencies, including
17 demographic data, source of coverage, insurer or plan, resolution
18 of complaints, and other information intended to improve health
19 care and coverage for consumers. The office shall develop and
20 provide comprehensive and timely data and analysis based on the
21 information provided by other agencies.

22 (3) The office shall collect and report data to the United States
23 Secretary of Health and Human Services on complaints and
24 consumer assistance as required to comply with requirements of
25 the federal Patient Protection and Affordable Care Act (P.L.
26 111-148).

27 (e) Commencing ~~in~~ on January 1, 2013, in order to assist
28 consumers in understanding the impact of federal health care
29 reform as well as navigating and resolving questions and problems
30 with health care coverage and programs, the office shall ensure
31 that either the office or a state agency contracting with the office
32 shall do the following:

33 (1) Operate a toll-free telephone hotline number that can route
34 callers to the proper regulating body or public program for their
35 question, their health plan, or the consumer assistance program in
36 their area.

37 (2) Operate an Internet Web site, other social media, and
38 up-to-date communication systems to give information regarding
39 the consumer assistance programs.

1 (f) (1) The office may contract with community-based consumer
2 assistance organizations to assist in any or all of the duties of
3 subdivision (c) in accordance with Section 19130 of the
4 Government Code or provide grants to community-based consumer
5 assistance organizations for portions of these purposes.

6 (2) Commencing on January 1, 2013, any local
7 community-based nonprofit consumer assistance program with
8 which the office contracts shall include in its mission the assistance
9 of, and duty to, health care consumers. Contracting consumer
10 assistance programs shall have experience in the following areas:

11 (A) Assisting consumers in navigating the local health care
12 system.

13 (B) Advising consumers regarding their health care coverage
14 options and helping consumers enroll in and retain health care
15 coverage.

16 (C) Assisting consumers with problems in accessing health care
17 services.

18 (D) Serving consumers with special needs, including, but not
19 limited to, consumers with limited-English language proficiency,
20 consumers requiring culturally competent services, low-income
21 consumers, consumers with disabilities, consumers with low
22 literacy rates, and consumers with multiple health conditions,
23 including behavioral health.

24 (E) Collecting and reporting data, including demographic data,
25 source of coverage, regulator, and resolution of complaints,
26 including timeliness of resolution.

27 (3) Commencing on January 1, 2013, the office shall develop
28 protocols, procedures, and training modules for organizations with
29 which it contracts.

30 (4) Commencing on January 1, 2013, the office shall adopt
31 standards for organizations with which it contracts regarding
32 confidentiality and conduct.

33 (5) Commencing on January 1, 2013, the office may contract
34 with consumer assistance programs to develop a series of
35 appropriate literacy level and culturally and linguistically
36 appropriate educational materials in all threshold languages for
37 consumers regarding health care coverage options and how to
38 resolve problems.

1 (g) Commencing on January 1, 2013, the office shall develop
2 protocols and procedures for assisting in the resolution of consumer
3 complaints, including both of the following:

4 (1) A procedure for referral of complaints and grievances to the
5 appropriate regulator or health coverage program for resolution
6 by the relevant regulator or public program.

7 (2) A protocol or procedure for reporting to the appropriate
8 regulator and health coverage program regarding complaints and
9 grievances relevant to that agency that the office received and was
10 able to resolve without further action or referral.

11 (h) For purposes of this section, the following definitions shall
12 apply:

13 (1) “Consumer” or “individual” includes the individual or his
14 or her parent, guardian, conservator, or authorized representative.

15 (2) “Exchange” means the California Health Benefit Exchange
16 established pursuant to Title 22 (commencing with Section 100500)
17 of the Government Code.

18 (3) “Health care” includes behavioral health, including both
19 mental health and substance abuse treatment.

20 (4) “Health care service plan” has the same meaning as that set
21 forth in subdivision (f) of Section 1345. Health care service plan
22 includes “specialized health care service plans,” including
23 behavioral health plans.

24 (5) “Health coverage program” includes the Medi-Cal program,
25 Healthy Families Program, tax subsidies and premium credits
26 under the Exchange, the Basic Health Program, if enacted, county
27 health coverage programs, and the Access for Infants and Mothers
28 Program.

29 (6) “Health insurance” has the same meaning as set forth in
30 Section 106 of the Insurance Code.

31 (7) “Health insurer” means an insurer that issues policies of
32 health insurance.

33 (8) “Office” means the Office of Patient Advocate.

34 (9) “Threshold languages” shall have the same meaning as for
35 Medi-Cal managed care.

36 SEC. 103. Section 1760.1 of the Insurance Code is amended
37 to read:

38 1760.1. For the purposes of this chapter, the following terms
39 have the following definitions:

1 (a) “Certified” means an originally signed or sealed statement,
2 dated not more than 60 days before submission, made by a public
3 official or other person, attached to a copy of a document, that
4 attests that the copy is a true copy of the original, and that the
5 original is in the custody of the person making the statement.

6 (b) “Commercial insured” means any person purchasing
7 commercial insurance that, at the time of placement, meets all of
8 the following requirements:

9 (1) The person employs or retains a qualified risk manager to
10 negotiate insurance coverage.

11 (2) The person has paid aggregate nationwide commercial
12 property and casualty insurance premiums in excess of one hundred
13 thousand dollars (\$100,000) in the immediately preceding 12
14 months.

15 (3) (A) The person meets at least one of the following criteria:

16 (i) The person possesses a net worth in excess of twenty million
17 dollars (\$20,000,000), as that amount is adjusted pursuant to
18 subparagraph (B).

19 (ii) The person generates annual revenues in excess of fifty
20 million dollars (\$50,000,000), as that amount is adjusted pursuant
21 to subparagraph (B).

22 (iii) The person employs more than 500 full-time or full-time
23 equivalent employees per individual insured or is a member of an
24 affiliated group employing more than 1,000 employees in the
25 aggregate.

26 (iv) The person is a not-for-profit organization or public entity
27 generating annual budgeted expenditures of at least thirty million
28 dollars (\$30,000,000), as that amount is adjusted pursuant to
29 subparagraph (B).

30 (v) The person is a municipality with a population in excess of
31 50,000 persons.

32 (B) Effective on January 1, 2015, and each fifth January 1
33 occurring thereafter, the dollar amounts in subparagraph (A) shall
34 be adjusted to reflect the percentage change for that five-year
35 period in the Consumer Price Index for All Urban Consumers
36 published by the Bureau of Labor Statistics of the United States
37 Department of Labor. The commissioner shall issue a bulletin to
38 all surplus line brokers advising of any adjustments and may adopt
39 the calculations of the NAIC or other entity in doing so.

1 (c) “Domiciliary jurisdiction” means the state, nation, or
2 subdivision thereof under the laws of which an insurer is
3 incorporated or otherwise organized.

4 (d) “Domiciliary state of the syndicate’s trust” means the state
5 in which the syndicate’s trust fund is principally maintained and
6 administered for the benefit of the syndicate’s policyholders in the
7 United States.

8 (e) “Home state” means, except as provided in paragraphs (2)
9 to (4), inclusive, any of the following, with respect to an insured
10 or applicant:

11 (1) (A) The state in which the insured maintains its principal
12 place of business or, in the case of an individual, the individual’s
13 principal residence.

14 (B) If 100 percent of the insured risk is located outside the state
15 referred to in subparagraph (A), the state to which the greatest
16 percentage of the insured’s taxable premium for that insurance
17 contract is allocated.

18 (2) “Principal place of business” means, with respect to
19 subparagraph (A) of paragraph (1) determining the home state of
20 the insured, (A) the state where the insured maintains its
21 headquarters and where the insured’s high-level officers direct,
22 control, and coordinate the business activities; or (B) if the
23 insured’s high-level officers direct, control, and coordinate the
24 business activities in more than one state, the state in which the
25 greatest percentage of the insured’s taxable premium for that
26 insurance contract is allocated; or (C) if the insured maintains its
27 headquarters or the insured’s high-level officers direct, control,
28 and coordinate the business activities outside any state, the state
29 to which the greatest percentage of the insured’s taxable premium
30 for that insurance contract is allocated.

31 (3) “Principal residence” means, with respect to determining
32 the home state of the insured, (A) the state where the insured
33 resides for the greatest number of days during a calendar year; or
34 (B) if the insured’s principal residence is located outside any state,
35 the state to which the greatest percentage of the insured’s taxable
36 premium for that insurance contract is allocated.

37 (4) ~~Affiliated Groups~~ *groups*. If more than one insured from an
38 affiliated group are named insureds on a single nonadmitted
39 insurance contract, the term “home state” means the home state,
40 as determined pursuant to subparagraph (A) of paragraph (1), of

1 the member of the affiliated group that has the largest percentage
2 of premium attributed to it under such insurance contract.

3 (f) “Home state insured” or “home state insured applicant”
4 means a person whose home state is California and who has
5 received a certificate or evidence of coverage as set forth in Section
6 1764 or a policy as issued by an eligible surplus line insurer, or a
7 person who is an applicant therefor.

8 (g) “IID” means the International Insurers Department of the
9 National Association of Insurance Commissioners.

10 (h) “Insurer” means, unless the context indicates otherwise,
11 “nonadmitted” insurers that are either “foreign” or “alien” insurers,
12 as those terms are defined in Sections 25, 27, and 1580, and
13 syndicates whose members consist of individual incorporated
14 insurers who are not engaged in any business other than
15 underwriting as a member of the group and individual
16 unincorporated insurers, provided all the members are subject to
17 the same level of solvency regulation and control by the group’s
18 domiciliary regulator. The term “insurer” includes all nonadmitted
19 insurers selling insurance to or through purchasing groups as
20 defined in the federal Liability Risk Retention Act of 1986 (15
21 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act
22 of 1991 (Chapter 1.5 (commencing with Section 125) of Part 1),
23 except insurers that are risk retention groups as defined by those
24 acts.

25 (i) “ISI” means Insurance Solvency International.

26 (j) “Licensee” means a surplus line broker as defined in Section
27 47.

28 (k) “Multistate risk” means a risk covered by a nonadmitted
29 insurer with insured exposures in more than one state.

30 (l) “NAIC” means the National Association of Insurance
31 Commissioners or its successor organization.

32 (m) “Nonadmitted insurance” means any property and casualty
33 insurance permitted to be placed directly or through a surplus line
34 broker with a nonadmitted insurer eligible to accept such insurance.

35 (n) “Nonadmitted insurer” means an insurer not licensed or
36 admitted to engage in the business of insurance in this state in
37 conformity with Section 700; but does not include a risk retention
38 group, as that term is defined in Sections 130(k) and 2(a)(4) of the
39 federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec.
40 3901(a)(4)).

1 (o) “Qualified risk manager” means, with respect to a
2 policyholder of commercial insurance, a person who meets all of
3 the following requirements:

4 (1) The person is an employee of, or third-party consultant
5 retained by, the commercial policyholder.

6 (2) The person provides skilled services in loss prevention, loss
7 reduction, or risk and insurance coverage analysis, and purchase
8 of insurance.

9 (3) The person has any of the following:

10 (A) A bachelor’s degree or higher degree from an accredited
11 college or university in risk management, business administration,
12 finance, economics, or any other field determined by the
13 commissioner to demonstrate minimum competence in risk
14 management and satisfies either of the following:

15 (i) Has three years of experience in risk financing, claims
16 administration, loss prevention, risk and insurance analysis, or
17 purchasing commercial lines of insurance.

18 (ii) Has one of the following:

19 (I) A designation as a Chartered Property and Casualty
20 Underwriter (CPCU) issued by the American Institute for CPCU
21 and Insurance Institute of America.

22 (II) A designation as an Associate in Risk Management (ARM)
23 issued by the American Institute for CPCU and Insurance Institute
24 of America.

25 (III) A designation as Certified Risk Manager (CRM) issued by
26 the National Alliance for Insurance Education and Research.

27 (IV) A designation as a RIMS Fellow (RF) issued by the Global
28 Risk Management Institute.

29 (V) Any other designation, certification, or license determined
30 by the commissioner to demonstrate minimum competency in risk
31 management.

32 (B) At least seven years of experience in risk financing, claims
33 administration, loss prevention, risk and insurance coverage
34 analysis, or purchasing commercial lines of insurance, and has any
35 one of the designations specified in subclauses (I) to (V), inclusive,
36 of clause (ii) of subparagraph (A).

37 (C) At least 10 years of experience in risk financing, claims
38 administration, loss prevention, risk and insurance coverage
39 analysis, or purchasing commercial lines of insurance.

1 (D) A graduate degree from an accredited college or university
2 in risk management, business administration, finance, economics,
3 or any other field determined by the commissioner to demonstrate
4 minimum competence in risk management.

5 (p) “State” means any state of the United States, the District of
6 Columbia, the Commonwealth of Puerto Rico, Guam, the Northern
7 Mariana Islands, the Virgin Islands, and American Samoa.

8 (q) “Verified” means a document or copy accompanied by an
9 originally signed statement, dated not more than 60 days before
10 submission, from a responsible executive or official who has
11 authority to provide the statement and knowledge whereof he or
12 she speaks, attesting either under oath before a notary public, or
13 under the penalty of perjury under California law, that the
14 assertions made in the document are true.

15 SEC. 104. Section 1763 of the Insurance Code is amended to
16 read:

17 1763. (a) A surplus line broker may solicit and place insurance
18 for a home state insured, other than as excepted in Section 1761,
19 with nonadmitted insurers only if that insurance cannot be procured
20 from insurers admitted for the particular class or classes of
21 insurance and that actually write the particular type of insurance
22 in this state. Each surplus line broker shall be responsible to ensure
23 that a diligent search is made among insurers that are admitted to
24 transact and are actually writing the particular type of insurance
25 in this state before procuring the insurance for a home state insured
26 from a nonadmitted insurer. Each surplus line broker shall file
27 with the commissioner or his or her designee, within 60 days of
28 placing any insurance for a home state insured with a nonadmitted
29 insurer, a written report that shall be kept confidential, regarding
30 the insurance. This report shall include the name and address of
31 the insured, verification that the insured is a home state insured,
32 the identity of the insurer or insurers, a description of the subject
33 and location of the risk, the amount of premium charged for the
34 insurance, a copy of the declarations page of the policy or a copy
35 of the surplus line broker’s certificate or binder evidencing the
36 placement of insurance, and other pertinent information that the
37 commissioner may reasonably require. In addition, each surplus
38 line broker shall file a standardized form to be prescribed by the
39 commissioner setting forth the diligent efforts to place the coverage
40 with admitted insurers and the results of these efforts. The form

1 shall be signed by a person licensed under this code who has made
2 the diligent search required by this section or who supervised an
3 unlicensed person or persons who actually conducted the search.
4 The insurance shall not be placed with a nonadmitted insurer for
5 the purpose of procuring a rate lower than the lowest rate that will
6 be accepted by any admitted insurer except as provided by
7 subdivision (c). The commissioner may make and publish
8 reasonable rules and regulations, consistent with this chapter, in
9 respect to transactions governed thereby and the basis or bases for
10 his or her determinations hereunder.

11 (b) It shall be prima facie evidence that a diligent search among
12 admitted insurers has been made if the standardized form filed as
13 required by subdivision (a) establishes that three admitted insurers
14 that actually write the particular type of insurance in this state have
15 declined the risk, or that fewer than three admitted insurers actually
16 write the particular type of insurance. The commissioner, or his
17 or her designee, may review the form for the accuracy of the
18 information provided on it, including, but not limited to, whether
19 the listed insurers actually write that type of insurance, and whether
20 the three insurers declined the risk. The commissioner may take
21 disciplinary action against the person signing the form for any
22 misrepresentation made in the form due to the negligence of or
23 the result of an intentional act by that person or the person or
24 persons who actually conducted the search. Those actions may
25 include any action authorized to be taken against a licensed person
26 by this code. Nothing in this subdivision shall preclude the
27 commissioner or his or her designee from directing the surplus
28 line broker to conduct a further or additional search among
29 admitted insurers for similar placements in the future.

30 (c) It shall be conclusively presumed that insurance is placed
31 in violation of this section if the insurance is actually placed with
32 a nonadmitted insurer at a lower rate of premium or lower premium
33 than the lowest rate of premium or the lowest premium that could
34 be obtained from an admitted insurer unless, at the time the
35 insurance attaches, there is filed with the commissioner a statement
36 describing the insurance, specifying the rate and the nearest
37 procurable rates from admitted insurers. The statement shall include
38 an explanation of the reasons that the insurance must be placed
39 with a nonadmitted insurer even though it is available from an
40 admitted insurer. Unless the commissioner, or his or her designee,

1 within five days after that filing notifies the filing broker that in
2 his or her opinion the placing of the insurance constitutes a
3 violation of this section, the broker may thereafter maintain in
4 effect that insurance. If within that five-day period the
5 commissioner notifies the surplus line broker that the insurance is
6 in violation of this section and orders the broker to effect
7 termination of that insurance within 10 days from the notice, and
8 the broker fails or refuses to effect that termination, that failure or
9 refusal is a violation of this section.

10 (d) Statements filed under this section are not subject to public
11 inspection unless the commissioner determines that the public
12 interest or the welfare of the filing broker requires that any
13 statement be made public.

14 (e) For purposes of this section, “type of insurance” means the
15 hazard or combination of hazards covered by a contract of
16 insurance.

17 (f) Notwithstanding subdivision (a), this section shall not apply
18 to insurance issued or delivered in this state to a home state insured
19 by a nonadmitted Mexican insurer by and through a surplus line
20 broker affording coverage exclusively in the Republic of Mexico
21 on property located temporarily or permanently in, or operations
22 conducted temporarily or permanently within, the Republic of
23 Mexico.

24 (g) This section does not apply to the extension of coverage by
25 a nonadmitted insurer, of or for the same risks, and to the same
26 insured under an existing surplus lines policy. Such an extension
27 may not exceed 90 days in the aggregate during any 12-month
28 period. The extension may not include a change in coverage, terms,
29 and conditions, or limits. Any additional premium charged for the
30 extension shall be determined pro rata, based on the same rate of
31 premium as the existing surplus lines policy.

32 (h) (1) The diligent search requirement set forth in subdivision
33 (a) shall not apply to a commercial insured as defined in
34 subdivision (b) of Section 1760.1 when both of the following occur:

35 (A) The surplus line broker procuring or placing the surplus
36 line insurance has disclosed in writing to the commercial insured
37 that surplus insurance may or may not be available from the
38 admitted market that may provide greater protection with more
39 regulatory oversight.

1 (B) The commercial insured has subsequently requested in
2 writing that the surplus line broker procure or place surplus
3 insurance from a nonadmitted insurer.

4 (2) The surplus line broker shall be responsible to ensure that
5 the applicant is a commercial insured. A surplus line broker who
6 reasonably relies on information provided in good faith by the
7 applicant, whether directly or through a producer, shall be deemed
8 to be in compliance with this requirement.

9 SEC. 105. Section 1764.1 of the Insurance Code is amended
10 to read:

11 1764.1. (a) (1) Every nonadmitted insurer, in the case of
12 insurance to be purchased by a home state insured pursuant to
13 Section 1760, and surplus line broker, in the case of any insurance
14 with a nonadmitted carrier for a home state insured to be transacted
15 by the surplus line broker, shall be responsible to ensure that, at
16 the time of accepting an application for an insurance policy, other
17 than a renewal of that policy, issued by a nonadmitted insurer, the
18 signature of the applicant on the disclosure statement set forth in
19 subdivision (b) is obtained. In fulfillment of this responsibility,
20 the nonadmitted insurer and the surplus line broker may rely, if it
21 is reasonable under all the circumstances to do so, on the disclosure
22 statement received from a licensee involved in the transaction as
23 prima facie evidence that the disclosure statement and appropriate
24 signature from the applicant have been obtained. The surplus line
25 broker shall maintain a copy of the signed disclosure statement in
26 his or her records for a period of at least five years. These records
27 shall be made available to the commissioner and the insured upon
28 request. This disclosure shall be signed by the applicant, and is
29 not subject to a limited power of attorney agreement between the
30 applicant and an agent or broker or a surplus line broker. The
31 disclosure statement shall be in boldface 16-point type on a
32 freestanding document. In addition, every policy issued by a
33 nonadmitted insurer and every certificate evidencing the placement
34 of insurance shall contain, or have affixed to it by the insurer or
35 surplus line broker, the disclosure statement set forth in subdivision
36 (b) in boldface 16-point type on the front page of the policy.

37 (2) In a case in which the applicant has not received and
38 completed the signed disclosure form required by this section, he
39 or she may cancel the insurance so placed. The cancellation shall

1 be on a pro rata basis as to premium, and the applicant shall be
2 entitled to the return of any broker’s fees charged for the placement.

3 (b) The following notice shall be provided to home state insureds
4 and home state insured applicants for insurance as provided by
5 subdivision (a), and shall be printed in English and in the language
6 principally used by the surplus line broker and nonadmitted insurer
7 to advertise, solicit, or negotiate the sale and purchase of surplus
8 line insurance. The surplus line broker and nonadmitted insurer
9 shall use the appropriate bracketed language for application and
10 issued policy disclosures:

11
12
13 “NOTICE:
14

15 1. THE INSURANCE POLICY THAT YOU [HAVE
16 PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING
17 ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE
18 STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED
19 “NONADMITTED” OR “SURPLUS LINE” INSURERS.

20 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL
21 SOLVENCY REGULATION AND ENFORCEMENT THAT
22 APPLY TO CALIFORNIA LICENSED INSURERS.

23 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF
24 THE INSURANCE GUARANTEE FUNDS CREATED BY
25 CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL
26 NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF
27 THE INSURER BECOMES INSOLVENT AND IS UNABLE
28 TO MAKE PAYMENTS AS PROMISED.

29 4. THE INSURER SHOULD BE LICENSED EITHER AS A
30 FOREIGN INSURER IN ANOTHER STATE IN THE UNITED
31 STATES OR AS A NON-UNITED STATES (ALIEN) INSURER.
32 YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE
33 AGENT, BROKER, OR “SURPLUS LINE” BROKER OR
34 CONTACT THE CALIFORNIA DEPARTMENT OF
35 INSURANCE AT THE FOLLOWING TOLL-FREE
36 TELEPHONE NUMBER _____. ASK WHETHER OR NOT THE
37 INSURER IS LICENSED AS A FOREIGN OR NON-UNITED
38 STATES (ALIEN) INSURER AND FOR ADDITIONAL
39 INFORMATION ABOUT THE INSURER. YOU MAY ALSO

1 CONTACT THE NAIC'S INTERNET WEB SITE AT
2 WWW.NAIC.ORG.

3 5. FOREIGN INSURERS SHOULD BE LICENSED BY A
4 STATE IN THE UNITED STATES AND YOU MAY CONTACT
5 THAT STATE'S DEPARTMENT OF INSURANCE TO OBTAIN
6 MORE INFORMATION ABOUT THAT INSURER.

7 6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE
8 INSURER SHOULD BE LICENSED BY A COUNTRY
9 OUTSIDE OF THE UNITED STATES AND SHOULD BE ON
10 THE NAIC'S INTERNATIONAL INSURERS DEPARTMENT
11 (IID) LISTING OF APPROVED NONADMITTED
12 NON-UNITED STATES INSURERS. ASK YOUR AGENT,
13 BROKER, OR "SURPLUS LINE" BROKER TO OBTAIN MORE
14 INFORMATION ABOUT THAT INSURER.

15 7. CALIFORNIA MAINTAINS A LIST OF APPROVED
16 SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER
17 IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST
18 AT THE INTERNET WEB SITE OF THE CALIFORNIA
19 DEPARTMENT OF INSURANCE:
20 WWW.INSURANCE.CA.GOV.

21 8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE
22 INSURANCE POLICY YOU HAVE PURCHASED BE BOUND
23 IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE
24 WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR
25 BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE
26 WITHIN TWO BUSINESS DAYS, AND YOU DID NOT
27 RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR
28 YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME
29 EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS
30 POLICY WITHIN FIVE DAYS OF RECEIVING THIS
31 DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM
32 WILL BE PRORATED AND ANY BROKER'S FEE CHARGED
33 FOR THIS INSURANCE WILL BE RETURNED TO YOU."

34
35 (c) When a contract is issued to an industrial insured, neither
36 the nonadmitted insurer nor the surplus line broker is required to
37 provide the notice required in this section except on the
38 confirmation of insurance, the certificate of placement, or the
39 policy, whichever is first provided to the insured, nor is the insurer
40 or surplus line broker required to obtain the insured's signature.

1 The producer shall ensure that the notice affixed to the confirmation
2 of insurance, certificate of placement, or the policy is provided to
3 the insured. The producer shall insert the current toll-free telephone
4 number of the Department of Insurance as provided in paragraph
5 5 4 of the notice.

6 (1) An industrial insured is an insured that does both of the
7 following:

8 (A) Employs at least 25 employees on average during the prior
9 12 months.

10 (B) Has aggregate annual premiums for insurance for all risks
11 other than workers' compensation and health coverage totaling no
12 less than twenty-five thousand dollars (\$25,000) or obtains
13 insurance through the services of a full-time employee acting as
14 an insurance manager or a continuously retained insurance
15 consultant. A "continuously retained insurance consultant" does
16 not include: (i) an agent or broker through whom the insurance is
17 being placed, (ii) a subagent or subproducer involved in the
18 transaction, or (iii) an agent or broker that is a business organization
19 employing or contracting with a person mentioned in clauses (i)
20 and (ii).

21 (2) The surplus line broker shall be responsible for ensuring
22 that the applicant is an industrial insured. A surplus line broker
23 who reasonably relies on information provided in good faith by
24 the applicant, whether directly or through the producer, shall be
25 deemed to be in compliance with this requirement.

26 (d) For purposes of compliance with the requirement of
27 subdivision (a) that the signature of the applicant be obtained, the
28 following shall apply:

29 (1) If the insurance transaction is not conducted at an in-person,
30 face-to-face meeting, the applicant's signature on the disclosure
31 form may be transmitted by the applicant to the agent or broker
32 via facsimile or comparable electronic transmittal.

33 (2) In the case of commercial lines coverage, or personal
34 insurance coverage subject to Section 675 and any umbrella
35 coverage associated therewith, where an applicant requires that
36 insurance coverage be bound immediately, either because existing
37 coverage will lapse within two business days of the time the
38 insurance is bound or because the applicant is required to have
39 coverage in place within two business days, and the applicant
40 cannot meet in person with the agent or broker to sign the

1 disclosure form, the agent or broker may obtain the signature of
 2 the applicant within five days of binding coverage, provided that
 3 the applicant may cancel the insurance so placed within five days
 4 of receiving the disclosure form from the agent or broker. The
 5 cancellation shall be on a pro rata basis, and the applicant shall be
 6 entitled to the rescission or return of any broker’s fees charged for
 7 the placement. When a policy is canceled, the broker shall inform
 8 the applicant that the broker’s fee must be returned and that the
 9 premium must be prorated.

10 (e) Notwithstanding subdivision (a), this section shall not apply
 11 to insurance issued or delivered in this state by a nonadmitted
 12 Mexican insurer by and through a surplus line broker affording
 13 coverage exclusively in the Republic of Mexico on property located
 14 temporarily or permanently in, or operations conducted temporarily
 15 or permanently within, the Republic of Mexico.

16 SEC. 106. Section 1765.1 of the Insurance Code is amended
 17 to read:

18 1765.1. No surplus line broker shall place any coverage with
 19 a nonadmitted insurer for a home state insured unless the insurer
 20 is domiciled in the Republic of Mexico and the placement covers
 21 only liability arising out of the ownership, maintenance, or use of
 22 a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at
 23 the time of placement, the nonadmitted insurer meets the
 24 requirements of either subdivision (a) or (b):

25 (a) If the insurer is domiciled in one of the states of the United
 26 States or its territories as defined in subdivision (p) of Section
 27 1760.1:

28 (1) Is licensed to write the type of insurance in its domiciliary
 29 jurisdiction; and

30 (2) (A) Has capital and surplus that together total forty-five
 31 million dollars (\$45,000,000).

32 (B) The requirements of subparagraph (A) may be satisfied by
 33 an insurer possessing less than forty-five million dollars
 34 (\$45,000,000) upon an affirmative finding of acceptability by the
 35 commissioner. The finding shall be based upon factors such as
 36 quality of management, capital and surplus of any parent company,
 37 company underwriting profit and investment income trends, market
 38 availability, and company record and reputation within the industry.
 39 The commissioner is prohibited from making an affirmative finding
 40 of acceptability when the foreign insurer’s capital and surplus are

1 less than four million five hundred thousand dollars (\$4,500,000);
2 or

3 (C) If a foreign insurer that was listed as an eligible surplus line
4 insurer as of January 1, 2011, and did not have the forty-five
5 million dollars (\$45,000,000) of capital and surplus as of January
6 1, 2011, that insurer shall have at least thirty million dollars
7 (\$30,000,000) of capital and surplus as of December 31, 2011, and
8 at least forty-five million dollars (\$45,000,000) of capital and
9 surplus as of December 31, 2013.

10 (b) If the insurer is not domiciled in one of the states of the
11 United States or its territories as defined in subdivision (p) of
12 Section 1760.1, the insurer is listed on the Quarterly Listing of
13 Alien Insurers maintained by the NAIC International Insurers
14 Department (IID) and is licensed as an insurer in its domiciliary
15 jurisdiction.

16 (c) The commissioner shall not recognize that a nonadmitted
17 insurer is eligible pursuant to subdivision (a) or (b) unless and until
18 the nonadmitted insurer, or a surplus line broker on its behalf, has
19 submitted for filing the following:

20 (1) A certificate of capital and surplus issued by the insurer's
21 domiciliary jurisdiction.

22 (2) A certified copy of the insurer's license issued by its
23 domiciliary jurisdiction, plus a certification of good standing,
24 certificate of compliance, or other equivalent certificate, from
25 either that jurisdiction or, if the jurisdiction does not issue those
26 certificates, from any state where it is licensed.

27 (3) Information on the insurer's agent in California for service
28 of process, including the agent's full name and address. The agent's
29 address must include a street address where the agent can be
30 reached during normal business hours.

31 (4) The complete street address, mailing address, and telephone
32 number of the insurer's principal place of business.

33 (5) Notice, if applicable, that the insurer or licensee is currently
34 known to be the subject of any order or proceeding regarding
35 conservation, liquidation, or other receivership; or regarding
36 revocation or suspension of a license to transact insurance in any
37 jurisdiction; or otherwise seeking to stop the insurer from
38 transacting insurance in any jurisdiction. The notice shall identify
39 the proceeding by date, jurisdiction, and relief or sanction sought,
40 and shall attach a copy of the relevant order.

1 (6) A list of all California surplus line brokers authorized by
2 the insurer to issue policies on its behalf, and any additions to or
3 deletions from that list.

4 (7) Any additional information or documentation required by
5 the commissioner that pertains to the requirements of this section
6 or the NAIC review of the insurer including for purposes of
7 inclusion on or exclusion from the list of authorized nonadmitted
8 insurers maintained by the NAIC.

9 (d) The commissioner shall not recognize that a nonadmitted
10 insurer is eligible pursuant to subdivision (a) or (b) unless and until
11 the nonadmitted insurer, or a surplus line broker on its behalf, has
12 established, in addition to the requirements prescribed in
13 subdivision (c), that:

14 (1) All documents required by subdivision (c) have been filed.
15 Each of the documents appear after review to be complete, clear,
16 comprehensible, unambiguous, accurate, and consistent.

17 (2) The documents affirm that the insurer is not subject in any
18 jurisdiction to an order or proceeding that:

19 (A) Seeks to stop it from transacting insurance.

20 (B) Relates to conservation, liquidation, or other receivership.

21 (C) Relates to revocation or suspension of its license.

22 (3) The documents confirm that the insurer holds a license to
23 issue insurance policies, other than reinsurance, to residents of the
24 jurisdiction that granted the license.

25 (4) The information available to the commissioner shall not
26 indicate that the insurer offers to a home state insured products or
27 rates that violate any provision of this code.

28 (e) If at any time the commissioner determines that an insurer
29 is no longer eligible pursuant to subdivision (a) or (b), the
30 commissioner may issue an order without prior notice and hearing.
31 At the time an order is issued pursuant to this subdivision to an
32 insurer, the commissioner shall notify all surplus line brokers of
33 the order.

34 (f) The commissioner may require, at least annually, the
35 submission of records and statements as are reasonably necessary
36 to ensure that the requirements of this section are maintained.

37 (g) The commissioner shall establish by regulation a schedule
38 of fees to cover costs of administering and enforcing this chapter.

1 (h) (1) Insurance may be placed on a limited basis with insurers
2 not eligible pursuant to this section if all of the following conditions
3 are met:

4 (A) The use of multiple insurers is necessary to obtain coverage
5 for 100 percent of the risk.

6 (B) At least 80 percent of the risk is placed with admitted
7 insurers or insurers that are eligible nonadmitted insurers.

8 (C) The placing surplus line broker submits to the commissioner,
9 or his or her designee, copies of all documentation relied upon by
10 the surplus line broker to make the broker's determination that the
11 financial stability, reputation, and integrity of the ineligible insurer
12 or insurers, are adequate to safeguard the interest of the insured
13 under the policy. This documentation, and any other documentation
14 regarding the ineligible insurer requested by the commissioner,
15 shall be submitted no more than 30 days after the insurance is
16 placed with the unlisted insurer for the initial placement by that
17 broker with the particular ineligible insurer, and annually thereafter
18 for as long as the broker continues to make placements with the
19 ineligible insurer pursuant to this paragraph.

20 (D) The insured has aggregate annual premiums for all risks
21 other than workers' compensation or health coverage totaling no
22 less than one hundred thousand dollars (\$100,000).

23 (2) Insurance may not be placed pursuant to paragraph (1) if
24 any of the following applies:

25 (A) The ineligible insurer has for any reason been objected to
26 by the commissioner pursuant to this section or become ineligible.

27 (B) The insurance includes coverage for employer-sponsored
28 medical, surgical, hospital, or other health or medical expense
29 benefits payable to the employee by the insurer.

30 (C) The insurance is mandatory under the laws of the federal
31 government, this state, or any political subdivision thereof, and
32 includes any portion of limits of coverage mandated by those laws.

33 (D) The insured is a multiple employer welfare arrangement,
34 as defined in Section 1002(40)(A) of Title 29 of the United States
35 Code, or any other arrangement among two or more employers
36 that are not under common ownership or control, which is
37 established or maintained for the primary purpose of providing
38 insurance benefits to the employees of two or more employers.

39 (E) Ineligible insurers represent a disproportionate portion of
40 the lower layers of the coverage.

1 (3) Nothing in this section is intended to alter any duties of a
2 surplus line broker pursuant to subdivision (b) of Section 1765 or
3 other laws of this state to safeguard the interests of the insured
4 under the policy in recommending or placing insurance with a
5 nonadmitted insurer.

6 (4) Placements authorized by this subdivision are intended to
7 provide sophisticated insurance purchasers with a means to obtain
8 necessary commercial insurance coverage from nonadmitted
9 insurers that are not eligible in situations where it is not
10 commercially possible to fully obtain that coverage from either
11 admitted or eligible insurers. This subdivision shall not be deemed
12 to permit surplus line brokers to place with nonadmitted insurers
13 common commercial or personal line coverages for insureds that
14 can be placed with insurers that are admitted or eligible pursuant
15 to this section, whether the insured is an individual insured, or a
16 group created primarily for the purpose of purchasing insurance.

17 (i) With respect to a nonadmitted insurer that is listed as an
18 eligible surplus line insurer as of July 21, 2011, pursuant to the
19 former Section 1765.1 as it read prior to July 21, 2011, this section
20 shall not be effective until the subsequent expiration of the policies
21 of that insurer in effect on July 21, 2011. Nothing in the bill that
22 amended this section during the 2011 portion of the 2011–12
23 Regular Session is intended to repeal or imply there is not authority
24 to adopt, or to have adopted, or to continue in force, any regulation,
25 or part thereof, with respect to surplus line insurance which is not
26 clearly inconsistent with it.

27 SEC. 107. Section 1765.2 of the Insurance Code is amended
28 to read:

29 1765.2. A surplus line broker may place any coverage with a
30 California-approved nonadmitted insurer if the insurer is domiciled
31 in the Republic of Mexico and the placement covers only liability
32 arising out of the ownership, maintenance, or use of a motor
33 vehicle, aircraft, or boat in the Republic of Mexico, or if, at the
34 time of placement, the nonadmitted insurer meets the following
35 requirements:

36 (a) (1) Has established its financial stability, reputation, and
37 integrity, for the class of insurance the broker proposes to place,
38 by satisfactory evidence submitted to the commissioner through
39 a surplus line broker.

1 (2) Meets one of the following requirements with respect to its
2 financial stability:
3 (A) Has capital and surplus that together total at least forty-five
4 million dollars (\$45,000,000). “Capital” shall be as defined in
5 Section 36. “Surplus” shall be defined as assets exceeding the sum
6 of liabilities for losses reported, expenses, taxes, and all other
7 indebtedness and reinsurance of outstanding risks as provided by
8 law and paid-in capital in the case of an insurer issuing or having
9 outstanding shares of capital stock. The type of assets to be used
10 in calculating capital and surplus shall be as follows: at least
11 twenty-five million dollars (\$25,000,000) shall be in the form of
12 cash, or securities of the same character and quality as specified
13 in Sections 1170 to 1182, inclusive, or in readily marketable
14 securities listed on regulated United States’ national or principal
15 regional securities exchanges. The remaining assets shall be in the
16 form just described or in the form of investments of substantially
17 the same character and quality as described in Sections 1190 to
18 1202, inclusive. In calculating capital and surplus under this
19 section, the term “same character and quality” shall permit, but
20 not require, the commissioner to approve assets maintained in
21 accordance with the laws of another state or country. The
22 commissioner shall be guided by the limitations, restrictions, or
23 other requirements of this code or the National Association of
24 Insurance Commissioners’ Accounting Practices and Procedures
25 Manual in determining whether assets substantially similar to those
26 described in Sections 1190 to 1202, inclusive, qualify. The
27 commissioner shall retain the discretion to disapprove or disallow
28 an asset that is not of a sound quality, or that he or she deems to
29 create an unacceptable risk of loss to the insurer or to policyholders.
30 Letters of credit shall not qualify as assets in the calculation of
31 surplus. If capital and surplus together total less than forty-five
32 million dollars (\$45,000,000), the commissioner has affirmatively
33 found that the capital and surplus are adequate to protect California
34 policyholders. The commissioner shall consider, on determining
35 whether to make this finding, factors such as quality of
36 management, the capital and surplus of a parent company, the
37 underwriting profit and investment income trends, and the record
38 of claims payment and claims handling practices of the
39 nonadmitted insurer.

1 (B) In the case of an “Insurance Exchange” created and
2 authorized under the laws of individual states, maintains capital
3 and surplus of not less than fifty million dollars (\$50,000,000) in
4 the aggregate. “Capital” shall be as defined in Section 36. “Surplus”
5 shall be defined as assets exceeding the sum of liabilities for losses
6 reported, expenses, taxes, and all other indebtedness and
7 reinsurance of outstanding risks as provided by law and paid-in
8 capital in the case of an insurer issuing or having outstanding shares
9 of capital stock. The type of assets to be used in calculating capital
10 and surplus shall be as follows: at least twenty-five million dollars
11 (\$25,000,000) shall be in the form of cash, or securities of the same
12 character and quality as specified in Sections 1170 to 1182,
13 inclusive, or in readily marketable securities listed on regulated
14 United States’ national or principal regional securities exchanges.
15 The remaining assets shall be in the form just described or in the
16 form of investments of substantially the same character and quality
17 as described in Sections 1190 to 1202, inclusive. In calculating
18 capital and surplus under this section, the term “same character
19 and quality” shall permit, but not require, the commissioner to
20 approve assets maintained in accordance with the laws of another
21 state or country. The commissioner shall be guided by the
22 limitations, restrictions, or other requirements of this code or the
23 National Association of Insurance Commissioners’ Accounting
24 Practices and Procedures Manual in determining whether assets
25 substantially similar to those described in Sections 1190 to 1202,
26 inclusive, qualify. The commissioner shall retain the discretion to
27 disapprove or disallow an asset that is not of a sound quality, or
28 that he or she deems to create an unacceptable risk of loss to the
29 insurer or to policyholders. Letters of credit shall not qualify as
30 assets in the calculation of surplus. Each individual syndicate
31 seeking to accept surplus line placements of risks resident, located,
32 or to be performed in this state shall maintain minimum capital
33 and surplus of not less than six million four hundred thousand
34 dollars (\$6,400,000). Each individual syndicate shall increase the
35 capital and surplus required by this paragraph by one million
36 dollars (\$1,000,000) each year until it attains a capital and surplus
37 of forty-five million dollars (\$45,000,000).

38 (C) In the case of a syndicate that is part of a group consisting
39 of incorporated individual insurers, or a combination of both
40 incorporated and unincorporated insurers, that at all times maintains

1 a trust fund of not less than one hundred million dollars
2 (\$100,000,000) in a qualified United States financial institution
3 as security to the full amount thereof for the United States surplus
4 line policyholders and beneficiaries of direct policies of the group,
5 including all policyholders and beneficiaries of direct policies of
6 the syndicate, and the full balance in the trust fund is available to
7 satisfy the liabilities of each member of the group of those
8 syndicates, incorporated individual insurers or other unincorporated
9 insurers, without regard to their individual contributions to that
10 trust fund, and the trust complies with the terms of and conditions
11 specified in paragraph (1) of subdivision (b), the syndicate is
12 excepted from the capital and surplus requirements of subparagraph
13 (A). The incorporated members of the group shall not be engaged
14 in any business other than underwriting as a member of the group
15 and shall be subject to the same level of solvency regulation and
16 control by the group's domiciliary regulator as are the
17 unincorporated members.

18 (b) (1) In addition, to be approved as a surplus line insurer, an
19 insurer not domiciled in one of the United States or its territories
20 shall have in force in the United States an irrevocable trust account
21 in a qualified United States financial institution, for the protection
22 of United States policyholders, of not less than five million four
23 hundred thousand dollars (\$5,400,000) and consisting of cash,
24 securities acceptable to the commissioner that are authorized
25 pursuant to Sections 1170 to 1182, inclusive, readily marketable
26 securities acceptable to the commissioner that are listed on a
27 regulated United States national or principal regional security
28 exchange, or clean and irrevocable letters of credit acceptable to
29 the commissioner and issued by a qualified United States financial
30 institution. The trust agreement shall be in a form acceptable to
31 the commissioner. The funds in the trust account may be included
32 in any calculation of capital and surplus, except letters of credit,
33 which shall not be included in the calculation.

34 (2) In the case of a syndicate seeking approval under
35 subparagraph (C) of paragraph (2) of subdivision (a), the syndicate
36 shall, in addition to the requirements of that subparagraph, at a
37 minimum, maintain in the United States a trust account in an
38 amount satisfactory to the commissioner that is not less than the
39 amount required by the domiciliary state of the syndicate's trust.

1 The trust account shall comply with the terms and conditions
2 specified in paragraph (1).

3 (3) In the case of a group of incorporated insurers under common
4 administration that maintains a trust fund of not less than one
5 hundred million dollars (\$100,000,000) in a qualified United States
6 financial institution for the payment of claims of its United States
7 policyholders, their assigns, or successors in interest and that
8 complies with the terms and conditions of paragraph (1) that has
9 continuously transacted an insurance business outside the United
10 States for at least three years, that is in good standing with its
11 domiciliary regulator, whose individual insurer members maintain
12 standards and a financial condition reasonably comparable to
13 admitted insurers, that submits to this state's authority to examine
14 its books and bears the expense of examination, and that has an
15 aggregate policyholder surplus of ten billion dollars
16 (\$10,000,000,000), the group is excepted from the capital and
17 surplus requirements of subdivision (a).

18 (c) Unless available from the NAIC or other public source, has
19 caused to be provided to the commissioner the following
20 documents:

21 (1) The financial documents as specified below, each showing
22 the insurer's condition as of a date not more than 12 months prior
23 to submission:

24 (A) A copy of an annual statement, prepared in the form
25 prescribed by the NAIC. For an alien insurer, in lieu of an annual
26 statement, a licensee may submit a form as set forth by regulation
27 and as prepared by the insurer, and, if listed by the IID, a copy of
28 the complete information as required in the application for listing
29 by the IID.

30 (B) A copy of an audited financial report on the insurer's
31 condition that meets the standards of subparagraph (D) for foreign
32 insurers or subparagraph (E) for alien insurers.

33 (C) If the insurer is an alien:

34 (i) A certified copy of the trust agreement referenced in
35 subdivision (b).

36 (ii) A verified copy of the most recent quarterly statement or
37 list of the assets in the trust.

38 (D) Financial reports filed pursuant to this section by foreign
39 insurers shall conform to the following standards:

40 (i) Financial documents shall be certified.

1 (ii) An audited financial report shall constitute a supplement to
2 the insurer's annual statement, as required by the annual statement
3 instructions issued by the NAIC.

4 (iii) An audited financial report shall be prepared by an
5 independent certified public accountant or accounting firm in good
6 standing with the American Institute of Certified Public
7 Accountants and in all states where licensed to practice; and be
8 prepared in conformity with statutory accounting practices
9 prescribed, or otherwise permitted, by the insurance regulator of
10 the insurer's domiciliary jurisdiction.

11 (iv) An audited financial report shall include information on the
12 insurer's financial position as of the end of the most recent calendar
13 year, and the results of its operations, cashflows, and changes in
14 capital and surplus for the year then ended.

15 (v) An audited financial report shall be prepared in a form and
16 using language and groupings substantially the same as the relevant
17 sections of the insurer's annual statement filed with its domiciliary
18 jurisdiction, and presenting comparatively the amounts as of
19 December 31 of the most recent calendar year and the amounts as
20 of December 31 of the preceding year.

21 (E) Financial reports filed pursuant to this section by alien
22 insurers shall conform to the following standards:

23 (i) Except as provided in clause (ii) of subparagraph (C),
24 financial documents should be certified. If certification of a
25 financial document is not available, the document shall be verified.

26 (ii) Financial documents should be expressed in United States
27 dollars, but may be expressed in another currency, if the exchange
28 rate for the other currency as of the date of the document is also
29 provided.

30 (iii) The responses provided pursuant to subparagraph (A) on
31 the form submitted in lieu of an annual statement should follow
32 the most recent Insurance Solvency International Guide to Alien
33 Reporting Format, "Standard Definitions of Accounting Items."
34 Responses that do not agree with a standard definition shall be
35 fully explained in the form.

36 (iv) An audited financial report shall be prepared by an
37 independent licensed auditor in the insurer's domiciliary
38 jurisdiction or in any state.

39 (v) An audited financial report shall be prepared in accord with
40 either (I) Generally Accepted Auditing Standards that prescribe

1 Generally Accepted Accounting Principles, or (II) International
2 Accounting Standards as published and revised from time to time
3 by the International Auditing Guidelines published by the
4 International Auditing Practice Committee of the International
5 Federation of Accountants, and shall include financial statement
6 notes and a summary of significant accounting practices.

7 (F) The commissioner may accept, in lieu of a document
8 described above, a certified or verified financial or regulatory
9 document, statement, or report if the commissioner finds that it
10 possesses reliability and financial detail substantially equal to or
11 greater than the document for which it is proposed to be a
12 substitute.

13 (G) If one of the financial documents required to be submitted
14 under subparagraphs (A) and (B) is dated within 12 months of
15 submission, but the other document is not so dated, the licensee
16 may use the outdated document if it is accompanied by a
17 supplement. The supplement must meet the same requirements
18 that apply to the supplemented document and must update the
19 outdated document to a date within the prescribed time period,
20 preferably to the same date as the nonsupplemented document.

21 (2) A certified copy of the insurer's license issued by its
22 domiciliary jurisdiction, plus a certification of good standing,
23 certificate of compliance, or other equivalent certificate, from
24 either that jurisdiction or, if the jurisdiction does not issue those
25 certificates, from a state where it is licensed.

26 (3) Information on the insurer's agent in California for service
27 of process, including the agent's full name and address. The agent's
28 address must include a street address where the agent can be
29 reached during normal business hours.

30 (4) The complete street address, mailing address, and telephone
31 number of the insurer's principal place of business.

32 (5) A certified or verified explanation, report, or other statement
33 from the insurance regulatory office or official of the insurer's
34 domiciliary jurisdiction concerning the insurer's record regarding
35 market conduct and consumer complaints, or, if that information
36 cannot be obtained from that jurisdiction, then any other
37 information that the licensee can procure to demonstrate a good
38 reputation for payment of claims and treatment of policyholders.

39 (6) A verified statement, from the insurer or licensee, on whether
40 the insurer or an affiliated entity is currently known to be the

1 subject of an order or proceeding regarding conservation,
2 liquidation, or other receivership; or regarding revocation or
3 suspension of a license to transact insurance in any jurisdiction;
4 or otherwise seeking to stop the insurer from transacting insurance
5 in any jurisdiction. The statement shall identify the proceeding by
6 date, jurisdiction, and relief or sanction sought, and shall attach a
7 copy of the relevant order.

8 (7) A certified copy of the most recent report of examination
9 or an explanation if the report is not available.

10 (8) A list of all California surplus line brokers authorized by
11 the insurer to issue policies on its behalf, and any additions to or
12 deletions from that list.

13 (d) (1) Has provided additional information or documentation
14 required by the commissioner that is relevant to the financial
15 stability, reputation, and integrity of the nonadmitted insurer. In
16 making a determination concerning financial stability, reputation,
17 and integrity of the nonadmitted insurer, the commissioner shall
18 consider any analyses, findings, or conclusions made by the NAIC
19 in its review of the insurer for purposes of inclusion on or exclusion
20 from the list of authorized nonadmitted insurers maintained by the
21 NAIC. The commissioner may, but shall not be required to, rely
22 on, adopt, or otherwise accept any analyses, findings, or
23 conclusions of the NAIC, as the commissioner deems appropriate.
24 In the case of a syndicate seeking eligibility under subparagraph
25 (C) of paragraph (2) of subdivision (a), the commissioner may,
26 but shall not be required to, rely on, adopt, or otherwise accept
27 any analyses, findings, or conclusions of a state, as the
28 commissioner deems appropriate, as long as that state, in its method
29 of regulation and review, meets the requirements of paragraph (2).

30 (2) The regulatory body of the state shall regularly receive and
31 review the following: (A) an audited financial statement of the
32 syndicate, prepared by a certified or chartered public accountant;
33 (B) an opinion of a qualified actuary with regard to the syndicate's
34 aggregate reserves for payment of losses or claims and payment
35 of expenses of adjustment or settlement of losses or claims; (C) a
36 certification from the qualified United States financial institution
37 that acts as the syndicate's trustee, respecting the existence and
38 value of the syndicate's trust fund; and (D) information concerning
39 the syndicate's or its manager's operating history, business plan,
40 ownership and control, experience, and ability, together with any

1 other pertinent factors, and any information indicating that the
2 syndicate or its manager make reasonably prompt payment of
3 claims in this state or elsewhere. The regulatory body of the state
4 shall have the authority, either by law or through the operation of
5 a valid and enforceable agreement, to review the syndicate's assets
6 and liabilities and audit the syndicate's trust account, and shall
7 exercise that authority with a frequency and in a manner
8 satisfactory to the commissioner.

9 (e) Has established that:

10 (1) All documents required by subdivisions (c) and (d) have
11 been filed. Each of the documents appear after review to be
12 complete, clear, comprehensible, unambiguous, accurate, and
13 consistent.

14 (2) The documents affirm that the insurer is not subject in any
15 jurisdiction to an order or proceeding that:

16 (A) Seeks to stop it from transacting insurance.

17 (B) Relates to conservation, liquidation, or other receivership.

18 (C) Relates to revocation or suspension of its license.

19 (3) The documents affirm that the insurer has actively transacted
20 insurance for the three years immediately preceding the filing made
21 under this section, unless an exemption is granted. As used in this
22 paragraph, "insurer" does not include a syndicate of underwriting
23 entities. The commissioner may grant an exemption if the licensee
24 has applied for exemption and demonstrates either of the following:

25 (A) The insurer meets the condition for any exception set forth
26 in subdivision (a), (b), or (c) of Section 716.

27 (B) If the insurer has been actively transacting insurance for at
28 least 12 months, and the licensee demonstrates that the exemption
29 is warranted because the insurer's current financial strength,
30 operating history, business plan, ownership and control,
31 management experience, and ability, together with any other
32 pertinent factors, make three years of active insurance transaction
33 unnecessary to establish sufficient reputation.

34 (4) The documents confirm that the insurer holds a license to
35 issue insurance policies, other than reinsurance, to residents of the
36 jurisdiction that granted the license unless an exemption is granted.
37 The commissioner may grant an exemption if the licensee has
38 applied for an exemption and demonstrates that the exemption is
39 warranted because the insurer proposes to issue in California only
40 commercial coverage, and is wholly owned and actually controlled

1 by substantial and knowledgeable business enterprises that are its
2 policyholders and that effectively govern the insurer's destiny in
3 furtherance of their own business objectives.

4 (5) The information filed pursuant to paragraph (5) of
5 subdivision (c) or otherwise filed with or available to the
6 commissioner, including reports received from California
7 policyholders, shall indicate that the insurer makes reasonably
8 prompt payment of claims in this state or elsewhere.

9 (6) The information available to the commissioner shall not
10 indicate that the insurer offers in California a licensee products or
11 rates that violate any provision of this code.

12 (f) Has been placed on the list of approved surplus line insurers
13 by the commissioner. The commissioner shall establish a list of
14 all surplus line insurers that have met the requirements of
15 subdivisions (a) to (e), inclusive, and shall publish a master list at
16 least semiannually. An insurer receiving approval as an approved
17 surplus line insurer shall be added by addendum to the list at the
18 time of approval, and shall be incorporated into the master list at
19 the next date of publication. If an insurer appears on the most
20 recent list, it shall be presumed that the insurer is an approved
21 surplus line insurer, unless the commissioner or his or her designee
22 has mailed or causes to be mailed notice to all surplus line brokers
23 that the commissioner has withdrawn the insurer's approval. Upon
24 receipt of notice, the surplus line broker shall no longer advertise
25 that the insurer is approved. Nothing in this subdivision shall limit
26 the commissioner's discretion to withdraw an insurer's approval.

27 (g) (1) Except as provided by paragraph (2), whenever the
28 commissioner has reasonable cause to believe, and determines
29 after a public hearing, that an insurer on the list established
30 pursuant to subdivision (f), (A) is in an unsound financial condition,
31 (B) does not meet the approval requirements under subdivisions
32 (a) to (e), inclusive, (C) has violated the laws of this state, or (D)
33 without justification, or with a frequency so as to indicate a general
34 business practice, delays the payment of just claims, the
35 commissioner may issue an order removing the insurer from the
36 list. Notice of hearing shall be served upon the insurer or its agent
37 for service of process stating the time and place of the hearing and
38 the conduct, condition, or ground upon which the commissioner
39 would make his or her order. The hearing shall occur not less than

1 20 days, nor more than 30 days, after notice is served upon the
2 insurer or its agent for service of process.

3 (2) If the commissioner determines that an insurer's immediate
4 removal from the list is necessary to protect the public or a home
5 state insured or home state insured applicant of the insurer, or, in
6 the case of an application by an insurer to be placed on the list that
7 is being denied by the commissioner, the commissioner may issue
8 an order pursuant to paragraph (1) without prior notice and hearing.
9 At the time an order is served pursuant to this paragraph to an
10 insurer on the list, the commissioner shall also issue and serve
11 upon the insurer a statement of the reasons that immediate removal
12 is necessary. An order issued pursuant to this paragraph shall
13 include a notice stating the time and place of a hearing on the order,
14 which shall be not less than 20 days, nor more than 30 days, after
15 the notice is served.

16 (3) Notwithstanding paragraphs (1) and (2), in a case where the
17 commissioner is basing a decision to remove an insurer from the
18 list, or deny an application to be placed on the list, on the failure
19 of the insurer or applicant to comply with, meet, or maintain any
20 of the objective criteria established by this section, or by regulation
21 adopted pursuant to this section, the commissioner may specify
22 this fact in the order, and no hearing shall be required to be held
23 on the order.

24 (4) Notwithstanding paragraphs (1) and (2), the commissioner
25 may, without prior notice or hearing, remove from the list
26 established pursuant to subdivision (f) an insurer that has failed
27 or refused to timely provide documents required by this section,
28 or regulations adopted to implement this section. In the case of
29 removal pursuant to this paragraph, the commissioner shall notify
30 all surplus line brokers of the action.

31 (h) In addition to other statements or reports required by this
32 chapter, the commissioner may also address to a licensee a written
33 request for full and complete information respecting the financial
34 stability, reputation, and integrity of a nonadmitted insurer with
35 whom the licensee has dealt or proposes to deal in the transaction
36 of insurance business with a home state insured. The licensee so
37 addressed shall promptly furnish in written or printed form so
38 much of the information requested as he or she can produce,
39 together with a signed statement identifying the same and giving
40 reasons for omissions, if any. After due examination of the

1 information and accompanying statement, the commissioner may,
2 if he or she believes it to be in the public interest, advise the
3 licensee in writing that the insurer does not qualify as an approved
4 insurer. Any placement in the nonadmitted insurer made by a
5 licensee after receipt of that advisement shall be accompanied by
6 a copy of the advisement. The commissioner may issue an
7 advisement when documents submitted pursuant to subdivisions
8 (c) and (d) do not meet the criteria of subdivisions (a) to (e),
9 inclusive, or when the commissioner obtains documents on an
10 insurer and the insurer does not meet the criteria of subdivisions
11 (a) to (e), inclusive, and shall be authorized to not include or
12 remove that insurer from the List of Approved Surplus Line
13 Insurers.

14 (i) The commissioner shall require, at least annually, the
15 submission of records and statements reasonably necessary to
16 ensure that the requirements of this section are maintained.

17 (j) The commissioner shall establish, by regulation, a schedule
18 of fees to cover costs of administering and enforcing this chapter.

19 SEC. 108. Section 1768 of the Insurance Code is amended to
20 read:

21 1768. A resident surplus line broker shall keep in this state
22 complete records of the business transacted by him or her for
23 California home state insureds with nonadmitted insurers under
24 his or her license as a surplus line broker including all of the
25 following documentation for each policy:

26 (a) Verification that the insured is a California home state
27 insured.

28 (b) Verification that the commercial insured or industrial insured
29 qualifies for the provisions of this code.

30 (c) Whether or not it is a single state policy or multistate policy.

31 (d) Where allocation of premium to the states is required, data
32 necessary to make that allocation. A nonresident surplus line broker
33 shall keep in the state where he or she is licensed as a resident
34 surplus line broker complete records of the business transacted by
35 him or her for California home state insureds with nonadmitted
36 insurers under his or her California nonresident surplus line broker
37 license, including subdivisions (a) to (d), inclusive. The
38 commissioner may waive or modify any of the foregoing
39 requirements by issuance of a notice published on the department's
40 Internet Web site.

1 SEC. 109. Section 1774 of the Insurance Code is amended to
2 read:

3 1774. (a) (1) On or before the first day of March of each year
4 the surplus line broker, placing business for a home state insured,
5 shall file with the commissioner a sworn statement of all business
6 transacted under his or her surplus line license during the last
7 preceding calendar year. The statement shall contain an account
8 of the business done by the surplus line broker placing business
9 for a home state insured for the prior year, and shall include (A)
10 the total amount of gross premium, (B) the total gross premium
11 for single state risks where 100 percent of the premium is
12 attributable to risks in California, and (C) for multistate risks, the
13 percentage of gross premium allocated to California and each other
14 state. The commissioner may waive or modify any of the foregoing
15 requirements by issuance of a notice published on the department's
16 Internet Web site.

17 (2) On or before the first day of March of each year, the home
18 state insured that directly procures insurance pursuant to Section
19 1760 shall file with the commissioner a sworn statement of all
20 business done during the last preceding calendar year. That
21 statement shall contain an account of the insurance directly
22 procured by the home state insured pursuant to Section 1760 for
23 the prior year, and shall include (A) the total amount of premium,
24 (B) the total premium for single state risks where 100 percent of
25 the premium is attributable to risks in California, and (C) for
26 multistate risks, the percentage of premium allocated to California
27 and each other state. The commissioner may waive or modify any
28 of the foregoing requirements by issuance of a notice published
29 on the department's Internet Web site.

30 (b) For purposes of this chapter, "business done" or "business
31 transacted" means all insurance business conducted by the surplus
32 line broker for a home state insured or directly procured by the
33 home state insured. If two or more persons licensed as surplus line
34 brokers are involved in placing a policy, only the one who is
35 responsible for filing the confidential written report pursuant to
36 subdivision (a) of Section 1763, shall be considered transacting
37 business for tax purposes and then only one licensed surplus line
38 broker shall include the policy in his or her sworn statement. The
39 surplus line broker who is required to include the policy in his or
40 her own statement is either (1) the one who is responsible for

1 negotiating, effecting the placement, remitting the premium to the
2 nonadmitted insurer or its representatives, and filing the
3 confidential written report pursuant to subdivision (a) of Section
4 1763, or (2) the one surplus line broker who is delegated the
5 responsibility for the filing of the confidential written report
6 pursuant to subdivision (a) of Section 1763 pursuant to a written
7 agreement that is (A) by and among the surplus line brokers
8 referenced in paragraph (1) and this paragraph involved in the
9 transaction, (B) signed by the surplus line brokers referenced in
10 paragraph (1) and this paragraph involved in the transaction, and
11 (C) provides by its terms that the agreement shall be made available
12 to the commissioner or his or her designee, upon request.

13 (c) The date on which the surplus line broker transacting a policy
14 prepares a bill or invoice for payment of all or part of the premiums
15 due, shall be considered the date on which that business was done
16 or transacted, subject to ~~paragraph~~ *subdivision* (d). This date shall
17 be shown on the face of the bill or invoice and shall be referred to
18 as the “invoice date.”

19 (d) (1) The invoice date shall be no more than 60 days after the
20 policy effective date and no more than 60 days after the insurance
21 was placed with a nonadmitted insurer, except as provided in
22 paragraph (2).

23 (2) For purposes of this chapter, the amount of gross premium
24 to be reported, if premiums are billed and payable in installments,
25 shall be the amount of the installment premium, provided the
26 amount and due date of each installment, or the basis for
27 determining each installment, is identifiable in the policy or an
28 endorsement, and either of the following conditions is satisfied:

29 (A) Installments under the policy are not billed more frequently
30 than once per month.

31 (B) If more than one installment is billed in any month, the
32 commissioner determines, in his or her discretion, that the
33 installment billing method used does not unduly burden the
34 commissioner’s ability to accurately determine the amount of
35 premium paid by the insured.

36 (3) If a new or renewal policy has an effective date between
37 January 1, 2011, to July 20, 2011, inclusive, and is placed on or
38 before July 20, 2011, then the policy shall be considered to be
39 business done by the surplus line broker as of the effective date.
40 If a new or renewal policy has an effective date between January

1 1, 2011, to July 20, 2011, inclusive, then the policy shall be
2 considered to be business done by the home state insured who
3 directly procures policies as of the effective date. Cancellations
4 or endorsements shall be business done on the same date as the
5 policy that is being canceled or endorsed, if that policy effective
6 date is on or before July 20, 2011. Installment premiums, as
7 referenced in paragraph (2), shall be business done on the date of
8 the most recent invoice issued on or before July 20, 2011, that
9 included premium tax charges. This paragraph is enacted to address
10 the July 21, 2011, effective date of the federal Dodd-Frank Wall
11 Street Reform and Consumer Protection Act (P.L. 111-203), and
12 shall remain in effect only until October 18, 2012.

13 SEC. 110. Section 1775.5 of the Insurance Code is amended
14 to read:

15 1775.5. (a) Every surplus line broker shall annually, on or
16 before the first day of March of each year, pay to the Insurance
17 Commissioner for the use of the State of California a tax of 3
18 percent of the gross premiums charged less return premiums upon
19 business done by him or her under the authority of his or her license
20 during the preceding calendar year, excluding any portions of
21 premiums upon business done involving the risk finance portion
22 of any blended finite risk product used in the financing element
23 of state or federal Superfund environmental settlements involving
24 remediation of soil or groundwater contamination or by the
25 provisions of Section 1760.5. If during any calendar year 3 percent
26 of the return premiums upon business done by a surplus line broker
27 exceed 3 percent of the gross premiums upon that business done
28 by him or her in that year, then he or she may either carry forward
29 that excess to the next succeeding year and apply it as a credit
30 against 3 percent of gross premiums on the business done by him
31 or her in the succeeding year, or he or she may elect to receive,
32 and thereupon be paid a refund equal to the amount of taxes
33 theretofore paid by him or her on that excess of return premiums
34 paid over gross premiums received.

35 (b) For the purpose of determining that tax, the total premium
36 charged for all that nonadmitted insurance placed in a single
37 transaction with one underwriter or group of underwriters, whether
38 in one or more policies, shall be the entire premium charged on
39 all nonadmitted insurance for the California home state insured.
40 This provision shall not apply to interstate motor transit operations

1 conducted between this and other states. With respect to those
2 operations surplus line tax shall be payable on the entire premium
3 charged on all nonadmitted insurance, less the following:

4 (1) The portion of the premium as is determined, as herein
5 provided, to have been charged for operations in other states taxing
6 the premium on operations in those states of an insured maintaining
7 its headquarters office in this state.

8 (2) The premium for any operations outside of this state of an
9 insured who maintains a headquarters operating office outside of
10 this state and a branch office in this state.

11 (c) (1) A penalty of 10 percent of the amount of the payment
12 due pursuant to this section shall be levied upon and paid by any
13 surplus line broker who fails to make the necessary payment within
14 the time required, plus interest at the rate of 1 percent per calendar
15 month or fraction thereof, from March 1, the due date of the annual
16 tax, until the date the payment is received by the commissioner.
17 The penalty and interest shall be applied as prescribed in Section
18 12636.5 of the Revenue and Taxation Code. The commissioner,
19 upon a showing of good cause, may extend for a period not to
20 exceed 30 days, the time for filing a tax return or paying any
21 amount required to be paid with the return. The extension may be
22 granted at any time, provided that a request therefor is filed with
23 the commissioner within, or prior to, the period for which the
24 extension may be granted.

25 (2) Any surplus line broker to whom an extension is granted
26 shall, in addition to the tax, pay interest at the rate of 1 percent per
27 month or fraction thereof from March 1, until the date of payment.
28 The commissioner may remit the penalty in a case where the
29 commissioner finds, as a result of examination or otherwise, that
30 the failure of or delay in payment arose out of excusable mistake
31 or excusable inadvertence.

32 (d) For any part of a payment required by this section or by
33 Section 1775.4 which was not made within the time required by
34 law, when the nonpayment or late payment was due to fraud on
35 the part of the broker, a penalty of 25 percent of the amount unpaid
36 shall be added thereto, in addition to all other penalties otherwise
37 imposed.

38 (e) For the purposes of this section, these terms shall have the
39 following meanings:

1 (1) “Blended finite risk product” means a contractual
2 arrangement combining risk finance with traditional risk transfer,
3 where a distinct portion of the program cost represents the funding
4 of a known, existing, nonfortuitous future cost, obligation,
5 responsibility, or liability at its discounted net present value, and
6 another portion of the program cost represents risk transfer for
7 losses that have yet to occur related to the cost, obligation,
8 responsibility, or liability that is the subject of the program.

9 (2) “Risk financing” means that portion of any blended finite
10 risk product that represents the funding of a known, existing,
11 nonfortuitous future cost, obligation, responsibility, or liability.

12 (3) “Risk finance” or “financing element” means a method of
13 funding for a known future cost over a long time horizon in
14 current-value dollars using the principle of net present value
15 discounting.

16 SEC. 111. Section 10123.191 of the Insurance Code is amended
17 to read:

18 10123.191. (a) Notwithstanding any other provision of law,
19 on and after January 1, 2013, a health insurer that provides
20 prescription drug benefits shall utilize and accept only the prior
21 authorization form developed pursuant to subdivision (c) when
22 requiring prior authorization for prescription drug benefits.

23 (b) If a health insurer fails to utilize or accept the prior
24 authorization form, or fails to respond within two business days
25 upon receipt of a completed prior authorization request from a
26 prescribing provider, pursuant to the submission of the prior
27 authorization form developed as described in subdivision (c), the
28 prior authorization request shall be deemed to have been granted.
29 The requirements of this subdivision shall not apply to contracts
30 entered into pursuant to Article 2.7 (commencing with Section
31 14087.3), Article 2.8 (commencing with Section 14087.5), Article
32 2.81 (commencing with Section 14087.96), or Article 2.91
33 (commencing with Section 14089) of Chapter 7 of, or Chapter 8
34 (commencing with Section 14200) of, Part 3 of Division 9 of the
35 Welfare and Institutions Code.

36 (c) On or before July 1, 2012, the department and the
37 Department of Managed Health Care shall jointly develop a
38 uniform prior authorization form. Notwithstanding any other
39 provision of law, on and after January 1, 2013, or six months after
40 the form is developed, whichever is later, every prescribing

1 provider shall use that uniform prior authorization form to request
2 prior authorization for coverage of prescription drug benefits and
3 every health insurer shall accept that form as sufficient to request
4 prior authorization for prescription drug benefits.

5 (d) The prior authorization form developed pursuant to
6 subdivision (c) shall meet the following criteria:

7 (1) The form shall not exceed two pages.

8 (2) The form shall be made electronically available by the
9 department and the health insurer.

10 (3) The completed form may also be electronically submitted
11 from the prescribing provider to the health insurer.

12 (4) The department and the Department of Managed Health
13 Care shall develop the form with input from interested parties from
14 at least one public meeting.

15 (5) The department and the Department of Managed Health
16 Care, in development of the standardized form, shall take into
17 consideration the following:

18 (A) Existing prior authorization forms established by the federal
19 Centers for Medicare and Medicaid Services and the State
20 Department of Health Care Services.

21 (B) National standards pertaining to electronic prior
22 authorization.

23 (e) For purposes of this section, a “prescribing provider” shall
24 include a provider authorized to write a prescription, pursuant to
25 subdivision (a) of Section 4040 of the Business and Professions
26 Code, to treat a medical condition of an insured.

27 SEC. 112. Section 10144.51 of the Insurance Code is amended
28 to read:

29 10144.51. (a) (1) Every health insurance policy shall also
30 provide coverage for behavioral health treatment for pervasive
31 developmental disorder or autism no later than July 1, 2012. The
32 coverage shall be provided in the same manner and shall be subject
33 to the same requirements as provided in Section 10144.5.

34 (2) Notwithstanding paragraph (1), as of the date that proposed
35 final rulemaking for essential health benefits is issued, this section
36 does not require any benefits to be provided that exceed the
37 essential health benefits that all health insurers will be required by
38 federal regulations to provide under Section 1302(b) of the federal
39 Patient Protection and Affordable Care Act (P.L. 111-148), as

1 amended by the federal Health Care and Education Reconciliation
2 Act of 2010 (P.L. 111-152).

3 (3) This section shall not affect services for which an individual
4 is eligible pursuant to Division 4.5 (commencing with Section
5 4500) of the Welfare and Institutions Code or Title 14
6 (commencing with Section 95000) of the Government Code.

7 (4) This section shall not affect or reduce any obligation to
8 provide services under an individualized education program, as
9 defined in Section 56032 of the Education Code, or an
10 individualized service plan, as described in Section 5600.4 of the
11 Welfare and Institutions Code, or under the Individuals with
12 Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and its
13 implementing regulations.

14 (b) Pursuant to Article 6 (commencing with Section 2240) of
15 Title 10 of the California Code of Regulations, every health insurer
16 subject to this section shall maintain an adequate network that
17 includes qualified autism service providers who supervise and
18 employ qualified autism service professionals or paraprofessionals
19 who provide and administer behavioral health treatment. Nothing
20 shall prevent a health insurer from selectively contracting with
21 providers within these requirements.

22 (c) For the purposes of this section, the following definitions
23 shall apply:

24 (1) “Behavioral health treatment” means professional services
25 and treatment programs, including applied behavior analysis and
26 evidence-based behavior intervention programs, that develop or
27 restore, to the maximum extent practicable, the functioning of an
28 individual with pervasive developmental disorder or autism, and
29 that meet all of the following criteria:

30 (A) The treatment is prescribed by a physician and surgeon
31 licensed pursuant to Chapter 5 (commencing with Section 2000)
32 of, or is developed by a psychologist licensed pursuant to Chapter
33 6.6 (commencing with Section 2900) of, Division 2 of the Business
34 and Professions Code.

35 (B) The treatment is provided under a treatment plan prescribed
36 by a qualified autism service provider and is administered by one
37 of the following:

38 (i) A qualified autism service provider.

39 (ii) A qualified autism service professional supervised and
40 employed by the qualified autism service provider.

1 (iii) A qualified autism service paraprofessional supervised and
2 employed by a qualified autism service provider.

3 (C) The treatment plan has measurable goals over a specific
4 timeline that is developed and approved by the qualified autism
5 service provider for the specific patient being treated. The treatment
6 plan shall be reviewed no less than once every six months by the
7 qualified autism service provider and modified whenever
8 appropriate, and shall be consistent with Section 4686.2 of the
9 Welfare and Institutions Code pursuant to which the qualified
10 autism service provider does all of the following:

11 (i) Describes the patient’s behavioral health impairments to be
12 treated.

13 (ii) Designs an intervention plan that includes the service type,
14 number of hours, and parent participation needed to achieve the
15 plan’s goal and objectives, and the frequency at which the patient’s
16 progress is evaluated and reported.

17 (iii) Provides intervention plans that utilize evidence-based
18 practices, with demonstrated clinical efficacy in treating pervasive
19 developmental disorder or autism.

20 (iv) Discontinues intensive behavioral intervention services
21 when the treatment goals and objectives are achieved or no longer
22 appropriate.

23 (D) The treatment plan is not used for purposes of providing or
24 for the reimbursement of respite, day care, or educational services
25 and is not used to reimburse a parent for participating in the
26 treatment program. The treatment plan shall be made available to
27 the insurer upon request.

28 (2) “Pervasive developmental disorder or autism” shall have
29 the same meaning and interpretation as used in Section 10144.5.

30 (3) “Qualified autism service provider” means either of the
31 following:

32 (A) A person, entity, or group that is certified by a national
33 entity, such as the Behavior Analyst Certification Board, that is
34 accredited by the National Commission for Certifying Agencies,
35 and who designs, supervises, or provides treatment for pervasive
36 developmental disorder or autism, provided the services are within
37 the experience and competence of the person, entity, or group that
38 is nationally certified.

39 (B) A person licensed as a physician and surgeon, physical
40 therapist, occupational therapist, psychologist, marriage and family

1 therapist, educational psychologist, clinical social worker,
2 professional clinical counselor, speech-language pathologist, or
3 audiologist pursuant to Division 2 (commencing with Section 500)
4 of the Business and Professions Code, who designs, supervises,
5 or provides treatment for pervasive developmental disorder or
6 autism, provided the services are within the experience and
7 competence of the licensee.

8 (4) “Qualified autism service professional” means an individual
9 who meets all of the following criteria:

10 (A) Provides behavioral health treatment.

11 (B) Is employed and supervised by a qualified autism service
12 provider.

13 (C) Provides treatment pursuant to a treatment plan developed
14 and approved by the qualified autism service provider.

15 (D) Is a behavioral service provider approved as a vendor by a
16 California regional center to provide services as an Associate
17 Behavior Analyst, Behavior Analyst, Behavior Management
18 Assistant, Behavior Management Consultant, or Behavior
19 Management Program as defined in Section 54342 of Title 17 of
20 the California Code of Regulations.

21 (E) Has training and experience in providing services for
22 pervasive developmental disorder or autism pursuant to Division
23 4.5 (commencing with Section 4500) of the Welfare and
24 Institutions Code or Title 14 (commencing with Section 95000)
25 of the Government Code.

26 (5) “Qualified autism service paraprofessional” means an
27 unlicensed and uncertified individual who meets all of the
28 following criteria:

29 (A) Is employed and supervised by a qualified autism service
30 provider.

31 (B) Provides treatment and implements services pursuant to a
32 treatment plan developed and approved by the qualified autism
33 service provider.

34 (C) Meets the criteria set forth in the regulations adopted
35 pursuant to Section 4686.3 of the Welfare and Institutions Code.

36 (D) Has adequate education, training, and experience, as
37 certified by a qualified autism service provider.

38 (d) This section shall not apply to the following:

39 (1) A specialized health insurance policy that does not cover
40 mental health or behavioral health services or an accident only,

1 specified disease, hospital indemnity, or Medicare supplement
2 policy.

3 (2) A health insurance policy in the Medi-Cal program (Chapter
4 7 (commencing with Section 14000) of Part 3 of Division 9 of the
5 Welfare and Institutions Code).

6 (3) A health insurance policy in the Healthy Families Program
7 (Part 6.2 (commencing with Section 12693)).

8 (4) A health care benefit plan or policy entered into with the
9 Board of Administration of the Public Employees' Retirement
10 System pursuant to the Public Employees' Medical and Hospital
11 Care Act (Part 5 (commencing with Section 22750) of Division 5
12 of Title 2 of the Government Code).

13 (e) Nothing in this section shall be construed to limit the
14 obligation to provide services under Section 10144.5.

15 (f) As provided in Section 10144.5 and in paragraph (1) of
16 subdivision (a), in the provision of benefits required by this section,
17 a health insurer may utilize case management, network providers,
18 utilization review techniques, prior authorization, copayments, or
19 other cost sharing.

20 (g) This section shall become inoperative on July 1, 2014, and,
21 as of January 1, 2015, is repealed, unless a later enacted statute,
22 that becomes operative on or before January 1, 2015, deletes or
23 extends the dates on which it becomes inoperative and is repealed.

24 SEC. 113. Section 10192.12 of the Insurance Code is amended
25 to read:

26 10192.12. (a) (1) With respect to the guaranteed issue of a
27 Medicare supplement policy, eligible persons are those individuals
28 described in subdivision (b) who seek to enroll under the policy
29 during the period specified in subdivision (c), and who submit
30 evidence of the date of termination or disenrollment or enrollment
31 in Medicare Part D with the application for a Medicare supplement
32 policy.

33 (2) With respect to eligible persons, an issuer shall not take any
34 of the following actions:

35 (A) Deny or condition the issuance or effectiveness of a
36 Medicare supplement policy described in subdivision (e) that is
37 offered and is available for issuance to new enrollees by the issuer.

38 (B) Discriminate in the pricing of that Medicare supplement
39 policy because of health status, claims experience, receipt of health
40 care, or medical condition.

1 (C) Impose an exclusion of benefits based on a preexisting
2 condition under that Medicare supplement policy.

3 (b) An eligible person is an individual described in any of the
4 following paragraphs:

5 (1) The individual is enrolled under an employee welfare benefit
6 plan that provides health benefits that supplement the benefits
7 under Medicare and either of the following applies:

8 (A) The plan either terminates or ceases to provide all of those
9 supplemental health benefits to the individual.

10 (B) The employer no longer provides the individual with
11 insurance that covers all of the payment for the 20-percent
12 coinsurance.

13 (2) The individual is enrolled with a Medicare Advantage
14 organization under a Medicare Advantage plan under Medicare
15 Part C, and any of the following circumstances apply:

16 (A) The certification of the organization or plan has been
17 terminated.

18 (B) The organization has terminated or otherwise discontinued
19 providing the plan in the area in which the individual resides.

20 (C) The individual is no longer eligible to elect the plan because
21 of a change in the individual's place of residence or other change
22 in circumstances specified by the secretary. Those changes in
23 circumstances shall not include termination of the individual's
24 enrollment on the basis described in Section 1851(g)(3)(B) of the
25 federal Social Security Act where the individual has not paid
26 premiums on a timely basis or has engaged in disruptive behavior
27 as specified in standards under Section 1856 of the federal Social
28 Security Act, or the plan is terminated for all individuals within a
29 residence area.

30 (D) (i) The Medicare Advantage plan in which the individual
31 is enrolled reduces any of its benefits or increases the amount of
32 cost sharing or premium or discontinues for other than good cause
33 relating to quality of care its relationship or contract under the plan
34 with a provider who is currently furnishing services to the
35 individual. An individual shall be eligible under this subparagraph
36 for a Medicare supplement policy issued by the same issuer through
37 which the individual was enrolled at the time the reduction,
38 increase, or discontinuance described above occurs or, commencing
39 January 1, 2007, for one issued by a subsidiary of the parent
40 company of that issuer or by a network that contracts with the

1 parent company of that issuer. If no Medicare supplement policy
2 is available to the individual from the same issuer, a subsidiary of
3 the parent company of the issuer, or a network that contracts with
4 the parent company of the issuer, the individual shall be eligible
5 for a Medicare supplement policy pursuant to paragraph (1) of
6 subdivision (e) issued by any issuer, if the Medicare Advantage
7 plan in which the individual is enrolled does any of the following:

8 (I) Increases the premium by 15 percent or more.

9 (II) Increases physician, hospital, or drug copayments by 15
10 percent or more.

11 (III) Reduces any benefits under the plan.

12 (IV) Discontinues, for other than good cause relating to quality
13 of care, its relationship or contract under the plan with a provider
14 who is currently furnishing services to the individual.

15 (ii) Enrollment in a Medicare supplement policy from an issuer
16 unaffiliated with the issuer of the Medicare Advantage plan in
17 which the individual is enrolled shall be permitted only during the
18 annual election period for a Medicare Advantage plan, except
19 where the Medicare Advantage plan has discontinued its
20 relationship with a provider currently furnishing services to the
21 individual. Nothing in this section shall be construed to authorize
22 an individual to enroll in a group Medicare supplement policy if
23 the individual does not meet the eligibility requirements for the
24 group.

25 (E) The individual demonstrates, in accordance with guidelines
26 established by the secretary, either of the following:

27 (i) The organization offering the plan substantially violated a
28 material provision of the organization's contract under this article
29 in relation to the individual, including the failure to provide on a
30 timely basis medically necessary care for which benefits are
31 available under the plan or the failure to provide the covered care
32 in accordance with applicable quality standards.

33 (ii) The organization, or agent or other entity acting on the
34 organization's behalf, materially misrepresented the plan's
35 provisions in marketing the plan to the individual.

36 (F) The individual meets other exceptional conditions as the
37 secretary may provide.

38 (3) The individual is 65 years of age or older, is enrolled with
39 a Program of All-Inclusive Care for the Elderly (PACE) provider
40 under Section 1894 of the federal Social Security Act, and

1 circumstances similar to those described in paragraph (2) exist that
2 would permit discontinuance of the individual's enrollment with
3 the provider, if the individual were enrolled in a Medicare
4 Advantage plan.

5 (4) The individual meets both of the following conditions:

6 (A) The individual is enrolled with any of the following:

7 (i) An eligible organization under a contract under Section 1876
8 of the federal Social Security Act (Medicare cost).

9 (ii) A similar organization operating under demonstration project
10 authority, effective for periods before April 1, 1999.

11 (iii) An organization under an agreement under Section
12 1833(a)(1)(A) of the federal Social Security Act (health care
13 prepayment plan).

14 (iv) An organization under a Medicare Select policy.

15 (B) The enrollment ceases under the same circumstances that
16 would permit discontinuance of an individual's election of coverage
17 under paragraph (2) or (3).

18 (5) The individual is enrolled under a Medicare supplement
19 policy, and the enrollment ceases because of any of the following
20 circumstances:

21 (A) The insolvency of the issuer or bankruptcy of the nonissuer
22 organization, or other involuntary termination of coverage or
23 enrollment under the policy.

24 (B) The issuer of the policy substantially violated a material
25 provision of the policy.

26 (C) The issuer, or an agent or other entity acting on the issuer's
27 behalf, materially misrepresented the policy's provisions in
28 marketing the policy to the individual.

29 (6) The individual meets both of the following conditions:

30 (A) The individual was enrolled under a Medicare supplement
31 policy and terminates enrollment and subsequently enrolls, for the
32 first time, with any Medicare Advantage organization under a
33 Medicare Advantage plan under Medicare Part C, any eligible
34 organization under a contract under Section 1876 of the federal
35 Social Security Act (Medicare cost), any similar organization
36 operating under demonstration project authority, any PACE
37 provider under Section 1894 of the federal Social Security Act, or
38 a Medicare Select policy.

39 (B) The subsequent enrollment under subparagraph (A) is
40 terminated by the individual during any period within the first 12

1 months of the subsequent enrollment (during which the enrollee
2 is permitted to terminate the subsequent enrollment under Section
3 1851(e) of the federal Social Security Act).

4 (7) The individual upon first becoming eligible for benefits
5 under Medicare Part A at 65 years of age enrolls in a Medicare
6 Advantage plan under Medicare Part C or with a PACE provider
7 under Section 1894 of the federal Social Security Act, and
8 disenrolls from the plan or program not later than 12 months after
9 the effective date of enrollment.

10 (8) The individual while enrolled under a Medicare supplement
11 policy that covers outpatient prescription drugs enrolls in a
12 Medicare Part D plan during the initial enrollment period
13 terminates enrollment in the Medicare supplement policy, and
14 submits evidence of enrollment in Medicare Part D along with the
15 application for a policy described in paragraph (4) of subdivision
16 (e).

17 (c) (1) In the case of an individual described in paragraph (1)
18 of subdivision (b), the guaranteed issue period begins on the later
19 of the following two dates and ends on the date that is 63 days
20 after the date the applicable coverage terminates:

21 (A) The date the individual receives a notice of termination or
22 cessation of all supplemental health benefits or, if no notice is
23 received, the date of the notice denying a claim because of a
24 termination or cessation of benefits.

25 (B) The date that the applicable coverage terminates or ceases.

26 (2) In the case of an individual described in paragraphs (2), (3),
27 (4), (6), and (7) of subdivision (b) whose enrollment is terminated
28 involuntarily, the guaranteed issue period begins on the date that
29 the individual receives a notice of termination and ends 63 days
30 after the date the applicable coverage is terminated.

31 (3) In the case of an individual described in subparagraph (A)
32 of paragraph (5) of subdivision (b), the guaranteed issue period
33 begins on the earlier of the following two dates and ends on the
34 date that is 63 days after the date the coverage is terminated:

35 (A) The date that the individual receives a notice of termination,
36 a notice of the issuer's bankruptcy or insolvency, or other similar
37 notice if any.

38 (B) The date that the applicable coverage is terminated.

39 (4) In the case of an individual described in paragraph (2), (3),
40 (6), or (7) of, or in subparagraph (B) or (C) of paragraph (5) of,

1 subdivision (b) who disenrolls voluntarily, the guaranteed issue
2 period begins on the date that is 60 days before the effective date
3 of the disenrollment and ends on the date that is 63 days after the
4 effective date of the disenrollment.

5 (5) In the case of an individual described in paragraph (8) of
6 subdivision (b), the guaranteed issue period begins on the date the
7 individual receives notice pursuant to Section 1882(v)(2)(B) of
8 the federal Social Security Act from the Medicare supplement
9 issuer during the 60-day period immediately preceding the initial
10 enrollment period for Medicare Part D and ends on the date that
11 is 63 days after the effective date of the individual's coverage
12 under Medicare Part D.

13 (6) In the case of an individual described in subdivision (b) who
14 is not included in this subdivision, the guaranteed issue period
15 begins on the effective date of disenrollment and ends on the date
16 that is 63 days after the effective date of disenrollment.

17 (d) (1) In the case of an individual described in paragraph (6)
18 of subdivision (b), or deemed to be so described pursuant to this
19 paragraph, whose enrollment with an organization or provider
20 described in subparagraph (A) of paragraph (6) of subdivision (b)
21 is involuntarily terminated within the first 12 months of enrollment
22 and who, without an intervening enrollment, enrolls with another
23 such organization or provider, the subsequent enrollment shall be
24 deemed to be an initial enrollment described in paragraph (6) of
25 subdivision (b).

26 (2) In the case of an individual described in paragraph (7) of
27 subdivision (b), or deemed to be so described pursuant to this
28 paragraph, whose enrollment with a plan or in a program described
29 in paragraph (7) of subdivision (b) is involuntarily terminated
30 within the first 12 months of enrollment and who, without an
31 intervening enrollment, enrolls in another such plan or program,
32 the subsequent enrollment shall be deemed to be an initial
33 enrollment described in paragraph (7) of subdivision (b).

34 (3) For purposes of paragraphs (6) and (7) of subdivision (b),
35 an enrollment of an individual with an organization or provider
36 described in subparagraph (A) of paragraph (6) of subdivision (b),
37 or with a plan or in a program described in paragraph (7) of
38 subdivision (b) shall not be deemed to be an initial enrollment
39 under this paragraph after the two-year period beginning on the

1 date on which the individual first enrolled with such an
2 organization, provider, plan, or program.

3 (e) (1) Under paragraphs (1), (2), (3), (4), and (5) of subdivision
4 (b), an eligible individual is entitled to a Medicare supplement
5 policy that has a benefit package classified as Plan A, B, C, F
6 (including a high deductible Plan F), K, L, M, or N offered by any
7 issuer.

8 (2) (A) Under paragraph (6) of subdivision (b), an eligible
9 individual is entitled to the same Medicare supplement policy in
10 which he or she was most recently enrolled, if available from the
11 same issuer. If that policy is not available, the eligible individual
12 is entitled to a Medicare supplement policy that has a benefit
13 package classified as Plan A, B, C, F (including a high deductible
14 Plan F), K, L, M, or N offered by any issuer.

15 (B) On and after January 1, 2006, an eligible individual
16 described in this paragraph who was most recently enrolled in a
17 Medicare supplement policy with an outpatient prescription drug
18 benefit is entitled to a Medicare supplement policy that is available
19 from the same issuer but without an outpatient prescription drug
20 benefit or, at the election of the individual, has a benefit package
21 classified as a Plan A, B, C, F (including high deductible Plan F),
22 K, L, M, or N that is offered by any issuer.

23 (3) Under paragraph (7) of subdivision (b), an eligible individual
24 is entitled to any Medicare supplement policy offered by any issuer.

25 (4) Under paragraph (8) of subdivision (b), an eligible individual
26 is entitled to a Medicare supplement policy that has a benefit
27 package classified as Plan A, B, C, F (including a high deductible
28 Plan F), K, L, M, or N and that is offered and is available for
29 issuance to a new enrollee by the same issuer that issued the
30 individual's Medicare supplement policy with outpatient
31 prescription drug coverage.

32 (f) (1) At the time of an event described in subdivision (b) by
33 which an individual loses coverage or benefits due to the
34 termination of a contract or agreement, policy, or plan, the
35 organization that terminates the contract or agreement, the issuer
36 terminating the policy, or the administrator of the plan being
37 terminated, respectively, shall notify the individual of his or her
38 rights under this section and of the obligations of issuers of
39 Medicare supplement policies under subdivision (a). The notice

1 shall be communicated contemporaneously with the notification
2 of termination.

3 (2) At the time of an event described in subdivision (b) by which
4 an individual ceases enrollment under a contract or agreement,
5 policy, or plan, the organization that offers the contract or
6 agreement, regardless of the basis for the cessation of enrollment,
7 the issuer offering the policy, or the administrator of the plan,
8 respectively, shall notify the individual of his or her rights under
9 this section, and of the obligations of issuers of Medicare
10 supplement policies under subdivision (a). The notice shall be
11 communicated within 10 working days of the date the issuer
12 received notification of disenrollment.

13 (g) An issuer shall refund any unearned premium that an insured
14 paid in advance and shall terminate coverage upon the request of
15 an insured.

16 SEC. 114. Section 10509.912 of the Insurance Code is amended
17 to read:

18 10509.912. Unless otherwise specifically included, this article
19 shall not apply to transactions involving any of the following:

20 (a) Direct response solicitations where there is no
21 recommendation based on information collected from the consumer
22 pursuant to this article.

23 (b) Contracts used to fund any of the following:

24 (1) An employee pension or welfare benefit plan that is covered
25 by the federal Employee Retirement Income Security Act (ERISA)
26 of 1974 (29 U.S.C. Sec. 1001 et seq.).

27 (2) A plan described by Section 401(a), 401(k), 403(b), 408(k),
28 or 408(p) of the Internal Revenue Code (IRC), as amended, if
29 established or maintained by an employer.

30 (3) A government or church plan defined in Section 414 of the
31 IRC, a government or church welfare benefit plan, or a deferred
32 compensation plan of a state or local government or tax-exempt
33 organization under Section 457 of the IRC.

34 (4) A nonqualified deferred compensation arrangement
35 established or maintained by an employer or plan sponsor.

36 (5) Settlements of or assumptions of liabilities associated with
37 personal injury litigation or any dispute or claim resolution process.

38 (6) Formal prepaid funeral contracts.

39 SEC. 115. Section 11780.5 of the Insurance Code is amended
40 to read:

1 11780.5. (a) The fund may also insure a California employer
2 against his or her liability for workers' compensation benefits,
3 under the law of any other state, for California employees
4 temporarily working outside of California on a specific assignment
5 if the fund insures the employer's other employees who work
6 within California.

7 (b) (1) The fund is only authorized under this subdivision to
8 insure an employer whose principal place of business is in
9 California, provided the majority of the employer's operations and
10 employees are located within California, against his or her liability
11 for workers' compensation benefits, under the law of any other
12 state, if the fund insures the employer's employees who work
13 within California.

14 (2) The fund is only authorized pursuant to this subdivision to
15 contract as a reinsurer with a ceding insurer that has responded to
16 a request for proposal from the fund and is admitted to transact
17 workers' compensation insurance in California and in the
18 out-of-state jurisdiction where the non-California employees are
19 located. The fund may only contract for purposes of this
20 subdivision if the ceding insurer meets all of the following criteria:

21 (A) The insurer has an A minus (A-) rating or better from A.M.
22 Best Company.

23 (B) The insurer has substantial prior experience in transacting
24 workers' compensation business on another insurer's behalf.

25 (C) The insurer has a minimum surplus of one hundred million
26 dollars (\$100,000,000).

27 (c) On or before March 1, 2015, the Department of Insurance
28 shall provide to the Secretary of the Senate and Chief Clerk of the
29 Assembly, pursuant to Section 9795 of the Government Code, a
30 report assessing the experience of the fund that is authorized
31 pursuant to subdivision (b) and shall make recommendations
32 concerning its continuation, limitation, or expansion with special
33 attention to the extent of advantages this practice offers California
34 employers, the California workers' compensation marketplace,
35 and the impact of this class of insurance, whether pro or con, on
36 the fund, its management, and the California marketplace. The
37 report shall be posted on the Department of Insurance Internet
38 Web site upon completion. The costs incurred by the Department
39 of Insurance in the assessment, writing, and publication of this
40 report shall be provided by the fund.

1 (d) The fund shall not initiate paid advertising or solicit
2 sponsorship of advertising campaigns to market or promote to
3 prospective insureds the ability to insure qualified employers under
4 the law of any other state.

5 (e) Subdivisions (b), (c), and (d) shall be operative only until
6 December 31, 2016.

7 SEC. 116. Section 226.8 of the Labor Code is amended to read:

8 226.8. (a) It is unlawful for any person or employer to engage
9 in any of the following activities:

10 (1) Willful misclassification of an individual as an independent
11 contractor.

12 (2) Charging an individual who has been willfully misclassified
13 as an independent contractor a fee, or making any deductions from
14 compensation, for any purpose, including for goods, materials,
15 space rental, services, government licenses, repairs, equipment
16 maintenance, or fines arising from the individual’s employment
17 where any of the acts described in this paragraph would have
18 violated the law if the individual had not been misclassified.

19 (b) If the Labor and Workforce Development Agency or a court
20 issues a determination that a person or employer has engaged in
21 any of the enumerated violations of subdivision (a), the person or
22 employer shall be subject to a civil penalty of not less than five
23 thousand dollars (\$5,000) and not more than fifteen thousand
24 dollars (\$15,000) for each violation, in addition to any other
25 penalties or fines permitted by law.

26 (c) If the Labor and Workforce Development Agency or a court
27 issues a determination that a person or employer has engaged in
28 any of the enumerated violations of subdivision (a) and the person
29 or employer has engaged in or is engaging in a pattern or practice
30 of these violations, the person or employer shall be subject to a
31 civil penalty of not less than ten thousand dollars (\$10,000) and
32 not more than twenty-five thousand dollars (\$25,000) for each
33 violation, in addition to any other penalties or fines permitted by
34 law.

35 (d) (1) If the Labor and Workforce Development Agency or a
36 court issues a determination that a person or employer that is a
37 licensed contractor pursuant to the Contractors’ State License Law
38 has violated subdivision (a), the agency, in addition to any other
39 remedy that has been ordered, shall transmit a certified copy of
40 the order to the Contractors’ State License Board.

1 (2) The registrar of the Contractors' State License Board shall
2 initiate disciplinary action against a licensee within 30 days of
3 receiving a certified copy of an agency or court order that resulted
4 in disbarment pursuant to paragraph (1).

5 (e) If the Labor and Workforce Development Agency or a court
6 issues a determination that a person or employer has violated
7 subdivision (a), the agency or court, in addition to any other remedy
8 that has been ordered, shall order the person or employer to display
9 prominently on its Internet Web site, in an area which is accessible
10 to all employees and the general public, or, if the person or
11 employer does not have an Internet Web site, to display
12 prominently in an area that is accessible to all employees and the
13 general public at each location where a violation of subdivision
14 (a) occurred, a notice that sets forth all of the following:

15 (1) That the Labor and Workforce Development Agency or a
16 court, as applicable, has found that the person or employer has
17 committed a serious violation of the law by engaging in the willful
18 misclassification of employees.

19 (2) That the person or employer has changed its business
20 practices in order to avoid committing further violations of this
21 section.

22 (3) That any employee who believes that he or she is being
23 misclassified as an independent contractor may contact the Labor
24 and Workforce Development Agency. The notice shall include the
25 mailing address, email address, and telephone number of the
26 agency.

27 (4) That the notice is being posted pursuant to a state order.

28 (f) In addition to including the information specified in
29 subdivision (e), a person or employer also shall satisfy the
30 following requirements in preparing the notice:

31 (1) An officer shall sign the notice.

32 (2) It shall post the notice for one year commencing with the
33 date of the final decision and order.

34 (g) (1) In accordance with the procedures specified in Sections
35 98 to 98.2, inclusive, the Labor Commissioner may issue a
36 determination that a person or employer has violated subdivision
37 (a).

38 (2) If, upon inspection or investigation, the Labor Commissioner
39 determines that a person or employer has violated subdivision (a),
40 the Labor Commissioner may issue a citation to assess penalties

1 set forth in subdivisions (b) and (c) in addition to any other
2 penalties or damages that are otherwise available at law. The
3 procedures for issuing, contesting, and enforcing judgments shall
4 be the same as those set forth in Section 1197.1.

5 (3) The Labor Commissioner may enforce this section pursuant
6 to Section 98 or in a civil suit.

7 (h) Any administrative or civil penalty pursuant to subdivision
8 (b) or (c) or disciplinary action pursuant to subdivision (d) or (e)
9 shall remain in effect against any successor corporation, owner,
10 or business entity that satisfies both of the following:

11 (1) Has one or more of the same principals or officers as the
12 person or employer subject to the penalty or action.

13 (2) Is engaged in the same or a similar business as the person
14 or employer subject to the penalty or action.

15 (i) For purposes of this section, the following definitions apply:

16 (1) “Determination” means an order, decision, award, or citation
17 issued by an agency or a court of competent jurisdiction for which
18 the time to appeal has expired and for which no appeal is pending.

19 (2) “Labor and Workforce Development Agency” means the
20 Labor and Workforce Development Agency or any of its
21 departments, divisions, commissions, boards, or agencies.

22 (3) “Officer” means the chief executive officer, president, any
23 vice president in charge of a principal business unit, division, or
24 function, or any other officer of the corporation who performs a
25 policymaking function. If the employer is a partnership, “officer”
26 means a partner. If the employer is a sole proprietor, “officer”
27 means the owner.

28 (4) “Willful misclassification” means avoiding employee status
29 for an individual by voluntarily and knowingly misclassifying that
30 individual as an independent contractor.

31 (j) Nothing in this section is intended to limit any rights or
32 remedies otherwise available at law.

33 SEC. 117. Section 1308.10 of the Labor Code is amended to
34 read:

35 1308.10. (a) Prior to the employment of a minor under the age
36 of 16 years in any of the circumstances listed in subdivision (a) of
37 Section 1308.5, the Labor Commissioner may issue a temporary
38 permit authorizing employment of the minor to enable a parent or
39 guardian of the minor to meet the requirement for a permit under
40 subdivision (a) of Section 1308.5 and to establish a trust account

1 for the minor or to produce the documentation required by the
2 Labor Commissioner for the issuance of a permit under Section
3 1308.5, subject to all of the following conditions:

4 (1) A temporary permit shall be valid for a period not to exceed
5 10 days from the date of issuance.

6 (2) A temporary permit shall not be issued for the employment
7 of a minor if the minor's parent or guardian has previously applied
8 for or been issued a permit by the Labor Commissioner pursuant
9 to Section 1308.5 or a temporary permit pursuant to this section
10 for employment of the minor.

11 (3) The Division of Labor Standards Enforcement shall prepare
12 and make available on its Internet Web site the application form
13 for a temporary permit. An applicant for a temporary permit shall
14 submit a completed application and application fee online to the
15 division. Upon receipt of the completed application and fee, the
16 division shall immediately issue a temporary permit.

17 (b) The Labor Commissioner shall deposit all fees for temporary
18 permits received into the Entertainment Work Permit Fund, which
19 is hereby created in the State Treasury. The funds deposited in the
20 Entertainment Work Permit Fund shall be available to the Labor
21 Commissioner, upon appropriation by the Legislature, to pay for
22 the costs of administration of the online temporary minor's
23 entertainment work permit program and to repay any loan from
24 the Labor Enforcement and Compliance Fund made pursuant to
25 subdivision (c).

26 (c) The Labor Commissioner is authorized on a one-time basis
27 to borrow up to two hundred fifty thousand dollars (\$250,000)
28 from the Labor Enforcement and Compliance Fund, as established
29 by subdivision (e) of Section 62.5, for deposit in the Entertainment
30 and Compliance Fund to cover the one-time startup costs related
31 to the temporary permit program. The loan shall be repaid to the
32 Labor Enforcement and Compliance Fund as soon as sufficient
33 funds exist in the Entertainment Work Permit Fund to repay the
34 loan without compromising the operations of the temporary work
35 permit program.

36 (d) The Labor Commissioner shall set forth the fee in an amount
37 sufficient to pay for these costs, but not to exceed fifty dollars
38 (\$50).

39 SEC. 118. Section 21 of the Penal Code is amended and
40 renumbered to read:

1 29.2. (a) The intent or intention is manifested by the
2 circumstances connected with the offense.

3 (b) In the guilt phase of a criminal action or a juvenile
4 adjudication hearing, evidence that the accused lacked the capacity
5 or ability to control his or her conduct for any reason shall not be
6 admissible on the issue of whether the accused actually had any
7 mental state with respect to the commission of any crime. This
8 subdivision is not applicable to Section 26.

9 SEC. 119. Section 22 of the Penal Code is amended and
10 renumbered to read:

11 29.4. (a) No act committed by a person while in a state of
12 voluntary intoxication is less criminal by reason of his or her
13 having been in that condition. Evidence of voluntary intoxication
14 shall not be admitted to negate the capacity to form any mental
15 states for the crimes charged, including, but not limited to, purpose,
16 intent, knowledge, premeditation, deliberation, or malice
17 aforethought, with which the accused committed the act.

18 (b) Evidence of voluntary intoxication is admissible solely on
19 the issue of whether or not the defendant actually formed a required
20 specific intent, or, when charged with murder, whether the
21 defendant premeditated, deliberated, or harbored express malice
22 aforethought.

23 (c) Voluntary intoxication includes the voluntary ingestion,
24 injection, or taking by any other means of any intoxicating liquor,
25 drug, or other substance.

26 SEC. 120. Section 25.5 of the Penal Code is amended and
27 renumbered to read:

28 29.8. In any criminal proceeding in which a plea of not guilty
29 by reason of insanity is entered, this defense shall not be found by
30 the trier of fact solely on the basis of a personality or adjustment
31 disorder, a seizure disorder, or an addiction to, or abuse of,
32 intoxicating substances. This section shall apply only to persons
33 who utilize this defense on or after the operative date of the section.

34 SEC. 121. Section 136.2 of the Penal Code is amended to read:

35 136.2. (a) Except as provided in subdivision (c), upon a good
36 cause belief that harm to, or intimidation or dissuasion of, a victim
37 or witness has occurred or is reasonably likely to occur, any court
38 with jurisdiction over a criminal matter may issue orders, including,
39 but not limited to, the following:

1 (1) Any order issued pursuant to Section 6320 of the Family
2 Code.

3 (2) An order that a defendant shall not violate any provision of
4 Section 136.1.

5 (3) An order that a person before the court other than a
6 defendant, including, but not limited to, a subpoenaed witness or
7 other person entering the courtroom of the court, shall not violate
8 any provisions of Section 136.1.

9 (4) An order that any person described in this section shall have
10 no communication whatsoever with any specified witness or any
11 victim, except through an attorney under any reasonable restrictions
12 that the court may impose.

13 (5) An order calling for a hearing to determine if an order as
14 described in paragraphs (1) to (4), inclusive, should be issued.

15 (6) (A) An order that a particular law enforcement agency
16 within the jurisdiction of the court provide protection for a victim
17 or a witness, or both, or for immediate family members of a victim
18 or a witness who reside in the same household as the victim or
19 witness or within reasonable proximity of the victim's or witness'
20 household, as determined by the court. The order shall not be made
21 without the consent of the law enforcement agency except for
22 limited and specified periods of time and upon an express finding
23 by the court of a clear and present danger of harm to the victim or
24 witness or immediate family members of the victim or witness.

25 (B) For purposes of this paragraph, "immediate family
26 members" include the spouse, children, or parents of the victim
27 or witness.

28 (7) (A) Any order protecting victims of violent crime from all
29 contact by the defendant, or contact, with the intent to annoy,
30 harass, threaten, or commit acts of violence, by the defendant. The
31 court or its designee shall transmit orders made under this
32 paragraph to law enforcement personnel within one business day
33 of the issuance, modification, extension, or termination of the
34 order, pursuant to subdivision (a) of Section 6380 of the Family
35 Code. It is the responsibility of the court to transmit the
36 modification, extension, or termination orders made under this
37 paragraph to the same agency that entered the original protective
38 order into the Domestic Violence Restraining Order System.

39 (B) (i) If a court does not issue an order pursuant to
40 subparagraph (A) in a case in which the defendant is charged with

1 a crime of domestic violence as defined in Section 13700, the court
2 on its own motion shall consider issuing a protective order upon
3 a good cause belief that harm to, or intimidation or dissuasion of,
4 a victim or witness has occurred or is reasonably likely to occur,
5 that provides as follows:

6 (I) The defendant shall not own, possess, purchase, receive, or
7 attempt to purchase or receive, a firearm while the protective order
8 is in effect.

9 (II) The defendant shall relinquish any firearms that he or she
10 owns or possesses pursuant to Section 527.9 of the Code of Civil
11 Procedure.

12 (ii) Every person who owns, possesses, purchases, or receives,
13 or attempts to purchase or receive, a firearm while this protective
14 order is in effect is punishable pursuant to Section 29825.

15 (C) Any order issued, modified, extended, or terminated by a
16 court pursuant to this paragraph shall be issued on forms adopted
17 by the Judicial Council and that have been approved by the
18 Department of Justice pursuant to subdivision (i) of Section 6380
19 of the Family Code. However, the fact that an order issued by a
20 court pursuant to this section was not issued on forms adopted by
21 the Judicial Council and approved by the Department of Justice
22 shall not, in and of itself, make the order unenforceable.

23 (b) Any person violating any order made pursuant to paragraphs
24 (1) to (7), inclusive, of subdivision (a) may be punished for any
25 substantive offense described in Section 136.1, or for a contempt
26 of the court making the order. A finding of contempt shall not be
27 a bar to prosecution for a violation of Section 136.1. However,
28 any person so held in contempt shall be entitled to credit for any
29 punishment imposed therein against any sentence imposed upon
30 conviction of an offense described in Section 136.1. Any conviction
31 or acquittal for any substantive offense under Section 136.1 shall
32 be a bar to a subsequent punishment for contempt arising out of
33 the same act.

34 (c) (1) Notwithstanding subdivisions (a) and (e), an emergency
35 protective order issued pursuant to Chapter 2 (commencing with
36 Section 6250) of Part 3 of Division 10 of the Family Code or
37 Section 646.91 of this code shall have precedence in enforcement
38 over any other restraining or protective order, provided that the
39 emergency protective order meets all of the following requirements:

1 (A) The emergency protective order is issued to protect one or
2 more individuals who are already protected persons under another
3 restraining or protective order.

4 (B) The emergency protective order restrains the individual who
5 is the restrained person in the other restraining or protective order
6 specified in subparagraph (A).

7 (C) The provisions of the emergency protective order are more
8 restrictive in relation to the restrained person than are the provisions
9 of the other restraining or protective order specified in
10 subparagraph (A).

11 (2) An emergency protective order that meets the requirements
12 of paragraph (1) shall have precedence in enforcement over the
13 provisions of any other restraining or protective order only with
14 respect to those provisions of the emergency protective order that
15 are more restrictive in relation to the restrained person.

16 (d) (1) A person subject to a protective order issued under this
17 section shall not own, possess, purchase, receive, or attempt to
18 purchase or receive a firearm while the protective order is in effect.

19 (2) The court shall order a person subject to a protective order
20 issued under this section to relinquish any firearms he or she owns
21 or possesses pursuant to Section 527.9 of the Code of Civil
22 Procedure.

23 (3) Every person who owns, possesses, purchases or receives,
24 or attempts to purchase or receive a firearm while the protective
25 order is in effect is punishable pursuant to Section 29825.

26 (e) (1) In all cases where the defendant is charged with a crime
27 of domestic violence, as defined in Section 13700, the court shall
28 consider issuing the above-described orders on its own motion.
29 All interested parties shall receive a copy of those orders. In order
30 to facilitate this, the court's records of all criminal cases involving
31 domestic violence shall be marked to clearly alert the court to this
32 issue.

33 (2) In those cases in which a complaint, information, or
34 indictment charging a crime of domestic violence, as defined in
35 Section 13700, has been issued, a restraining order or protective
36 order against the defendant issued by the criminal court in that
37 case has precedence in enforcement over any civil court order
38 against the defendant, unless a court issues an emergency protective
39 order pursuant to Chapter 2 (commencing with Section 6250) of
40 Part 3 of Division 10 of the Family Code or Section 646.91 of this

1 code, in which case the emergency protective order shall have
2 precedence in enforcement over any other restraining or protective
3 order, provided that the emergency protective order meets the
4 following requirements:

5 (A) The emergency protective order is issued to protect one or
6 more individuals who are already protected persons under another
7 restraining or protective order.

8 (B) The emergency protective order restrains the individual who
9 is the restrained person in the other restraining or protective order
10 specified in subparagraph (A).

11 (C) The provisions of the emergency protective order are more
12 restrictive in relation to the restrained person than are the provisions
13 of the other restraining or protective order specified in
14 subparagraph (A).

15 (3) Custody and visitation with respect to the defendant and his
16 or her minor children may be ordered by a family or juvenile court
17 consistent with the protocol established pursuant to subdivision
18 (f), but if ordered after a criminal protective order has been issued
19 pursuant to this section, the custody and visitation order shall make
20 reference to, and acknowledge the precedence of enforcement of,
21 any appropriate criminal protective order. On or before July 1,
22 2006, the Judicial Council shall modify the criminal and civil court
23 forms consistent with this subdivision.

24 (f) On or before January 1, 2003, the Judicial Council shall
25 promulgate a protocol, for adoption by each local court in
26 substantially similar terms, to provide for the timely coordination
27 of all orders against the same defendant and in favor of the same
28 named victim or victims. The protocol shall include, but shall not
29 be limited to, mechanisms for assuring appropriate communication
30 and information sharing between criminal, family, and juvenile
31 courts concerning orders and cases that involve the same parties,
32 and shall permit a family or juvenile court order to coexist with a
33 criminal court protective order subject to the following conditions:

34 (1) Any order that permits contact between the restrained person
35 and his or her children shall provide for the safe exchange of the
36 children and shall not contain language either printed or
37 handwritten that violates a “no contact order” issued by a criminal
38 court.

39 (2) Safety of all parties shall be the courts’ paramount concern.
40 The family or juvenile court shall specify the time, day, place, and

1 manner of transfer of the child, as provided in Section 3100 of the
2 Family Code.

3 (g) On or before January 1, 2003, the Judicial Council shall
4 modify the criminal and civil court protective order forms
5 consistent with this section.

6 (h) In any case in which a complaint, information, or indictment
7 charging a crime of domestic violence, as defined in Section 13700,
8 has been filed, the court may consider, in determining whether
9 good cause exists to issue an order under paragraph (1) of
10 subdivision (a), the underlying nature of the offense charged, and
11 the information provided to the court pursuant to Section 273.75.

12 (i) In all cases in which a criminal defendant has been convicted
13 of a crime of domestic violence as defined in Section 13700, the
14 court, at the time of sentencing, shall consider issuing an order
15 restraining the defendant from any contact with the victim. The
16 order may be valid for up to 10 years, as determined by the court.
17 This protective order may be issued by the court regardless of
18 whether the defendant is sentenced to the state prison or a county
19 jail, or whether imposition of sentence is suspended and the
20 defendant is placed on probation. It is the intent of the Legislature
21 in enacting this subdivision that the duration of any restraining
22 order issued by the court be based upon the seriousness of the facts
23 before the court, the probability of future violations, and the safety
24 of the victim and his or her immediate family.

25 SEC. 122. Section 243 of the Penal Code is amended to read:

26 243. (a) A battery is punishable by a fine not exceeding two
27 thousand dollars (\$2,000), or by imprisonment in a county jail not
28 exceeding six months, or by both that fine and imprisonment.

29 (b) When a battery is committed against the person of a peace
30 officer, custodial officer, firefighter, emergency medical technician,
31 lifeguard, security officer, custody assistant, process server, traffic
32 officer, code enforcement officer, animal control officer, or search
33 and rescue member engaged in the performance of his or her duties,
34 whether on or off duty, including when the peace officer is in a
35 police uniform and is concurrently performing the duties required
36 of him or her as a peace officer while also employed in a private
37 capacity as a part-time or casual private security guard or
38 patrolman, or a nonsworn employee of a probation department
39 engaged in the performance of his or her duties, whether on or off
40 duty, or a physician or nurse engaged in rendering emergency

1 medical care outside a hospital, clinic, or other health care facility,
2 and the person committing the offense knows or reasonably should
3 know that the victim is a peace officer, custodial officer, firefighter,
4 emergency medical technician, lifeguard, security officer, custody
5 assistant, process server, traffic officer, code enforcement officer,
6 animal control officer, or search and rescue member engaged in
7 the performance of his or her duties, nonsworn employee of a
8 probation department, or a physician or nurse engaged in rendering
9 emergency medical care, the battery is punishable by a fine not
10 exceeding two thousand dollars (\$2,000), or by imprisonment in
11 a county jail not exceeding one year, or by both that fine and
12 imprisonment.

13 (c) (1) When a battery is committed against a custodial officer,
14 firefighter, emergency medical technician, lifeguard, process server,
15 traffic officer, or animal control officer engaged in the performance
16 of his or her duties, whether on or off duty, or a nonsworn
17 employee of a probation department engaged in the performance
18 of his or her duties, whether on or off duty, or a physician or nurse
19 engaged in rendering emergency medical care outside a hospital,
20 clinic, or other health care facility, and the person committing the
21 offense knows or reasonably should know that the victim is a
22 nonsworn employee of a probation department, custodial officer,
23 firefighter, emergency medical technician, lifeguard, process server,
24 traffic officer, or animal control officer engaged in the performance
25 of his or her duties, or a physician or nurse engaged in rendering
26 emergency medical care, and an injury is inflicted on that victim,
27 the battery is punishable by a fine of not more than two thousand
28 dollars (\$2,000), by imprisonment in a county jail not exceeding
29 one year, or by both that fine and imprisonment, or by
30 imprisonment pursuant to subdivision (h) of Section 1170 for 16
31 months or two or three years.

32 (2) When the battery specified in paragraph (1) is committed
33 against a peace officer engaged in the performance of his or her
34 duties, whether on or off duty, including when the peace officer
35 is in a police uniform and is concurrently performing the duties
36 required of him or her as a peace officer while also employed in
37 a private capacity as a part-time or casual private security guard
38 or patrolman and the person committing the offense knows or
39 reasonably should know that the victim is a peace officer engaged
40 in the performance of his or her duties, the battery is punishable

1 by a fine of not more than ten thousand dollars (\$10,000), or by
2 imprisonment in a county jail not exceeding one year or pursuant
3 to subdivision (h) of Section 1170 for 16 months or two or three
4 years, or by both that fine and imprisonment.

5 (d) When a battery is committed against any person and serious
6 bodily injury is inflicted on the person, the battery is punishable
7 by imprisonment in a county jail not exceeding one year or
8 imprisonment pursuant to subdivision (h) of Section 1170 for two,
9 three, or four years.

10 (e) (1) When a battery is committed against a spouse, a person
11 with whom the defendant is cohabiting, a person who is the parent
12 of the defendant's child, former spouse, fiancé, or fiancée, or a
13 person with whom the defendant currently has, or has previously
14 had, a dating or engagement relationship, the battery is punishable
15 by a fine not exceeding two thousand dollars (\$2,000), or by
16 imprisonment in a county jail for a period of not more than one
17 year, or by both that fine and imprisonment. If probation is granted,
18 or the execution or imposition of the sentence is suspended, it shall
19 be a condition thereof that the defendant participate in, for no less
20 than one year, and successfully complete, a batterer's treatment
21 program, as described in Section 1203.097, or if none is available,
22 another appropriate counseling program designated by the court.
23 However, this provision shall not be construed as requiring a city,
24 a county, or a city and county to provide a new program or higher
25 level of service as contemplated by Section 6 of Article XIII B of
26 the California Constitution.

27 (2) Upon conviction of a violation of this subdivision, if
28 probation is granted, the conditions of probation may include, in
29 lieu of a fine, one or both of the following requirements:

30 (A) That the defendant make payments to a battered women's
31 shelter, up to a maximum of five thousand dollars (\$5,000).

32 (B) That the defendant reimburse the victim for reasonable costs
33 of counseling and other reasonable expenses that the court finds
34 are the direct result of the defendant's offense.

35 For any order to pay a fine, make payments to a battered
36 women's shelter, or pay restitution as a condition of probation
37 under this subdivision, the court shall make a determination of the
38 defendant's ability to pay. In no event shall any order to make
39 payments to a battered women's shelter be made if it would impair
40 the ability of the defendant to pay direct restitution to the victim

1 or court-ordered child support. If the injury to a married person is
2 caused in whole or in part by the criminal acts of his or her spouse
3 in violation of this section, the community property shall not be
4 used to discharge the liability of the offending spouse for restitution
5 to the injured spouse, required by Section 1203.04, as operative
6 on or before August 2, 1995, or Section 1202.4, or to a shelter for
7 costs with regard to the injured spouse and dependents, required
8 by this section, until all separate property of the offending spouse
9 is exhausted.

10 (3) Upon conviction of a violation of this subdivision, if
11 probation is granted or the execution or imposition of the sentence
12 is suspended and the person has been previously convicted of a
13 violation of this subdivision and sentenced under paragraph (1),
14 the person shall be imprisoned for not less than 48 hours in addition
15 to the conditions in paragraph (1). However, the court, upon a
16 showing of good cause, may elect not to impose the mandatory
17 minimum imprisonment as required by this subdivision and may,
18 under these circumstances, grant probation or order the suspension
19 of the execution or imposition of the sentence.

20 (4) The Legislature finds and declares that these specified crimes
21 merit special consideration when imposing a sentence so as to
22 display society's condemnation for these crimes of violence upon
23 victims with whom a close relationship has been formed.

24 (f) As used in this section:

25 (1) "Peace officer" means any person defined in Chapter 4.5
26 (commencing with Section 830) of Title 3 of Part 2.

27 (2) "Emergency medical technician" means a person who is
28 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses
29 a valid certificate or license in accordance with the standards of
30 Division 2.5 (commencing with Section 1797) of the Health and
31 Safety Code.

32 (3) "Nurse" means a person who meets the standards of Division
33 2.5 (commencing with Section 1797) of the Health and Safety
34 Code.

35 (4) "Serious bodily injury" means a serious impairment of
36 physical condition, including, but not limited to, the following:
37 loss of consciousness, concussion, bone fracture, protracted loss
38 or impairment of function of any bodily member or organ, a wound
39 requiring extensive suturing, and serious disfigurement.

1 (5) “Injury” means any physical injury which requires
2 professional medical treatment.

3 (6) “Custodial officer” means any person who has the
4 responsibilities and duties described in Section 831 and who is
5 employed by a law enforcement agency of any city or county or
6 who performs those duties as a volunteer.

7 (7) “Lifeguard” means a person defined in paragraph (5) of
8 subdivision (d) of Section 241.

9 (8) “Traffic officer” means any person employed by a city,
10 county, or city and county to monitor and enforce state laws and
11 local ordinances relating to parking and the operation of vehicles.

12 (9) “Animal control officer” means any person employed by a
13 city, county, or city and county for purposes of enforcing animal
14 control laws or regulations.

15 (10) “Dating relationship” means frequent, intimate associations
16 primarily characterized by the expectation of affectional or sexual
17 involvement independent of financial considerations.

18 (11) (A) “Code enforcement officer” means any person who
19 is not described in Chapter 4.5 (commencing with Section 830) of
20 Title 3 of Part 2 and who is employed by any governmental
21 subdivision, public or quasi-public corporation, public agency,
22 public service corporation, any town, city, county, or municipal
23 corporation, whether incorporated or chartered, who has
24 enforcement authority for health, safety, and welfare requirements,
25 and whose duties include enforcement of any statute, rules,
26 regulations, or standards, and who is authorized to issue citations
27 or file formal complaints.

28 (B) “Code enforcement officer” also includes any person who
29 is employed by the Department of Housing and Community
30 Development who has enforcement authority for health, safety,
31 and welfare requirements pursuant to the Employee Housing Act
32 (Part 1 (commencing with Section 17000) of Division 13 of the
33 Health and Safety Code); the State Housing Law (Part 1.5
34 (commencing with Section 17910) of Division 13 of the Health
35 and Safety Code); the Manufactured Housing Act of 1980 (Part 2
36 (commencing with Section 18000) of Division 13 of the Health
37 and Safety Code); the Mobilehome Parks Act (Part 2.1
38 (commencing with Section 18200) of Division 13 of the Health
39 and Safety Code); and the Special Occupancy Parks Act (Part 2.3

1 (commencing with Section 18860) of Division 13 of the Health
2 and Safety Code).

3 (12) “Custody assistant” means any person who has the
4 responsibilities and duties described in Section 831.7 and who is
5 employed by a law enforcement agency of any city, county, or city
6 and county.

7 (13) “Search and rescue member” means any person who is part
8 of an organized search and rescue team managed by a government
9 agency.

10 (14) “Security officer” means any person who has the
11 responsibilities and duties described in Section 831.4 and who is
12 employed by a law enforcement agency of any city, county, or city
13 and county.

14 (g) It is the intent of the Legislature by amendments to this
15 section at the 1981–82 and 1983–84 Regular Sessions to abrogate
16 the holdings in cases such as *People v. Corey* (1978) 21 Cal.3d
17 738 and *Cervantez v. J.C. Penney Co.* (1979) 24 Cal.3d 579, and
18 to reinstate prior judicial interpretations of this section as they
19 relate to criminal sanctions for battery on peace officers who are
20 employed, on a part-time or casual basis, while wearing a police
21 uniform as private security guards or patrolmen and to allow the
22 exercise of peace officer powers concurrently with that
23 employment.

24 SEC. 123. Section 336.5 of the Penal Code is amended to read:

25 336.5. Gaming chips may be used on the gaming floor by a
26 patron of a gambling establishment, as defined in subdivision (o)
27 of Section 19805 of the Business and Professions Code, to pay for
28 food and beverage items that are served at the table.

29 SEC. 124. Section 429 of the Penal Code is amended to read:

30 429. Any provider of telecommunications services in this state
31 that intentionally fails to collect or remit, as may be required, the
32 annual fee imposed pursuant to Section 431 of the Public Utilities
33 Code, the universal telephone service surcharge imposed pursuant
34 to Section 879 or 879.5 of the Public Utilities Code, the fee for
35 filing an application for a certificate of public convenience and
36 necessity as provided in Section 1904 of the Public Utilities Code,
37 or the surcharge imposed pursuant to subdivision (g) of Section
38 2881 of the Public Utilities Code, whether imposed on the provider
39 or measured by the provider’s service charges, is guilty of a
40 misdemeanor.

1 SEC. 125. Section 597.4 of the Penal Code is amended to read:
2 597.4. (a) It shall be unlawful for any person to willfully do
3 either of the following:

4 (1) Sell or give away as part of a commercial transaction a live
5 animal on any street, highway, public right-of-way, parking lot,
6 carnival, or boardwalk.

7 (2) Display or offer for sale, or display or offer to give away as
8 part of a commercial transaction, a live animal, if the act of selling
9 or giving away the live animal is to occur on any street, highway,
10 public right-of-way, parking lot, carnival, or boardwalk.

11 (b) (1) A person who violates this section for the first time shall
12 be guilty of an infraction punishable by a fine not to exceed two
13 hundred fifty dollars (\$250).

14 (2) A person who violates this section for the first time and by
15 that violation either causes or permits any animal to suffer or be
16 injured, or causes or permits any animal to be placed in a situation
17 in which its life or health may be endangered, shall be guilty of a
18 misdemeanor.

19 (3) A person who violates this section for a second or subsequent
20 time shall be guilty of a misdemeanor.

21 (c) A person who is guilty of a misdemeanor violation of this
22 section shall be punishable by a fine not to exceed one thousand
23 dollars (\$1,000) per violation. The court shall weigh the gravity
24 of the violation in setting the fine.

25 (d) A notice describing the charge and the penalty for a violation
26 of this section may be issued by any peace officer, animal control
27 officer, as defined in Section 830.9, or humane officer qualified
28 pursuant to Section 14502 or 14503 of the Corporations Code.

29 (e) This section shall not apply to the following:

30 (1) Events held by 4-H Clubs, Junior Farmers Clubs, or Future
31 Farmers Clubs.

32 (2) The California Exposition and State Fair, district agricultural
33 association fairs, or county fairs.

34 (3) Stockyards with respect to which the Secretary of the United
35 States Department of Agriculture has posted notice that the
36 stockyards are regulated by the federal Packers and Stockyards
37 Act, 1921 (7 U.S.C. Sec. 181 et seq.).

38 (4) The sale of cattle on consignment at any public cattle sales
39 market, the sale of sheep on consignment at any public sheep sales
40 market, the sale of swine on consignment at any public swine sales

1 market, the sale of goats on consignment at any public goat sales
2 market, and the sale of equines on consignment at any public
3 equine sales market.

4 (5) Live animal markets regulated under Section 597.3.

5 (6) A public animal control agency or shelter, society for the
6 prevention of cruelty to animals shelter, humane society shelter,
7 or rescue group regulated under Division 14 (commencing with
8 Section 30501) of the Food and Agricultural Code. For purposes
9 of this section, “rescue group” is a not-for-profit entity whose
10 primary purpose is the placement of dogs, cats, or other animals
11 that have been removed from a public animal control agency or
12 shelter, society for the prevention of cruelty to animals shelter, or
13 humane society shelter, or that have been surrendered or
14 relinquished to the entity by the previous owner.

15 (7) The sale of fish or shellfish, live or dead, from a fishing
16 vessel or registered aquaculture facility, at a pier or wharf, or at a
17 farmer’s market by any licensed commercial fisherman or an owner
18 or employee of a registered aquaculture facility to the public for
19 human consumption.

20 (8) A cat show, dog show, or bird show, provided that all of the
21 following circumstances exist:

22 (A) The show is validly permitted by the city or county in which
23 the show is held.

24 (B) The show’s sponsor or permittee ensures compliance with
25 all federal, state, and local animal welfare and animal control laws.

26 (C) The participant has written documentation of the payment
27 of a fee for the entry of his or her cat, dog, or bird in the show.

28 (D) The sale of a cat, dog, or bird occurs only on the premises
29 and within the confines of the show.

30 (E) The show is a competitive event where the cats, dogs, or
31 birds are exhibited and judged by an established standard or set of
32 ideals established for each breed or species.

33 (9) A pet store as defined in subdivision (i) of Section 122350
34 of the Health and Safety Code.

35 (f) Nothing in this section shall be construed to in any way limit
36 or affect the application or enforcement of any other law that
37 protects animals or the rights of consumers, including, but not
38 limited to, the Lockyer-Polanco-Farr Pet Protection Act contained
39 in Article 2 (commencing with Section 122125) of Chapter 5 of

1 Part 6 of Division 105 of the Health and Safety Code, or Sections
2 597 and 5971 of this code.

3 (g) Nothing in this section limits or authorizes any act or
4 omission that violates Section 597 or 5971, or any other local, state,
5 or federal law. The procedures set forth in this section shall not
6 apply to any civil violation of any other local, state, or federal law
7 that protects animals or the rights of consumers, or to a violation
8 of Section 597 or 5971, which is cited or prosecuted pursuant to
9 one or both of those sections, or to a violation of any other local,
10 state, or federal law that is cited or prosecuted pursuant to that law.

11 SEC. 126. Section 629.62 of the Penal Code is amended to
12 read:

13 629.62. (a) The Attorney General shall prepare and submit an
14 annual report to the Legislature, the Judicial Council, and the
15 Director of the Administrative Office of the United States Courts
16 on interceptions conducted under the authority of this chapter
17 during the preceding year. Information for this report shall be
18 provided to the Attorney General by any prosecutorial agency
19 seeking an order pursuant to this chapter.

20 (b) The report shall include all of the following data:

21 (1) The number of orders or extensions applied for.

22 (2) The kinds of orders or extensions applied for.

23 (3) The fact that the order or extension was granted as applied
24 for, was modified, or was denied.

25 (4) The number of wire or electronic communication devices
26 that are the subject of each order granted.

27 (5) The period of interceptions authorized by the order, and the
28 number and duration of any extensions of the order.

29 (6) The offense specified in the order or application, or extension
30 of an order.

31 (7) The identity of the applying law enforcement officer and
32 agency making the application and the person authorizing the
33 application.

34 (8) The nature of the facilities from which or the place where
35 communications were to be intercepted.

36 (9) A general description of the interceptions made under the
37 order or extension, including (A) the number of persons whose
38 communications were intercepted, (B) the number of
39 communications intercepted, (C) the percentage of incriminating
40 communications intercepted and the percentage of other

1 communications intercepted, and (D) the approximate nature,
2 amount, and cost of the manpower and other resources used in the
3 interceptions.

4 (10) The number of arrests resulting from interceptions made
5 under the order or extension, and the offenses for which arrests
6 were made.

7 (11) The number of trials resulting from the interceptions.

8 (12) The number of motions to suppress made with respect to
9 the interceptions, and the number granted or denied.

10 (13) The number of convictions resulting from the interceptions
11 and the offenses for which the convictions were obtained and a
12 general assessment of the importance of the interceptions.

13 (14) Except with regard to the initial report required by this
14 section, the information required by paragraphs (9) to (13),
15 inclusive, with respect to orders or extensions obtained in a
16 preceding calendar year.

17 (15) The date of the order for service of inventory made pursuant
18 to Section 629.68, confirmation of compliance with the order, and
19 the number of notices sent.

20 (16) Other data that the Legislature, the Judicial Council, or the
21 Director of the Administrative Office of the United States Courts
22 shall require.

23 (c) The annual report shall be filed no later than April of each
24 year, and shall also include a summary analysis of the data reported
25 pursuant to subdivision (b). The Attorney General may issue
26 regulations prescribing the content and form of the reports required
27 to be filed pursuant to this section by any prosecutorial agency
28 seeking an order to intercept wire or electronic communications.

29 (d) The Attorney General shall, upon the request of an individual
30 making an application, provide any information known to him or
31 her as a result of these reporting requirements that would enable
32 the individual making an application to comply with paragraph
33 (6) of subdivision (a) of Section 629.50.

34 SEC. 127. Section 830.5 of the Penal Code is amended to read:

35 830.5. The following persons are peace officers whose authority
36 extends to any place in the state while engaged in the performance
37 of the duties of their respective employment and for the purpose
38 of carrying out the primary function of their employment or as
39 required under Sections 8597, 8598, and 8617 of the Government
40 Code, as amended by Section 44 of Chapter 1124 of the Statutes

1 of 2002. Except as specified in this section, these peace officers
2 may carry firearms only if authorized and under those terms and
3 conditions specified by their employing agency:

4 (a) A parole officer of the Department of Corrections and
5 Rehabilitation, or the Department of Corrections and
6 Rehabilitation, Division of Juvenile Parole Operations, probation
7 officer, deputy probation officer, or a board coordinating parole
8 agent employed by the Juvenile Parole Board. Except as otherwise
9 provided in this subdivision, the authority of these parole or
10 probation officers shall extend only as follows:

11 (1) To conditions of parole, probation, or postrelease community
12 supervision by any person in this state on parole, probation, or
13 postrelease community supervision.

14 (2) To the escape of any inmate or ward from a state or local
15 institution.

16 (3) To the transportation of persons on parole, probation, or
17 postrelease community supervision.

18 (4) To violations of any penal provisions of law which are
19 discovered while performing the usual or authorized duties of his
20 or her employment.

21 (5) (A) To the rendering of mutual aid to any other law
22 enforcement agency.

23 (B) For the purposes of this subdivision, “parole agent” shall
24 have the same meaning as parole officer of the Department of
25 Corrections and Rehabilitation or of the Department of Corrections
26 and Rehabilitation, Division of Juvenile Facilities.

27 (C) Any parole officer of the Department of Corrections and
28 Rehabilitation, or the Department of Corrections and
29 Rehabilitation, Division of Juvenile Parole Operations, is
30 authorized to carry firearms, but only as determined by the director
31 on a case-by-case or unit-by-unit basis and only under those terms
32 and conditions specified by the director or chairperson. The
33 Department of Corrections and Rehabilitation, Division of Juvenile
34 Facilities, shall develop a policy for arming peace officers of the
35 Department of Corrections and Rehabilitation, Division of Juvenile
36 Facilities, who comprise “high-risk transportation details” or
37 “high-risk escape details” no later than June 30, 1995. This policy
38 shall be implemented no later than December 31, 1995.

39 (D) The Department of Corrections and Rehabilitation, Division
40 of Juvenile Facilities, shall train and arm those peace officers who

1 comprise tactical teams at each facility for use during “high-risk
2 escape details.”

3 (b) A correctional officer employed by the Department of
4 Corrections and Rehabilitation, or of the Department of Corrections
5 and Rehabilitation, Division of Juvenile Facilities, having custody
6 of wards or any employee of the Department of Corrections and
7 Rehabilitation designated by the secretary or any correctional
8 counselor series employee of the Department of Corrections and
9 Rehabilitation or any medical technical assistant series employee
10 designated by the secretary or designated by the secretary and
11 employed by the State Department of Mental Health or any
12 employee of the Board of Parole Hearings designated by the
13 secretary or employee of the Department of Corrections and
14 Rehabilitation, Division of Juvenile Facilities, designated by the
15 secretary or any superintendent, supervisor, or employee having
16 custodial responsibilities in an institution operated by a probation
17 department, or any transportation officer of a probation department.

18 (c) The following persons may carry a firearm while not on
19 duty: a parole officer of the Department of Corrections and
20 Rehabilitation, or the Department of Corrections and
21 Rehabilitation, Division of Juvenile Facilities, a correctional officer
22 or correctional counselor employed by the Department of
23 Corrections and Rehabilitation, or an employee of the Department
24 of Corrections and Rehabilitation, Division of Juvenile Facilities,
25 having custody of wards or any employee of the Department of
26 Corrections and Rehabilitation designated by the secretary. A
27 parole officer of the Juvenile Parole Board may carry a firearm
28 while not on duty only when so authorized by the chairperson of
29 the board and only under the terms and conditions specified by
30 the chairperson. Nothing in this section shall be interpreted to
31 require licensure pursuant to Section 25400. The director or
32 chairperson may deny, suspend, or revoke for good cause a
33 person’s right to carry a firearm under this subdivision. That person
34 shall, upon request, receive a hearing, as provided for in the
35 negotiated grievance procedure between the exclusive employee
36 representative and the Department of Corrections and
37 Rehabilitation, Division of Juvenile Facilities, or the Juvenile
38 Parole Board, to review the director’s or the chairperson’s decision.

39 (d) Persons permitted to carry firearms pursuant to this section,
40 either on or off duty, shall meet the training requirements of Section

1 832 and shall qualify with the firearm at least quarterly. It is the
2 responsibility of the individual officer or designee to maintain his
3 or her eligibility to carry concealable firearms off duty. Failure to
4 maintain quarterly qualifications by an officer or designee with
5 any concealable firearms carried off duty shall constitute good
6 cause to suspend or revoke that person's right to carry firearms
7 off duty.

8 (e) The Department of Corrections and Rehabilitation shall
9 allow reasonable access to its ranges for officers and designees of
10 either department to qualify to carry concealable firearms off duty.
11 The time spent on the range for purposes of meeting the
12 qualification requirements shall be the person's own time during
13 the person's off-duty hours.

14 (f) The secretary shall promulgate regulations consistent with
15 this section.

16 (g) "High-risk transportation details" and "high-risk escape
17 details" as used in this section shall be determined by the secretary,
18 or his or her designee. The secretary, or his or her designee, shall
19 consider at least the following in determining "high-risk
20 transportation details" and "high-risk escape details": protection
21 of the public, protection of officers, flight risk, and violence
22 potential of the wards.

23 (h) "Transportation detail" as used in this section shall include
24 transportation of wards outside the facility, including, but not
25 limited to, court appearances, medical trips, and interfacility
26 transfers.

27 (i) This section is operative January 1, 2012.

28 SEC. 128. Section 1370 of the Penal Code, as added by Section
29 2 of Chapter 654 of the Statutes of 2011, is amended to read:

30 1370. (a) (1) (A) If the defendant is found mentally
31 competent, the criminal process shall resume, the trial on the
32 offense charged shall proceed, and judgment may be pronounced.

33 (B) If the defendant is found mentally incompetent, the trial or
34 judgment shall be suspended until the person becomes mentally
35 competent.

36 (i) In the meantime, the court shall order that the mentally
37 incompetent defendant be delivered by the sheriff to a state hospital
38 for the care and treatment of the mentally disordered, or to any
39 other available public or private treatment facility approved by the
40 community program director that will promote the defendant's

1 speedy restoration to mental competence, or placed on outpatient
2 status as specified in Section 1600.

3 (ii) However, if the action against the defendant who has been
4 found mentally incompetent is on a complaint charging a felony
5 offense specified in Section 290, the prosecutor shall determine
6 whether the defendant previously has been found mentally
7 incompetent to stand trial pursuant to this chapter on a charge of
8 a Section 290 offense, or whether the defendant is currently the
9 subject of a pending Section 1368 proceeding arising out of a
10 charge of a Section 290 offense. If either determination is made,
11 the prosecutor shall so notify the court and defendant in writing.
12 After this notification, and opportunity for hearing, the court shall
13 order that the defendant be delivered by the sheriff to a state
14 hospital or other secure treatment facility for the care and treatment
15 of the mentally disordered unless the court makes specific findings
16 on the record that an alternative placement would provide more
17 appropriate treatment for the defendant and would not pose a
18 danger to the health and safety of others.

19 (iii) If the action against the defendant who has been found
20 mentally incompetent is on a complaint charging a felony offense
21 specified in Section 290 and the defendant has been denied bail
22 pursuant to subdivision (b) of Section 12 of Article I of the
23 California Constitution because the court has found, based upon
24 clear and convincing evidence, a substantial likelihood that the
25 person's release would result in great bodily harm to others, the
26 court shall order that the defendant be delivered by the sheriff to
27 a state hospital for the care and treatment of the mentally disordered
28 unless the court makes specific findings on the record that an
29 alternative placement would provide more appropriate treatment
30 for the defendant and would not pose a danger to the health and
31 safety of others.

32 (iv) The clerk of the court shall notify the Department of Justice
33 in writing of any finding of mental incompetence with respect to
34 a defendant who is subject to clause (ii) or (iii) for inclusion in his
35 or her state summary criminal history information.

36 (C) Upon the filing of a certificate of restoration to competence,
37 the court shall order that the defendant be returned to court in
38 accordance with Section 1372. The court shall transmit a copy of
39 its order to the community program director or a designee.

1 (D) A defendant charged with a violent felony may not be
2 delivered to a state hospital or treatment facility pursuant to this
3 subdivision unless the state hospital or treatment facility has a
4 secured perimeter or a locked and controlled treatment facility,
5 and the judge determines that the public safety will be protected.

6 (E) For purposes of this paragraph, “violent felony” means an
7 offense specified in subdivision (c) of Section 667.5.

8 (F) A defendant charged with a violent felony may be placed
9 on outpatient status, as specified in Section 1600, only if the court
10 finds that the placement will not pose a danger to the health or
11 safety of others. If the court places a defendant charged with a
12 violent felony on outpatient status, as specified in Section 1600,
13 the court must serve copies of the placement order on defense
14 counsel, the sheriff in the county where the defendant will be
15 placed and the district attorney for the county in which the violent
16 felony charges are pending against the defendant.

17 (2) Prior to making the order directing that the defendant be
18 confined in a state hospital or other treatment facility or placed on
19 outpatient status, the court shall proceed as follows:

20 (A) The court shall order the community program director or a
21 designee to evaluate the defendant and to submit to the court within
22 15 judicial days of the order a written recommendation as to
23 whether the defendant should be required to undergo outpatient
24 treatment, or committed to a state hospital or to any other treatment
25 facility. No person shall be admitted to a state hospital or other
26 treatment facility or placed on outpatient status under this section
27 without having been evaluated by the community program director
28 or a designee.

29 (B) The court shall hear and determine whether the defendant
30 lacks capacity to make decisions regarding the administration of
31 antipsychotic medication, and shall proceed as follows:

32 (i) The court shall hear and determine whether any of the
33 following is true:

34 (I) The defendant lacks capacity to make decisions regarding
35 antipsychotic medication, the defendant’s mental disorder requires
36 medical treatment with antipsychotic medication, and, if the
37 defendant’s mental disorder is not treated with antipsychotic
38 medication, it is probable that serious harm to the physical or
39 mental health of the patient will result. Probability of serious harm
40 to the physical or mental health of the defendant requires evidence

1 that the defendant is presently suffering adverse effects to his or
2 her physical or mental health, or the defendant has previously
3 suffered these effects as a result of a mental disorder and his or
4 her condition is substantially deteriorating. The fact that a
5 defendant has a diagnosis of a mental disorder does not alone
6 establish probability of serious harm to the physical or mental
7 health of the defendant.

8 (II) The defendant is a danger to others, in that the defendant
9 has inflicted, attempted to inflict, or made a serious threat of
10 inflicting substantial physical harm on another while in custody,
11 or the defendant had inflicted, attempted to inflict, or made a
12 serious threat of inflicting substantial physical harm on another
13 that resulted in his or her being taken into custody, and the
14 defendant presents, as a result of mental disorder or mental defect,
15 a demonstrated danger of inflicting substantial physical harm on
16 others. Demonstrated danger may be based on an assessment of
17 the defendant's present mental condition, including a consideration
18 of past behavior of the defendant within six years prior to the time
19 the defendant last attempted to inflict, inflicted, or threatened to
20 inflict substantial physical harm on another, and other relevant
21 evidence.

22 (III) The people have charged the defendant with a serious crime
23 against the person or property, involuntary administration of
24 antipsychotic medication is substantially likely to render the
25 defendant competent to stand trial, the medication is unlikely to
26 have side effects that interfere with the defendant's ability to
27 understand the nature of the criminal proceedings or to assist
28 counsel in the conduct of a defense in a reasonable manner, less
29 intrusive treatments are unlikely to have substantially the same
30 results, and antipsychotic medication is in the patient's best medical
31 interest in light of his or her medical condition.

32 (ii) If the court finds any of the conditions described in clause
33 (i) to be true, the court shall issue an order authorizing the treatment
34 facility to involuntarily administer antipsychotic medication to the
35 defendant when and as prescribed by the defendant's treating
36 psychiatrist. The court shall not order involuntary administration
37 of psychotropic medication under subclause (III) of clause (i)
38 unless the court has first found that the defendant does not meet
39 the criteria for involuntary administration of psychotropic

1 medication under subclause (I) of clause (i) and does not meet the
2 criteria under subclause (II) of clause (i).

3 (iii) In all cases, the treating hospital, facility, or program may
4 administer medically appropriate antipsychotic medication
5 prescribed by a psychiatrist in an emergency as described in
6 subdivision (m) of Section 5008 of the Welfare and Institutions
7 Code.

8 (iv) If the court has determined that the defendant has the
9 capacity to make decisions regarding antipsychotic medication,
10 and if the defendant, with advice of his or her counsel, consents,
11 the court order of commitment shall include confirmation that
12 antipsychotic medication may be given to the defendant as
13 prescribed by a treating psychiatrist pursuant to the defendant's
14 consent. The commitment order shall also indicate that, if the
15 defendant withdraws consent for antipsychotic medication, after
16 the treating psychiatrist complies with the provisions of
17 subparagraph (C), the defendant shall be returned to court for a
18 hearing in accordance with subparagraphs (C) and (D) regarding
19 whether antipsychotic medication shall be administered
20 involuntarily.

21 (v) If the court has determined that the defendant has the
22 capacity to make decisions regarding antipsychotic medication
23 and if the defendant, with advice from his or her counsel, does not
24 consent, the court order for commitment shall indicate that, after
25 the treating psychiatrist complies with the provisions of
26 subparagraph (C), the defendant shall be returned to court for a
27 hearing in accordance with subparagraphs (C) and (D) regarding
28 whether antipsychotic medication shall be administered
29 involuntarily.

30 (vi) Any report made pursuant to paragraph (1) of subdivision
31 (b) shall include a description of any antipsychotic medication
32 administered to the defendant and its effects and side effects,
33 including effects on the defendant's appearance or behavior that
34 would affect the defendant's ability to understand the nature of
35 the criminal proceedings or to assist counsel in the conduct of a
36 defense in a reasonable manner. During the time the defendant is
37 confined in a state hospital or other treatment facility or placed on
38 outpatient status, either the defendant or the people may request
39 that the court review any order made pursuant to this subdivision.
40 The defendant, to the same extent enjoyed by other patients in the

1 state hospital or other treatment facility, shall have the right to
2 contact the patients' rights advocate regarding his or her rights
3 under this section.

4 (C) If the defendant consented to antipsychotic medication as
5 described in clause (iv) of subparagraph (B), but subsequently
6 withdraws his or her consent, or, if involuntary antipsychotic
7 medication was not ordered pursuant to clause (v) of subparagraph
8 (B), and the treating psychiatrist determines that antipsychotic
9 medication has become medically necessary and appropriate, the
10 treating psychiatrist shall make efforts to obtain informed consent
11 from the defendant for antipsychotic medication. If informed
12 consent is not obtained from the defendant, and the treating
13 psychiatrist is of the opinion that the defendant lacks capacity to
14 make decisions regarding antipsychotic medication based on the
15 conditions described in subclause (I) or (II) of clause (i) of
16 subparagraph (B), the treating psychiatrist shall certify whether
17 the lack of capacity and any applicable conditions described above
18 exist. That certification shall contain an assessment of the current
19 mental status of the defendant and the opinion of the treating
20 psychiatrist that involuntary antipsychotic medication has become
21 medically necessary and appropriate.

22 (D) (i) If the treating psychiatrist certifies that antipsychotic
23 medication has become medically necessary and appropriate
24 pursuant to subparagraph (C), antipsychotic medication may be
25 administered to the defendant for not more than 21 days, provided,
26 however, that, within 72 hours of the certification, the defendant
27 is provided a medication review hearing before an administrative
28 law judge to be conducted at the facility where the defendant is
29 receiving treatment. The treating psychiatrist shall present the case
30 for the certification for involuntary treatment and the defendant
31 shall be represented by an attorney or a patients' rights advocate.
32 The attorney or patients' rights advocate shall be appointed to meet
33 with the defendant no later than one day prior to the medication
34 review hearing to review the defendant's rights at the medication
35 review hearing, discuss the process, answer questions or concerns
36 regarding involuntary medication or the hearing, assist the
37 defendant in preparing for the hearing and advocating for his or
38 her interests at the hearing, review the panel's final determination
39 following the hearing, advise the defendant of his or her right to
40 judicial review of the panel's decision, and provide the defendant

1 with referral information for legal advice on the subject. The
2 defendant shall also have the following rights with respect to the
3 medication review hearing:

4 (I) To being given timely access to the defendant's records.

5 (II) To be present at the hearing, unless the defendant waives
6 that right.

7 (III) To present evidence at the hearing.

8 (IV) To question persons presenting evidence supporting
9 involuntary medication.

10 (V) To make reasonable requests for attendance of witnesses
11 on the defendant's behalf.

12 (VI) To a hearing conducted in an impartial and informal
13 manner.

14 (ii) If the administrative law judge determines that the defendant
15 meets the criteria specified in either subclause (I) or (II) of clause
16 (i) of subparagraph (B), then antipsychotic medication may
17 continue to be administered to the defendant for the 21-day
18 certification period. Concurrently with the treating psychiatrist's
19 certification, the treating psychiatrist shall file a copy of the
20 certification and a petition with the court for issuance of an order
21 to administer antipsychotic medication beyond the 21-day
22 certification period. For purposes of this subparagraph, the treating
23 psychiatrist shall not be required to pay or deposit any fee for the
24 filing of the petition or other document or paper related to the
25 petition.

26 (iii) If the administrative law judge disagrees with the
27 certification, medication may not be administered involuntarily
28 until the court determines that antipsychotic medication should be
29 administered pursuant to this section.

30 (iv) The court shall provide notice to the prosecuting attorney
31 and to the attorney representing the defendant, and shall hold a
32 hearing, no later than 18 days from the date of the certification, to
33 determine whether antipsychotic medication should be ordered
34 beyond the certification period.

35 (v) If, as a result of the hearing, the court determines that
36 antipsychotic medication should be administered beyond the
37 certification period, the court shall issue an order authorizing the
38 administration of that medication.

39 (vi) The court shall render its decision on the petition and issue
40 its order no later than three calendar days after the hearing and, in

1 any event, no later than the expiration of the 21-day certification
2 period.

3 (3) When the court orders that the defendant be confined in a
4 state hospital or other public or private treatment facility, the court
5 shall provide copies of the following documents which shall be
6 taken with the defendant to the state hospital or other treatment
7 facility where the defendant is to be confined:

8 (A) The commitment order, including a specification of the
9 charges.

10 (B) A computation or statement setting forth the maximum term
11 of commitment in accordance with subdivision (c).

12 (C) A computation or statement setting forth the amount of
13 credit for time served, if any, to be deducted from the maximum
14 term of commitment.

15 (D) State summary criminal history information.

16 (E) Any arrest reports prepared by the police department or
17 other law enforcement agency.

18 (F) Any court-ordered psychiatric examination or evaluation
19 reports.

20 (G) The community program director's placement
21 recommendation report.

22 (H) Records of any finding of mental incompetence pursuant
23 to this chapter arising out of a complaint charging a felony offense
24 specified in Section 290 or any pending Section 1368 proceeding
25 arising out of a charge of a Section 290 offense.

26 (4) When the defendant is committed to a treatment facility
27 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
28 court makes the findings specified in clause (ii) or (iii) of
29 subparagraph (B) of paragraph (1) to assign the defendant to a
30 treatment facility other than a state hospital or other secure
31 treatment facility, the court shall order that notice be given to the
32 appropriate law enforcement agency or agencies having local
33 jurisdiction at the site of the placement facility of any finding of
34 mental incompetence pursuant to this chapter arising out of a
35 charge of a Section 290 offense.

36 (5) When directing that the defendant be confined in a state
37 hospital pursuant to this subdivision, the court shall select the
38 hospital in accordance with the policies established by the State
39 Department of Mental Health.

1 (6) (A) If the defendant is committed or transferred to a state
2 hospital pursuant to this section, the court may, upon receiving the
3 written recommendation of the medical director of the state hospital
4 and the community program director that the defendant be
5 transferred to a public or private treatment facility approved by
6 the community program director, order the defendant transferred
7 to that facility. If the defendant is committed or transferred to a
8 public or private treatment facility approved by the community
9 program director, the court may, upon receiving the written
10 recommendation of the community program director, transfer the
11 defendant to a state hospital or to another public or private
12 treatment facility approved by the community program director.
13 In the event of dismissal of the criminal charges before the
14 defendant recovers competence, the person shall be subject to the
15 applicable provisions of the Lanterman-Petris-Short Act (Part 1
16 commencing with Section 5000) of Division 5 of the Welfare and
17 Institutions Code). Where either the defendant or the prosecutor
18 chooses to contest either kind of order of transfer, a petition may
19 be filed in the court for a hearing, which shall be held if the court
20 determines that sufficient grounds exist. At the hearing, the
21 prosecuting attorney or the defendant may present evidence bearing
22 on the order of transfer. The court shall use the same standards as
23 are used in conducting probation revocation hearings pursuant to
24 Section 1203.2.

25 Prior to making an order for transfer under this section, the court
26 shall notify the defendant, the attorney of record for the defendant,
27 the prosecuting attorney, and the community program director or
28 a designee.

29 (B) If the defendant is initially committed to a state hospital or
30 secure treatment facility pursuant to clause (ii) or (iii) of
31 subparagraph (B) of paragraph (1) and is subsequently transferred
32 to any other facility, copies of the documents specified in paragraph
33 (3) shall be taken with the defendant to each subsequent facility
34 to which the defendant is transferred. The transferring facility shall
35 also notify the appropriate law enforcement agency or agencies
36 having local jurisdiction at the site of the new facility that the
37 defendant is a person subject to clause (ii) or (iii) of subparagraph
38 (B) of paragraph (1).

39 (7) An order by the court authorizing involuntary medication
40 of the defendant shall be valid for no more than one year. The

1 court shall review the order six months after the order was made
2 to determine if the grounds for the authorization remain. In the
3 review, the court shall consider the reports of the treating
4 psychiatrist or psychiatrists and the defendant's patients' rights
5 advocate or attorney. The court may require testimony from the
6 treating psychiatrist or psychiatrists and the patients' rights
7 advocate or attorney, if necessary. The court may continue the
8 order authorizing involuntary medication for up to another six
9 months, or vacate the order, or make any other appropriate order.

10 (b) (1) Within 90 days of a commitment made pursuant to
11 subdivision (a), the medical director of the state hospital or other
12 treatment facility to which the defendant is confined shall make a
13 written report to the court and the community program director
14 for the county or region of commitment, or a designee, concerning
15 the defendant's progress toward recovery of mental competence.
16 Where the defendant is on outpatient status, the outpatient treatment
17 staff shall make a written report to the community program director
18 concerning the defendant's progress toward recovery of mental
19 competence. Within 90 days of placement on outpatient status, the
20 community program director shall report to the court on this matter.
21 If the defendant has not recovered mental competence, but the
22 report discloses a substantial likelihood that the defendant will
23 regain mental competence in the foreseeable future, the defendant
24 shall remain in the state hospital or other treatment facility or on
25 outpatient status. Thereafter, at six-month intervals or until the
26 defendant becomes mentally competent, where the defendant is
27 confined in a treatment facility, the medical director of the hospital
28 or person in charge of the facility shall report in writing to the
29 court and the community program director or a designee regarding
30 the defendant's progress toward recovery of mental competence.
31 Where the defendant is on outpatient status, after the initial 90-day
32 report, the outpatient treatment staff shall report to the community
33 program director on the defendant's progress toward recovery,
34 and the community program director shall report to the court on
35 this matter at six-month intervals. A copy of these reports shall be
36 provided to the prosecutor and defense counsel by the court. If the
37 report indicates that there is no substantial likelihood that the
38 defendant will regain mental competence in the foreseeable future,
39 the committing court shall order the defendant to be returned to
40 the court for proceedings pursuant to paragraph (2) of subdivision

1 (c). The court shall transmit a copy of its order to the community
2 program director or a designee.

3 (2) Where the court has issued an order authorizing the treating
4 facility to involuntarily administer antipsychotic medication to the
5 defendant, the reports made at six-month intervals concerning the
6 defendant's progress toward regaining competency shall also
7 consider the issue of involuntary medication. Each report shall
8 include, but is not limited to, all of the following:

9 (A) Whether or not the defendant has the capacity to make
10 decisions concerning antipsychotic medication.

11 (B) If the defendant lacks capacity to make decisions concerning
12 antipsychotic medication, whether the defendant risks serious harm
13 to his or her physical or mental health if not treated with
14 antipsychotic medication.

15 (C) Whether or not the defendant presents a danger to others if
16 he or she is not treated with antipsychotic medication.

17 (D) Whether the defendant has a mental illness for which
18 medications are the only effective treatment.

19 (E) Whether there are any side effects from the medication
20 currently being experienced by the defendant that would interfere
21 with the defendant's ability to collaborate with counsel.

22 (F) Whether there are any effective alternatives to medication.

23 (G) How quickly the medication is likely to bring the defendant
24 to competency.

25 (H) Whether the treatment plan includes methods other than
26 medication to restore the defendant to competency.

27 (I) A statement, if applicable, that no medication is likely to
28 restore the defendant to competency.

29 (3) After reviewing the reports, the court shall determine whether
30 or not grounds for the order authorizing involuntary administration
31 of antipsychotic medication still exist and shall do one of the
32 following:

33 (A) If the original grounds for involuntary medication still exist,
34 the order authorizing the treating facility to involuntarily administer
35 antipsychotic medication to the defendant shall remain in effect.

36 (B) If the original grounds for involuntary medication no longer
37 exist, and there is no other basis for involuntary administration of
38 antipsychotic medication, the order for the involuntary
39 administration of antipsychotic medication shall be vacated.

1 (C) If the original grounds for involuntary medication no longer
2 exist, and the report states that there is another basis for involuntary
3 administration of antipsychotic medication, the court shall set a
4 hearing within 21 days to determine whether the order for the
5 involuntary administration of antipsychotic medication shall be
6 vacated or whether a new order for the involuntary administration
7 of antipsychotic medication shall be issued. The hearing shall
8 proceed as set forth in subparagraph (B) of paragraph (2) of
9 subdivision (a).

10 (4) Any defendant who has been committed or has been on
11 outpatient status for 18 months and is still hospitalized or on
12 outpatient status shall be returned to the committing court where
13 a hearing shall be held pursuant to the procedures set forth in
14 Section 1369. The court shall transmit a copy of its order to the
15 community program director or a designee.

16 (5) If it is determined by the court that no treatment for the
17 defendant's mental impairment is being conducted, the defendant
18 shall be returned to the committing court. The court shall transmit
19 a copy of its order to the community program director or a
20 designee.

21 (6) At each review by the court specified in this subdivision,
22 the court shall determine if the security level of housing and
23 treatment is appropriate and may make an order in accordance
24 with its determination. If the court determines that the defendant
25 shall continue to be treated in the state hospital or on an outpatient
26 basis, the court shall determine issues concerning administration
27 of antipsychotic medication, as set forth in subparagraph (B) of
28 paragraph (2) of subdivision (a).

29 (c) (1) At the end of three years from the date of commitment
30 or a period of commitment equal to the maximum term of
31 imprisonment provided by law for the most serious offense charged
32 in the information, indictment, or misdemeanor complaint,
33 whichever is shorter, a defendant who has not recovered mental
34 competence shall be returned to the committing court. The court
35 shall notify the community program director or a designee of the
36 return and of any resulting court orders.

37 (2) Whenever any defendant is returned to the court pursuant
38 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
39 subdivision and it appears to the court that the defendant is gravely
40 disabled, as defined in subparagraph (B) of paragraph (1) of

1 subdivision (h) of Section 5008 of the Welfare and Institutions
2 Code, the court shall order the conservatorship investigator of the
3 county of commitment of the defendant to initiate conservatorship
4 proceedings for the defendant pursuant to Chapter 3 (commencing
5 with Section 5350) of Part 1 of Division 5 of the Welfare and
6 Institutions Code. Any hearings required in the conservatorship
7 proceedings shall be held in the superior court in the county that
8 ordered the commitment. The court shall transmit a copy of the
9 order directing initiation of conservatorship proceedings to the
10 community program director or a designee, the sheriff and the
11 district attorney of the county in which criminal charges are
12 pending, and the defendant’s counsel of record. The court shall
13 notify the community program director or a designee, the sheriff
14 and district attorney of the county in which criminal charges are
15 pending, and the defendant’s counsel of record of the outcome of
16 the conservatorship proceedings.

17 (3) If a change in placement is proposed for a defendant who
18 is committed pursuant to subparagraph (B) of paragraph (1) of
19 subdivision (h) of Section 5008 of the Welfare and Institutions
20 Code, the court shall provide notice and an opportunity to be heard
21 with respect to the proposed placement of the defendant to the
22 sheriff and the district attorney of the county in which criminal
23 charges are pending.

24 (4) Where the defendant is confined in a treatment facility, a
25 copy of any report to the committing court regarding the
26 defendant’s progress toward recovery of mental competence shall
27 be provided by the committing court to the prosecutor and to the
28 defense counsel.

29 (d) The criminal action remains subject to dismissal pursuant
30 to Section 1385. If the criminal action is dismissed, the court shall
31 transmit a copy of the order of dismissal to the community program
32 director or a designee.

33 (e) If the criminal charge against the defendant is dismissed,
34 the defendant shall be released from any commitment ordered
35 under this section, but without prejudice to the initiation of any
36 proceedings that may be appropriate under the
37 Lanterman-Petris-Short Act (Part 1 (commencing with Section
38 5000) of Division 5 of the Welfare and Institutions Code).

39 (f) As used in this chapter, “community program director” means
40 the person, agency, or entity designated by the State Department

1 of Mental Health pursuant to Section 1605 of this code and Section
2 4360 of the Welfare and Institutions Code.

3 (g) For the purpose of this section, “secure treatment facility”
4 shall not include, except for state mental hospitals, state
5 developmental centers, and correctional treatment facilities, any
6 facility licensed pursuant to Chapter 2 (commencing with Section
7 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
8 3.2 (commencing with Section 1569) of, Division 2 of the Health
9 and Safety Code, or any community board and care facility.

10 (h) Nothing in this section shall preclude a defendant from filing
11 a petition for habeas corpus to challenge the continuing validity
12 of an order authorizing a treatment facility or outpatient program
13 to involuntarily administer antipsychotic medication to a person
14 being treated as incompetent to stand trial.

15 (i) This section shall become operative on July 1, 2012.

16 SEC. 129. Section 2602 of the Penal Code is amended to read:

17 2602. (a) Except as provided in subdivision (b), no person
18 sentenced to imprisonment in a state prison shall be administered
19 any psychotropic medication without his or her prior informed
20 consent.

21 (b) If a psychiatrist determines that an inmate should be treated
22 with psychotropic medication, but the inmate does not consent,
23 the inmate may be involuntarily treated with the medication.
24 Treatment may be given on either a nonemergency basis as
25 provided in subdivision (c), or on an emergency basis as provided
26 in subdivision (d).

27 (c) The Department of Corrections and Rehabilitation may seek
28 to initiate involuntary medication on a nonemergency basis only
29 if all of the following conditions have been met:

30 (1) A psychiatrist has determined that the inmate has a serious
31 mental disorder.

32 (2) A psychiatrist has determined that, as a result of that mental
33 disorder, the inmate is gravely disabled or a danger to self or others
34 and does not have the capacity to refuse treatment with
35 psychotropic medications.

36 (3) A psychiatrist has prescribed one or more psychotropic
37 medications for the treatment of the inmate’s disorder, has
38 considered the risks, benefits, and treatment alternatives to
39 involuntary medication, and has determined that the treatment

1 alternatives to involuntary medication are unlikely to meet the
2 needs of the patient.

3 (4) The inmate has been advised of the risks and benefits of,
4 and treatment alternatives to, the psychotropic medication and
5 refuses or is unable to consent to the administration of the
6 medication.

7 (5) The inmate is provided a hearing before an administrative
8 law judge.

9 (6) The inmate is provided counsel at least 21 days prior to the
10 hearing. The hearing shall be held not more than 30 days after the
11 filing of the notice with the Office of Administrative Hearings,
12 unless counsel for the inmate agrees to extend the date of the
13 hearing.

14 (7) The inmate and counsel are provided with written notice of
15 the hearing at least 21 days prior to the hearing. The written notice
16 shall do all of the following:

17 (A) Set forth the diagnosis, the factual basis for the diagnosis,
18 the basis upon which psychotropic medication is recommended,
19 the expected benefits of the medication, any potential side effects
20 and risks to the inmate from the medication, and any alternatives
21 to treatment with the medication.

22 (B) Advise the inmate of the right to be present at the hearing,
23 the right to be represented by counsel at all stages of the
24 proceedings, the right to present evidence, and the right to
25 cross-examine witnesses. Counsel for the inmate shall have access
26 to all medical records and files of the inmate, but shall not have
27 access to the confidential section of the inmate's central file which
28 contains materials unrelated to medical treatment.

29 (C) Inform the prisoner of his or her right to contest the finding
30 of an administrative law judge authorizing treatment with
31 involuntary medication by filing a petition for writ of
32 administrative mandamus pursuant to Section 1094.5 of the Code
33 of Civil Procedure, and his or her right to file a petition for writ
34 of habeas corpus with respect to any decision of the Department
35 of Corrections and Rehabilitation to continue treatment with
36 involuntary medication after the administrative law judge has
37 authorized treatment with involuntary medication.

38 (8) An administrative law judge determines by clear and
39 convincing evidence that the inmate has a mental illness or
40 disorder, that as a result of that illness the inmate is gravely

1 disabled and lacks the capacity to consent to or refuse treatment
2 with psychotropic medications or is a danger to self or others if
3 not medicated, that there is no less intrusive alternative to
4 involuntary medication, and that the medication is in the inmate's
5 best medical interest.

6 (9) The historical course of the inmate's mental disorder, as
7 determined by available relevant information about the course of
8 the inmate's mental disorder, shall be considered when it has direct
9 bearing on the determination of whether the inmate is a danger to
10 self or others, or is gravely disabled and incompetent to refuse
11 medication as the result of a mental disorder.

12 (10) An inmate is entitled to file one motion for reconsideration
13 following a determination that he or she may receive involuntary
14 medication, and may seek a hearing to present new evidence, upon
15 good cause shown.

16 (d) Nothing in this section is intended to prohibit a physician
17 from taking appropriate action in an emergency. An emergency
18 exists when there is a sudden and marked change in an inmate's
19 mental condition so that action is immediately necessary for the
20 preservation of life or the prevention of serious bodily harm to the
21 inmate or others, and it is impractical, due to the seriousness of
22 the emergency, to first obtain informed consent. If psychotropic
23 medication is administered during an emergency, the medication
24 shall only be that which is required to treat the emergency condition
25 and shall be administered for only so long as the emergency
26 continues to exist, but in no event longer than five days after the
27 written notice and counsel are provided pursuant to subdivision
28 (c), unless the department first obtains an order from an
29 administrative law judge authorizing the continuance of medication
30 beyond five days. The order may be issued ex parte upon a showing
31 that in the absence of the medication the emergency is likely to
32 recur. The request for an order shall be supported by an affidavit
33 showing specific facts. The inmate may present facts supported
34 by an affidavit in opposition to the request. If an order is issued,
35 the psychiatrist may continue the administration of the medication
36 until the hearing described in paragraph (5) of subdivision (c) is
37 held.

38 (1) The Department of Corrections and Rehabilitation shall file
39 with the Office of Administrative Hearings, and serve on the inmate
40 and his or her counsel the written notice described in paragraph

1 (7) of subdivision (c) within 72 hours of commencing medication
2 pursuant to this subdivision, unless either of the following occurs:

3 (A) The inmate gives informed consent to continue the
4 medication.

5 (B) A psychiatrist determines that the psychotropic medication
6 is not necessary and administration of the medication is
7 discontinued.

8 (2) If medication is being administered pursuant to this
9 subdivision, the hearing described in paragraph (5) of subdivision
10 (c) shall commence within 21 days of the filing and service of the
11 notice, unless counsel for an inmate agrees to a longer period of
12 time.

13 (3) With the exception of the timeline provisions specified in
14 paragraphs (1) and (2) for providing notice and commencement
15 of the hearing in emergency situations, the inmate shall be entitled
16 to and be given the same due process protections as specified in
17 subdivision (c). The department shall prove the same elements
18 supporting the involuntary administration of psychotropic
19 medication and the administrative law judge shall be required to
20 make the same findings described in subdivision (c).

21 (e) The determination that an inmate may receive involuntary
22 medication shall be valid for one year from the date of the
23 determination, regardless of whether the inmate subsequently gives
24 his or her informed consent.

25 (f) If a determination has been made to involuntarily medicate
26 an inmate pursuant to subdivision (c) or (d), the medication shall
27 be discontinued one year after the date of that determination, unless
28 the inmate gives his or her informed consent to the administration
29 of the medication, or unless a new determination is made pursuant
30 to the procedures set forth in subdivision (g).

31 (g) To renew an existing order allowing involuntary medication,
32 the department shall file with the Office of Administrative
33 Hearings, and shall serve on the inmate and his or her counsel, the
34 written notice described in paragraph (7) of subdivision (c). The
35 notice shall specify that the request is for a renewal.

36 (1) The request to renew the order shall be filed and served no
37 later than 21 days prior to the expiration of the current order
38 authorizing involuntary medication.

39 (2) To obtain a renewal order, the department shall provide the
40 same due process protections as specified in subdivision (c). The

1 department shall prove the same elements supporting the
2 involuntary administration of psychotropic medication and the
3 administrative law judge shall be required to make the same
4 findings described in subdivision (c).

5 (3) Renewal orders shall be valid for one year from the date of
6 the hearing.

7 (4) An order renewing a prior order may be granted based on
8 clear and convincing evidence that, but for the medication, the
9 inmate would revert to the behavior that was the basis for the prior
10 order authorizing involuntary medication, coupled with evidence
11 that the inmate lacks insight regarding his or her need for the
12 medication, such that it is unlikely that the inmate would be able
13 to manage his or her own medication and treatment regimen. No
14 new acts need be alleged or proven.

15 (5) The hearing on any petition to renew an order for involuntary
16 medication shall be conducted prior to the expiration of the current
17 order.

18 (h) In the event of a conflict between the provisions of this
19 section and the Administrative Procedure Act (Chapter 4.5
20 (commencing with Section 11400), and Chapter 5 (commencing
21 with Section 11500) of Part 1 of Division 3 of the Government
22 Code), this section shall control.

23 SEC. 130. Section 2932 of the Penal Code is amended to read:

24 2932. (a) (1) For any time credit accumulated pursuant to
25 Section 2931 or to ~~Section~~ 2933, not more than 360 days of credit
26 may be denied or lost for a single act of murder, attempted murder,
27 solicitation of murder, manslaughter, rape, sodomy, or oral
28 copulation accomplished against the victim's will, attempted rape,
29 attempted sodomy, or attempted oral copulation accomplished
30 against the victim's will, assault or battery causing serious bodily
31 injury, assault with a deadly weapon or caustic substance, taking
32 of a hostage, escape with force or violence, or possession or
33 manufacture of a deadly weapon or explosive device, whether or
34 not prosecution is undertaken for purposes of this paragraph.
35 Solicitation of murder shall be proved by the testimony of two
36 witnesses, or of one witness and corroborating circumstances.

37 (2) Not more than 180 days of credit may be denied or lost for
38 a single act of misconduct, except as specified in paragraph (1),
39 which could be prosecuted as a felony whether or not prosecution
40 is undertaken.

1 (3) Not more than 90 days of credit may be denied or lost for a
2 single act of misconduct which could be prosecuted as a
3 misdemeanor, whether or not prosecution is undertaken.

4 (4) Not more than 30 days of credit may be denied or lost for a
5 single act of misconduct defined by regulation as a serious
6 disciplinary offense by the Department of Corrections and
7 Rehabilitation. Any person confined due to a change in custodial
8 classification following the commission of any serious disciplinary
9 infraction shall, in addition to any loss of time credits, be ineligible
10 to receive participation or worktime credit for a period not to
11 exceed the number of days of credit which have been lost for the
12 act of misconduct or 180 days, whichever is less. Any person
13 confined in a secure housing unit for having committed any
14 misconduct specified in paragraph (1) in which great bodily injury
15 is inflicted upon a nonprisoner shall, in addition to any loss of time
16 credits, be ineligible to receive participation or worktime credit
17 for a period not to exceed the number of days of credit which have
18 been lost for that act of misconduct. In unusual cases, an inmate
19 may be denied the opportunity to participate in a credit qualifying
20 assignment for up to six months beyond the period specified in
21 this subdivision if the Secretary of the Department of Corrections
22 and Rehabilitation finds, after a hearing, that no credit qualifying
23 program may be assigned to the inmate without creating a
24 substantial risk of physical harm to staff or other inmates. At the
25 end of the six-month period and of successive six-month periods,
26 the denial of the opportunity to participate in a credit qualifying
27 assignment may be renewed upon a hearing and finding by the
28 director.

29 (5) The prisoner may appeal the decision through the
30 department's review procedure, which shall include a review by
31 an individual independent of the institution who has supervisorial
32 authority over the institution.

33 (b) For any credit accumulated pursuant to Section 2931, not
34 more than 30 days of participation credit may be denied or lost for
35 a single failure or refusal to participate. Any act of misconduct
36 described by the Department of Corrections and Rehabilitation as
37 a serious disciplinary infraction if committed while participating
38 in work, educational, vocational, therapeutic, or other prison
39 activity shall be deemed a failure to participate.

1 (c) Any procedure not provided for by this section, but necessary
2 to carry out the purposes of this section, shall be those procedures
3 provided for by the Department of Corrections and Rehabilitation
4 for serious disciplinary infractions if those procedures are not in
5 conflict with this section.

6 (1) (A) The Department of Corrections and Rehabilitation shall,
7 using reasonable diligence to investigate, provide written notice
8 to the prisoner. The written notice shall be given within 15 days
9 after the discovery of information leading to charges that may
10 result in a possible denial of credit, except that if the prisoner has
11 escaped, the notice shall be given within 15 days of the prisoner's
12 return to the custody of the secretary. The written notice shall
13 include the specific charge, the date, the time, the place that the
14 alleged misbehavior took place, the evidence relied upon, a written
15 explanation of the procedures that will be employed at the
16 proceedings and the prisoner's rights at the hearing. The hearing
17 shall be conducted by an individual who shall be independent of
18 the case and shall take place within 30 days of the written notice.

19 (B) The Department of Corrections and Rehabilitation may
20 delay written notice beyond 15 days when all of the following
21 factors are true:

22 (i) An act of misconduct is involved which could be prosecuted
23 as murder, attempted murder, or assault on a prison employee,
24 whether or not prosecution is undertaken.

25 (ii) Further investigation is being undertaken for the purpose of
26 identifying other prisoners involved in the misconduct.

27 (iii) Within 15 days after the discovery of information leading
28 to charges that may result in a possible denial of credit, the
29 investigating officer makes a written request to delay notifying
30 that prisoner and states the reasons for the delay.

31 (iv) The warden of the institution approves of the delay in
32 writing.

33 The period of delay under this paragraph shall not exceed 30
34 days. The prisoner's hearing shall take place within 30 days of the
35 written notice.

36 (2) The prisoner may elect to be assigned an employee to assist
37 in the investigation, preparation, or presentation of a defense at
38 the disciplinary hearing if it is determined by the department that
39 either of the following circumstances exist:

40 (A) The prisoner is illiterate.

1 (B) The complexity of the issues or the prisoner's confinement
2 status makes it unlikely that the prisoner can collect and present
3 the evidence necessary for an adequate comprehension of the case.

4 (3) The prisoner may request witnesses to attend the hearing
5 and they shall be called unless the person conducting the hearing
6 has specific reasons to deny this request. The specific reasons shall
7 be set forth in writing and a copy of the document shall be
8 presented to the prisoner.

9 (4) The prisoner has the right, under the direction of the person
10 conducting the hearing, to question all witnesses.

11 (5) At the conclusion of the hearing the charge shall be
12 dismissed if the facts do not support the charge, or the prisoner
13 may be found guilty on the basis of a preponderance of the
14 evidence.

15 (d) If found guilty the prisoner shall be advised in writing of
16 the guilty finding and the specific evidence relied upon to reach
17 this conclusion and the amount of time-credit loss. The prisoner
18 may appeal the decision through the department's review
19 procedure, and may, upon final notification of appeal denial, within
20 15 days of the notification demand review of the department's
21 denial of credit to the Board of Parole Hearings, and the board
22 may affirm, reverse, or modify the department's decision or grant
23 a hearing before the board at which hearing the prisoner shall have
24 the rights specified in Section 3041.5.

25 (e) Each prisoner subject to Section 2931 shall be notified of
26 the total amount of good behavior and participation credit which
27 may be credited pursuant to Section 2931, and his or her anticipated
28 time-credit release date. The prisoner shall be notified of any
29 change in the anticipated release date due to denial or loss of
30 credits, award of worktime credit, under Section 2933, or the
31 restoration of any credits previously forfeited.

32 (f) (1) If the conduct the prisoner is charged with also
33 constitutes a crime, the department may refer the case to criminal
34 authorities for possible prosecution. The department shall notify
35 the prisoner, who may request postponement of the disciplinary
36 proceedings pending the referral.

37 (2) The prisoner may revoke his or her request for postponement
38 of the disciplinary proceedings up until the filing of the accusatory
39 pleading. In the event of the revocation of the request for

1 postponement of the proceeding, the department shall hold the
2 hearing within 30 days of the revocation.

3 (3) Notwithstanding the notification requirements in this
4 paragraph and subparagraphs (A) and (B) of paragraph (1) of
5 subdivision (c), in the event the case is referred to criminal
6 authorities for prosecution and the authority requests that the
7 prisoner not be notified so as to protect the confidentiality of its
8 investigation, no notice to the prisoner shall be required until an
9 accusatory pleading is filed with the court, or the authority notifies
10 the warden, in writing, that it will not prosecute or it authorizes
11 the notification of the prisoner. The notice exceptions provided
12 for in this paragraph shall only apply if the criminal authority
13 requests of the warden, in writing, and within the 15 days provided
14 in subparagraph (A) of paragraph (1) of subdivision (c), that the
15 prisoner not be notified. Any period of delay of notice to the
16 prisoner shall not exceed 30 days beyond the 15 days referred to
17 in subdivision (c). In the event that no prosecution is undertaken,
18 the procedures in subdivision (c) shall apply, and the time periods
19 set forth in that subdivision shall commence to run from the date
20 the warden is notified in writing of the decision not to prosecute.
21 In the event the authority either cancels its requests that the prisoner
22 not be notified before it makes a decision on prosecution or files
23 an accusatory pleading, the provisions of this paragraph shall apply
24 as if no request had been received, beginning from the date of the
25 cancellation or filing.

26 (4) In the case where the prisoner is prosecuted by the district
27 attorney, the Department of Corrections and Rehabilitation shall
28 not deny time credit where the prisoner is found not guilty and
29 may deny credit if the prisoner is found guilty, in which case the
30 procedures in subdivision (c) shall not apply.

31 (g) If time credit denial proceedings or criminal prosecution
32 prohibit the release of a prisoner who would have otherwise been
33 released, and the prisoner is found not guilty of the alleged
34 misconduct, the amount of time spent incarcerated, in excess of
35 what the period of incarceration would have been absent the alleged
36 misbehavior, shall be deducted from the prisoner's parole period.

37 (h) Nothing in the amendments to this section made at the
38 1981–82 Regular Session of the Legislature shall affect the granting
39 or revocation of credits attributable to that portion of the prisoner's
40 sentence served prior to January 1, 1983.

1 SEC. 131. Section 3060.7 of the Penal Code is amended to
2 read:

3 3060.7. (a) (1) Notwithstanding any other provision of law,
4 the parole authority shall notify any person released on parole or
5 postrelease community supervision pursuant to Title 2.05
6 (commencing with Section 3450) of Part 3 who has been classified
7 by the Department of Corrections and Rehabilitation as included
8 within the highest control or risk classification that he or she shall
9 be required to report to his or her assigned parole officer or
10 designated local supervising agency within two days of release
11 from the state prison.

12 (2) This section shall not prohibit the parole authority or local
13 supervising agency from requiring any person released on parole
14 or postrelease community supervision to report to his or her
15 assigned parole officer within a time period that is less than two
16 days from the time of release.

17 (b) The parole authority, within 24 hours of a parolee's failure
18 to report as required by this section, shall issue a written order
19 suspending the parole of that parolee, pending a hearing before
20 the parole authority, and shall issue a warrant for the parolee's
21 arrest.

22 (c) Upon the issuance of an arrest warrant for a parolee who
23 has been classified within the highest control or risk classification,
24 the assigned parole officer shall continue to carry the parolee on
25 his or her regular caseload and shall continue to search for the
26 parolee's whereabouts.

27 (d) With regard to any inmate subject to this section, the
28 Department of Corrections and Rehabilitation shall release an
29 inmate sentenced prior to the effective date of this section one or
30 two days before his or her scheduled release date if the inmate's
31 release date falls on the day before a holiday or weekend.

32 (e) With regard to any inmate subject to this section, the
33 Department of Corrections and Rehabilitation shall release an
34 inmate one or two days after his or her scheduled release date if
35 the release date falls on the day before a holiday or weekend.

36 SEC. 132. Section 3453 of the Penal Code is amended to read:

37 3453. A postrelease community supervision agreement shall
38 include the following conditions:

39 (a) The person shall sign and agree to the conditions of release.

40 (b) The person shall obey all laws.

- 1 (c) The person shall report to the supervising county agency
2 within two working days of release from custody.
- 3 (d) The person shall follow the directives and instructions of
4 the supervising county agency.
- 5 (e) The person shall report to the supervising county agency as
6 directed by that agency.
- 7 (f) The person, and his or her residence and possessions, shall
8 be subject to search at any time of the day or night, with or without
9 a warrant, by an agent of the supervising county agency or by a
10 peace officer.
- 11 (g) The person shall waive extradition if found outside the state.
- 12 (h) The person shall inform the supervising county agency of
13 the person's place of residence, employment, education, or training.
- 14 (i) (1) The person shall inform the supervising county agency
15 of any pending or anticipated changes in residence, employment,
16 education, or training.
- 17 (2) If the person enters into new employment, he or she shall
18 inform the supervising county agency of the new employment
19 within three business days of that entry.
- 20 (j) The person shall immediately inform the supervising county
21 agency if he or she is arrested or receives a citation.
- 22 (k) The person shall obtain the permission of the supervising
23 county agency to travel more than 50 miles from the person's place
24 of residence.
- 25 (l) The person shall obtain a travel pass from the supervising
26 county agency before he or she may leave the county or state for
27 more than two days.
- 28 (m) The person shall not be in the presence of a firearm or
29 ammunition, or any item that appears to be a firearm or
30 ammunition.
- 31 (n) The person shall not possess, use, or have access to any
32 weapon listed in Section 16140, subdivision (c) of Section 16170,
33 Section 16220, 16260, 16320, 16330, or 16340, subdivision (b)
34 of Section 16460, Section 16470, subdivision (f) of Section 16520,
35 or Section 16570, 16740, 16760, 16830, 16920, 16930, 16940,
36 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270, 17280,
37 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720, 17725,
38 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200, 20310,
39 20410, 20510, 20610, 20710, 20910, 21110, 21310, 21810, 22010,
40 22015, 22210, 22215, 22410, 24310, 24410, 24510, 24610, 24680,

1 24710, 30210, 30215, 31500, 32310, 32400, 32405, 32410, 32415,
2 32420, 32425, 32430, 32435, 32440, 32445, 32450, 32900, 33215,
3 33220, 33225, or 33600.

4 (o) (1) Except as provided in paragraph (2) and subdivision
5 (p), the person shall not possess a knife with a blade longer than
6 two inches.

7 (2) The person may possess a kitchen knife with a blade longer
8 than two inches if the knife is used and kept only in the kitchen of
9 the person's residence.

10 (p) The person may use a knife with a blade longer than two
11 inches, if the use is required for that person's employment, the use
12 has been approved in a document issued by the supervising county
13 agency, and the person possesses the document of approval at all
14 times and makes it available for inspection.

15 (q) The person agrees to waive any right to a court hearing prior
16 to the imposition of a period of "flash incarceration" in a county
17 jail of not more than 10 consecutive days for any violation of his
18 or her postrelease supervision conditions.

19 (r) The person agrees to participate in rehabilitation
20 programming as recommended by the supervising county agency.

21 (s) The person agrees that he or she may be subject to arrest
22 with or without a warrant by a peace officer employed by the
23 supervising county agency or, at the direction of the supervising
24 county agency, by any peace officer when there is probable cause
25 to believe the person has violated the terms and conditions of his
26 or her release.

27 SEC. 133. Section 4807 of the Penal Code is amended to read:

28 4807. (a) At the beginning of every regular session of the
29 Legislature, the Governor shall file a written report with the
30 Legislature that shall include each application that was granted for
31 each case of reprieve, pardon, or commutation by the Governor,
32 or his or her predecessor in office, during the immediately
33 preceding regular session of the Legislature, stating the name of
34 the person convicted, the crime of which the person was convicted,
35 the sentence and its date, the date of the reprieve, pardon, or
36 commutation, and the reason for granting the same. The report
37 shall be submitted in compliance with Section 9795 of the
38 Government Code.

1 (b) Notwithstanding any other law, the written report filed with
2 the Legislature pursuant to subdivision (a) shall be available to the
3 public.

4 SEC. 134. Section 11105 of the Penal Code is amended to read:

5 11105. (a) (1) The Department of Justice shall maintain state
6 summary criminal history information.

7 (2) As used in this section:

8 (A) “State summary criminal history information” means the
9 master record of information compiled by the Attorney General
10 pertaining to the identification and criminal history of any person,
11 such as name, date of birth, physical description, fingerprints,
12 photographs, date of arrests, arresting agencies and booking
13 numbers, charges, dispositions, and similar data about the person.

14 (B) “State summary criminal history information” does not refer
15 to records and data compiled by criminal justice agencies other
16 than the Attorney General, nor does it refer to records of complaints
17 to or investigations conducted by, or records of intelligence
18 information or security procedures of, the office of the Attorney
19 General and the Department of Justice.

20 (b) The Attorney General shall furnish state summary criminal
21 history information to any of the following, if needed in the course
22 of their duties, provided that, when information is furnished to
23 assist an agency, officer, or official of state or local government,
24 a public utility, or any other entity, in fulfilling employment,
25 certification, or licensing duties, Chapter 1321 of the Statutes of
26 1974 and Section 432.7 of the Labor Code shall apply:

27 (1) The courts of the state.

28 (2) Peace officers of the state, as defined in Section 830.1,
29 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
30 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and
31 (b) of Section 830.5.

32 (3) District attorneys of the state.

33 (4) Prosecuting city attorneys of any city within the state.

34 (5) City attorneys pursuing civil gang injunctions pursuant to
35 Section 186.22a, or drug abatement actions pursuant to Section
36 3479 or 3480 of the Civil Code, or Section 11571 of the Health
37 and Safety Code.

38 (6) Probation officers of the state.

39 (7) Parole officers of the state.

1 (8) A public defender or attorney of record when representing
2 a person in proceedings upon a petition for a certificate of
3 rehabilitation and pardon pursuant to Section 4852.08.

4 (9) A public defender or attorney of record when representing
5 a person in a criminal case, or parole revocation or revocation
6 extension proceeding, and if authorized access by statutory or
7 decisional law.

8 (10) Any agency, officer, or official of the state if the criminal
9 history information is required to implement a statute or regulation
10 that expressly refers to specific criminal conduct applicable to the
11 subject person of the state summary criminal history information,
12 and contains requirements or exclusions, or both, expressly based
13 upon that specified criminal conduct. The agency, officer, or
14 official of the state authorized by this paragraph to receive state
15 summary criminal history information may also transmit fingerprint
16 images and related information to the Department of Justice to be
17 transmitted to the Federal Bureau of Investigation.

18 (11) Any city or county, city and county, district, or any officer
19 or official thereof if access is needed in order to assist that agency,
20 officer, or official in fulfilling employment, certification, or
21 licensing duties, and if the access is specifically authorized by the
22 city council, board of supervisors, or governing board of the city,
23 county, or district if the criminal history information is required
24 to implement a statute, ordinance, or regulation that expressly
25 refers to specific criminal conduct applicable to the subject person
26 of the state summary criminal history information, and contains
27 requirements or exclusions, or both, expressly based upon that
28 specified criminal conduct. The city or county, city and county,
29 district, or the officer or official thereof authorized by this
30 paragraph may also transmit fingerprint images and related
31 information to the Department of Justice to be transmitted to the
32 Federal Bureau of Investigation.

33 (12) The subject of the state summary criminal history
34 information under procedures established under Article 5
35 (commencing with Section 11120).

36 (13) Any person or entity when access is expressly authorized
37 by statute if the criminal history information is required to
38 implement a statute or regulation that expressly refers to specific
39 criminal conduct applicable to the subject person of the state
40 summary criminal history information, and contains requirements

1 or exclusions, or both, expressly based upon that specified criminal
2 conduct.

3 (14) Health officers of a city, county, city and county, or district
4 when in the performance of their official duties enforcing Section
5 120175 of the Health and Safety Code.

6 (15) Any managing or supervising correctional officer of a
7 county jail or other county correctional facility.

8 (16) Any humane society, or society for the prevention of cruelty
9 to animals, for the specific purpose of complying with Section
10 14502 of the Corporations Code for the appointment of humane
11 officers.

12 (17) Local child support agencies established by Section 17304
13 of the Family Code. When a local child support agency closes a
14 support enforcement case containing summary criminal history
15 information, the agency shall delete or purge from the file and
16 destroy any documents or information concerning or arising from
17 offenses for or of which the parent has been arrested, charged, or
18 convicted, other than for offenses related to the parent's having
19 failed to provide support for minor children, consistent with the
20 requirements of Section 17531 of the Family Code.

21 (18) County child welfare agency personnel who have been
22 delegated the authority of county probation officers to access state
23 summary criminal history information pursuant to Section 272 of
24 the Welfare and Institutions Code for the purposes specified in
25 Section 16504.5 of the Welfare and Institutions Code. Information
26 from criminal history records provided pursuant to this subdivision
27 shall not be used for any purposes other than those specified in
28 this section and Section 16504.5 of the Welfare and Institutions
29 Code. When an agency obtains records obtained both on the basis
30 of name checks and fingerprint checks, final placement decisions
31 shall be based only on the records obtained pursuant to the
32 fingerprint check.

33 (19) The court of a tribe, or court of a consortium of tribes, that
34 has entered into an agreement with the state pursuant to Section
35 10553.1 of the Welfare and Institutions Code. This information
36 may be used only for the purposes specified in Section 16504.5
37 of the Welfare and Institutions Code and for tribal approval or
38 tribal licensing of foster care or adoptive homes. Article 6
39 (commencing with Section 11140) shall apply to officers, members,

1 and employees of a tribal court receiving criminal record offender
2 information pursuant to this section.

3 (20) Child welfare agency personnel of a tribe or consortium
4 of tribes that has entered into an agreement with the state pursuant
5 to Section 10553.1 of the Welfare and Institutions Code and to
6 whom the state has delegated duties under paragraph (2) of
7 subdivision (a) of Section 272 of the Welfare and Institutions Code.
8 The purposes for use of the information shall be for the purposes
9 specified in Section 16504.5 of the Welfare and Institutions Code
10 and for tribal approval or tribal licensing of foster care or adoptive
11 homes. When an agency obtains records on the basis of name
12 checks and fingerprint checks, final placement decisions shall be
13 based only on the records obtained pursuant to the fingerprint
14 check. Article 6 (commencing with Section 11140) shall apply to
15 child welfare agency personnel receiving criminal record offender
16 information pursuant to this section.

17 (21) An officer providing conservatorship investigations
18 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
19 Institutions Code.

20 (22) A court investigator providing investigations or reviews
21 in conservatorships pursuant to Section 1826, 1850, 1851, or
22 2250.6 of the Probate Code.

23 (23) A person authorized to conduct a guardianship investigation
24 pursuant to Section 1513 of the Probate Code.

25 (24) A humane officer pursuant to Section 14502 of the
26 Corporations Code for the purposes of performing his or her duties.

27 (c) The Attorney General may furnish state summary criminal
28 history information and, when specifically authorized by this
29 subdivision, federal level criminal history information upon a
30 showing of a compelling need to any of the following, provided
31 that when information is furnished to assist an agency, officer, or
32 official of state or local government, a public utility, or any other
33 entity in fulfilling employment, certification, or licensing duties,
34 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
35 Labor Code shall apply:

36 (1) Any public utility, as defined in Section 216 of the Public
37 Utilities Code, that operates a nuclear energy facility when access
38 is needed in order to assist in employing persons to work at the
39 facility, provided that, if the Attorney General supplies the data,

1 he or she shall furnish a copy of the data to the person to whom
2 the data relates.

3 (2) To a peace officer of the state other than those included in
4 subdivision (b).

5 (3) To an illegal dumping enforcement officer as defined in
6 subdivision (j) of Section 830.7.

7 (4) To a peace officer of another country.

8 (5) To public officers, other than peace officers, of the United
9 States, other states, or possessions or territories of the United
10 States, provided that access to records similar to state summary
11 criminal history information is expressly authorized by a statute
12 of the United States, other states, or possessions or territories of
13 the United States if the information is needed for the performance
14 of their official duties.

15 (6) To any person when disclosure is requested by a probation,
16 parole, or peace officer with the consent of the subject of the state
17 summary criminal history information and for purposes of
18 furthering the rehabilitation of the subject.

19 (7) The courts of the United States, other states, or territories
20 or possessions of the United States.

21 (8) Peace officers of the United States, other states, or territories
22 or possessions of the United States.

23 (9) To any individual who is the subject of the record requested
24 if needed in conjunction with an application to enter the United
25 States or any foreign nation.

26 (10) (A) (i) Any public utility, as defined in Section 216 of the
27 Public Utilities Code, or any cable corporation as defined in
28 subparagraph (B), if receipt of criminal history information is
29 needed in order to assist in employing current or prospective
30 employees, contract employees, or subcontract employees who,
31 in the course of their employment, may be seeking entrance to
32 private residences or adjacent grounds. The information provided
33 shall be limited to the record of convictions and any arrest for
34 which the person is released on bail or on his or her own
35 recognizance pending trial.

36 (ii) If the Attorney General supplies the data pursuant to this
37 paragraph, the Attorney General shall furnish a copy of the data
38 to the current or prospective employee to whom the data relates.

39 (iii) Any information obtained from the state summary criminal
40 history is confidential and the receiving public utility or cable

1 corporation shall not disclose its contents, other than for the
2 purpose for which it was acquired. The state summary criminal
3 history information in the possession of the public utility or cable
4 corporation and all copies made from it shall be destroyed not
5 more than 30 days after employment or promotion or transfer is
6 denied or granted, except for those cases where a current or
7 prospective employee is out on bail or on his or her own
8 recognizance pending trial, in which case the state summary
9 criminal history information and all copies shall be destroyed not
10 more than 30 days after the case is resolved.

11 (iv) A violation of this paragraph is a misdemeanor, and shall
12 give the current or prospective employee who is injured by the
13 violation a cause of action against the public utility or cable
14 corporation to recover damages proximately caused by the
15 violations. Any public utility's or cable corporation's request for
16 state summary criminal history information for purposes of
17 employing current or prospective employees who may be seeking
18 entrance to private residences or adjacent grounds in the course
19 of their employment shall be deemed a "compelling need" as
20 required to be shown in this subdivision.

21 (v) Nothing in this section shall be construed as imposing a duty
22 upon public utilities or cable corporations to request state summary
23 criminal history information on any current or prospective
24 employees.

25 (B) For purposes of this paragraph, "cable corporation" means
26 any corporation or firm that transmits or provides television,
27 computer, or telephone services by cable, digital, fiber optic,
28 satellite, or comparable technology to subscribers for a fee.

29 (C) Requests for federal level criminal history information
30 received by the Department of Justice from entities authorized
31 pursuant to subparagraph (A) shall be forwarded to the Federal
32 Bureau of Investigation by the Department of Justice. Federal level
33 criminal history information received or compiled by the
34 Department of Justice may then be disseminated to the entities
35 referenced in subparagraph (A), as authorized by law.

36 (D) (i) Authority for a cable corporation to request state or
37 federal level criminal history information under this paragraph
38 shall commence July 1, 2005.

1 (ii) Authority for a public utility to request federal level criminal
2 history information under this paragraph shall commence July 1,
3 2005.

4 (11) To any campus of the California State University or the
5 University of California, or any four-year college or university
6 accredited by a regional accreditation organization approved by
7 the United States Department of Education, if needed in
8 conjunction with an application for admission by a convicted felon
9 to a special education program for convicted felons, including, but
10 not limited to, university alternatives and halfway houses. Only
11 conviction information shall be furnished. The college or university
12 may require the convicted felon to be fingerprinted, and any inquiry
13 to the department under this section shall include the convicted
14 felon's fingerprints and any other information specified by the
15 department.

16 (12) To any foreign government, if requested by the individual
17 who is the subject of the record requested, if needed in conjunction
18 with the individual's application to adopt a minor child who is a
19 citizen of that foreign nation. Requests for information pursuant
20 to this paragraph shall be in accordance with the process described
21 in Sections 11122 to 11124, inclusive. The response shall be
22 provided to the foreign government or its designee and to the
23 individual who requested the information.

24 (d) Whenever an authorized request for state summary criminal
25 history information pertains to a person whose fingerprints are on
26 file with the Department of Justice and the department has no
27 criminal history of that person, and the information is to be used
28 for employment, licensing, or certification purposes, the fingerprint
29 card accompanying the request for information, if any, may be
30 stamped "no criminal record" and returned to the person or entity
31 making the request.

32 (e) Whenever state summary criminal history information is
33 furnished as the result of an application and is to be used for
34 employment, licensing, or certification purposes, the Department
35 of Justice may charge the person or entity making the request a
36 fee that it determines to be sufficient to reimburse the department
37 for the cost of furnishing the information. In addition, the
38 Department of Justice may add a surcharge to the fee to fund
39 maintenance and improvements to the systems from which the
40 information is obtained. Notwithstanding any other law, a person

1 or entity required to pay a fee to the department for information
2 received under this section may charge the applicant a fee sufficient
3 to reimburse the person or entity for this expense. All moneys
4 received by the department pursuant to this section, Sections
5 11105.3 and 26190 of this code, and Sections 45125 and 88024
6 of the Education Code shall be deposited in a special account in
7 the General Fund to be available for expenditure by the department
8 to offset costs incurred pursuant to those sections and for
9 maintenance and improvements to the systems from which the
10 information is obtained upon appropriation by the Legislature.

11 (f) Whenever there is a conflict, the processing of criminal
12 fingerprints and fingerprints of applicants for security guard or
13 alarm agent registrations or firearms qualification permits
14 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
15 of the Business and Professions Code shall take priority over the
16 processing of other applicant fingerprints.

17 (g) It is not a violation of this section to disseminate statistical
18 or research information obtained from a record, provided that the
19 identity of the subject of the record is not disclosed.

20 (h) It is not a violation of this section to include information
21 obtained from a record in (1) a transcript or record of a judicial or
22 administrative proceeding or (2) any other public record if the
23 inclusion of the information in the public record is authorized by
24 a court, statute, or decisional law.

25 (i) Notwithstanding any other law, the Department of Justice
26 or any state or local law enforcement agency may require the
27 submission of fingerprints for the purpose of conducting summary
28 criminal history information checks that are authorized by law.

29 (j) The state summary criminal history information shall include
30 any finding of mental incompetence pursuant to Chapter 6
31 (commencing with Section 1367) of Title 10 of Part 2 arising out
32 of a complaint charging a felony offense specified in Section 290.

33 (k) (1) This subdivision shall apply whenever state or federal
34 summary criminal history information is furnished by the
35 Department of Justice as the result of an application by an
36 authorized agency or organization and the information is to be
37 used for peace officer employment or certification purposes. As
38 used in this subdivision, a peace officer is defined in Chapter 4.5
39 (commencing with Section 830) of Title 3 of Part 2.

1 (2) Notwithstanding any other provision of law, whenever state
2 summary criminal history information is furnished pursuant to
3 paragraph (1), the Department of Justice shall disseminate the
4 following information:

5 (A) Every conviction rendered against the applicant.

6 (B) Every arrest for an offense for which the applicant is
7 presently awaiting trial, whether the applicant is incarcerated or
8 has been released on bail or on his or her own recognizance
9 pending trial.

10 (C) Every arrest or detention, except for an arrest or detention
11 resulting in an exoneration, provided, however, that where the
12 records of the Department of Justice do not contain a disposition
13 for the arrest, the Department of Justice first makes a genuine effort
14 to determine the disposition of the arrest.

15 (D) Every successful diversion.

16 (E) Every date and agency name associated with all retained
17 peace officer or nonsworn law enforcement agency employee
18 preemployment criminal offender record information search
19 requests.

20 (l) (1) This subdivision shall apply whenever state or federal
21 summary criminal history information is furnished by the
22 Department of Justice as the result of an application by a criminal
23 justice agency or organization, as defined in Section 13101, and
24 the information is to be used for criminal justice employment,
25 licensing, or certification purposes.

26 (2) Notwithstanding any other provision of law, whenever state
27 summary criminal history information is furnished pursuant to
28 paragraph (1), the Department of Justice shall disseminate the
29 following information:

30 (A) Every conviction rendered against the applicant.

31 (B) Every arrest for an offense for which the applicant is
32 presently awaiting trial, whether the applicant is incarcerated or
33 has been released on bail or on his or her own recognizance
34 pending trial.

35 (C) Every arrest for an offense for which the records of the
36 Department of Justice do not contain a disposition or did not result
37 in a conviction, provided that the Department of Justice first makes
38 a genuine effort to determine the disposition of the arrest. However,
39 information concerning an arrest shall not be disclosed if the
40 records of the Department of Justice indicate, or if the genuine

1 effort reveals, that the subject was exonerated, successfully
2 completed a diversion or deferred entry of judgment program, or
3 the arrest was deemed a detention.

4 (D) Every date and agency name associated with all retained
5 peace officer or nonsworn law enforcement agency employee
6 preemployment criminal offender record information search
7 requests.

8 (m) (1) This subdivision shall apply whenever state or federal
9 summary criminal history information is furnished by the
10 Department of Justice as the result of an application by an
11 authorized agency or organization pursuant to Section 1522,
12 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
13 any statute that incorporates the criteria of any of those sections
14 or this subdivision by reference, and the information is to be used
15 for employment, licensing, or certification purposes.

16 (2) Notwithstanding any other provision of law, whenever state
17 summary criminal history information is furnished pursuant to
18 paragraph (1), the Department of Justice shall disseminate the
19 following information:

20 (A) Every conviction of an offense rendered against the
21 applicant.

22 (B) Every arrest for an offense for which the applicant is
23 presently awaiting trial, whether the applicant is incarcerated or
24 has been released on bail or on his or her own recognizance
25 pending trial.

26 (C) Every arrest for an offense for which the State Department
27 of Social Services is required by paragraph (1) of subdivision (a)
28 of Section 1522 of the Health and Safety Code to determine if an
29 applicant has been arrested. However, if the records of the
30 Department of Justice do not contain a disposition for an arrest,
31 the Department of Justice shall first make a genuine effort to
32 determine the disposition of the arrest.

33 (3) Notwithstanding the requirements of the sections referenced
34 in paragraph (1), the Department of Justice shall not disseminate
35 information about an arrest subsequently deemed a detention or
36 an arrest that resulted in either the successful completion of a
37 diversion program or exoneration.

38 (n) (1) This subdivision shall apply whenever state or federal
39 summary criminal history information, to be used for employment,
40 licensing, or certification purposes, is furnished by the Department

1 of Justice as the result of an application by an authorized agency,
2 organization, or individual pursuant to any of the following:

3 (A) Paragraph (9) of subdivision (c), when the information is
4 to be used by a cable corporation.

5 (B) Section 11105.3 or 11105.4.

6 (C) Section 15660 of the Welfare and Institutions Code.

7 (D) Any statute that incorporates the criteria of any of the
8 statutory provisions listed in subparagraph (A), (B), or (C) by
9 reference.

10 (2) With the exception of applications submitted by
11 transportation companies authorized pursuant to Section 11105.3,
12 and notwithstanding any other provision of law, whenever state
13 summary criminal history information is furnished pursuant to
14 paragraph (1), the Department of Justice shall disseminate the
15 following information:

16 (A) Every conviction rendered against the applicant for a
17 violation or attempted violation of any offense specified in
18 subdivision (a) of Section 15660 of the Welfare and Institutions
19 Code. However, with the exception of those offenses for which
20 registration is required pursuant to Section 290, the Department
21 of Justice shall not disseminate information pursuant to this
22 subdivision unless the conviction occurred within 10 years of the
23 date of the agency's request for information or the conviction is
24 over 10 years old but the subject of the request was incarcerated
25 within 10 years of the agency's request for information.

26 (B) Every arrest for a violation or attempted violation of an
27 offense specified in subdivision (a) of Section 15660 of the Welfare
28 and Institutions Code for which the applicant is presently awaiting
29 trial, whether the applicant is incarcerated or has been released on
30 bail or on his or her own recognizance pending trial.

31 (o) (1) This subdivision shall apply whenever state or federal
32 summary criminal history information is furnished by the
33 Department of Justice as the result of an application by an
34 authorized agency or organization pursuant to Section 261 or 550
35 of the Financial Code, or any statute that incorporates the criteria
36 of either of those sections or this subdivision by reference, and the
37 information is to be used for employment, licensing, or certification
38 purposes.

39 (2) Notwithstanding any other provision of law, whenever state
40 summary criminal history information is furnished pursuant to

1 paragraph (1), the Department of Justice shall disseminate the
2 following information:

3 (A) Every conviction rendered against the applicant for a
4 violation or attempted violation of any offense specified in Section
5 550 of the Financial Code.

6 (B) Every arrest for a violation or attempted violation of an
7 offense specified in Section 550 of the Financial Code for which
8 the applicant is presently awaiting trial, whether the applicant is
9 incarcerated or has been released on bail or on his or her own
10 recognizance pending trial.

11 (p) (1) This subdivision shall apply whenever state or federal
12 criminal history information is furnished by the Department of
13 Justice as the result of an application by an agency, organization,
14 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
15 by a transportation company authorized pursuant to Section
16 11105.3, or any statute that incorporates the criteria of that section
17 or this subdivision by reference, and the information is to be used
18 for employment, licensing, or certification purposes.

19 (2) Notwithstanding any other provisions of law, whenever state
20 summary criminal history information is furnished pursuant to
21 paragraph (1), the Department of Justice shall disseminate the
22 following information:

23 (A) Every conviction rendered against the applicant.

24 (B) Every arrest for an offense for which the applicant is
25 presently awaiting trial, whether the applicant is incarcerated or
26 has been released on bail or on his or her own recognizance
27 pending trial.

28 (q) All agencies, organizations, or individuals defined in
29 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
30 Department of Justice for subsequent arrest notification pursuant
31 to Section 11105.2. This subdivision shall not supersede sections
32 that mandate an agency, organization, or individual to contract
33 with the Department of Justice for subsequent arrest notification
34 pursuant to Section 11105.2.

35 (r) Nothing in this section shall be construed to mean that the
36 Department of Justice shall cease compliance with any other
37 statutory notification requirements.

38 (s) The provisions of Section 50.12 of Title 28 of the Code of
39 Federal Regulations are to be followed in processing federal
40 criminal history information.

1 SEC. 135. Section 11105.03 of the Penal Code is amended to
2 read:

3 11105.03. (a) Subject to the requirements and conditions set
4 forth in this section and Section 11105, local law enforcement
5 agencies are hereby authorized to provide state criminal summary
6 history information obtained through ~~CLETS~~ *the California Law*
7 *Enforcement Telecommunications System (CLETS)* for the purpose
8 of screening prospective participants and prospective and current
9 staff of a regional, county, city, or other local public housing
10 authority, at the request of the chief executive officer of the
11 authority or his or her designee, upon a showing by that authority
12 that the authority manages a Section 8 housing program pursuant
13 to federal law ~~(U.S. (United States Housing Act of 1937)~~, operates
14 housing at which children under the age of 18 years reside, or
15 operates housing for persons categorized as aged, blind, or disabled.

16 (b) The following requirements shall apply to information
17 released by local law enforcement agencies pursuant to subdivision
18 (a):

19 (1) Local law enforcement agencies shall not release any
20 information unless it relates to a conviction for a serious felony,
21 as defined in subdivision (c) of Section 1192.7, a conviction for
22 any offense punishable under Section 273.5, 422.6, 422.7, 422.75,
23 422.9, or 422.76, or under Chapter 2 (commencing with Section
24 29800) or Chapter 3 (commencing with Section 29900) of Division
25 9 of Title 4 of Part 6, or under any provision listed in Section
26 16590, a conviction under Section 273.6 that involves a violation
27 of a protective order, as defined in Section 6218 of the Family
28 Code, or a conviction for any felony offense that involves
29 controlled substances or alcoholic beverages, or any felony offense
30 that involves any activity related to controlled substances or
31 alcoholic beverages, or a conviction for any offense that involves
32 domestic violence, as defined in Section 13700.

33 (2) Local law enforcement agencies shall not release information
34 concerning an arrest for an offense that did not result in a
35 conviction.

36 (3) Local law enforcement agencies shall not release information
37 concerning an offense committed by a person who was under 18
38 years of age at the time he or she committed the offense.

39 (4) Local law enforcement agencies shall release any information
40 concerning any conviction or release from custody that occurred

1 within 10 years of the date on which the request for information
2 is submitted to the Attorney General, unless the conviction was
3 based upon a felony offense that involved controlled substances
4 or alcoholic beverages or a felony offense that involved any activity
5 related to controlled substances or alcoholic beverages. Where a
6 conviction was based on any of these felony offenses, local law
7 enforcement agencies shall release information concerning this
8 conviction if the conviction occurred within five years of the date
9 on which a request for the information was submitted.

10 (5) Notwithstanding paragraph (4), if information that meets
11 the requirements of paragraphs (2) to (4), inclusive, is located and
12 the information reveals a conviction of an offense specified in
13 paragraph (1), local law enforcement agencies shall release all
14 summary criminal history information concerning the person
15 whether or not the information meets the requirements of paragraph
16 (4), provided, however, that the information meets the requirements
17 of paragraphs (1) to (3), inclusive.

18 (6) Information released to the local public housing authority
19 pursuant to this section shall also be released to parole or probation
20 officers at the same time.

21 (c) State summary criminal history information shall be used
22 by the chief executive officer of the housing authority or a designee
23 only for purposes of identifying prospective participants in
24 subsidized programs and prospective and current staff who have
25 access to residences, whose criminal history is likely to pose a risk
26 to children under 18 years of age or persons categorized as aged,
27 blind, or disabled living in the housing operated by the authority.

28 (d) If a housing authority obtains summary criminal history
29 information for the purpose of screening a prospective participant
30 pursuant to this section, it shall review and evaluate that
31 information in the context of other available information and shall
32 not evaluate the person's suitability as a prospective participant
33 based solely on his or her past criminal history.

34 (e) If a housing authority determines that a prospective
35 participant is not eligible as a resident, it shall promptly notify him
36 or her of the basis for its determination and, upon request, shall
37 provide him or her within a reasonable time after the determination
38 is made with an opportunity for an informal hearing on the
39 determination in accordance with Section 960.207 of Title 24 of
40 the Code of Federal Regulations.

1 (f) Any information obtained from state summary criminal
2 history information pursuant to this section is confidential and the
3 recipient public housing authority shall not disclose or use the
4 information for any purpose other than that authorized by this
5 section. The state summary criminal history information in the
6 possession of the authority and all copies made from it shall be
7 destroyed not more than 30 days after the authority's final decision
8 whether to act on the housing status of the individual to whom the
9 information relates.

10 (g) The local public housing authority receiving state summary
11 criminal history information pursuant to this section shall adopt
12 regulations governing the receipt, maintenance, and use of the
13 information. The regulations shall include provisions that require
14 notice that the authority has access to criminal records of
15 participants and employees who have access to programs.

16 (h) Use of this information is to be consistent with Title 24 of
17 the Code of Federal Regulations and the current regulations
18 adopted by the housing authority using the information.

19 (i) Nothing in this section shall be construed to require a housing
20 authority to request and review an applicant's criminal history.

21 (j) The California Housing Authorities Association, after
22 compiling data from all public housing authorities that receive
23 summary criminal information pursuant to this chapter, shall report
24 its findings based upon this data to the Legislature prior to January
25 1, 2000.

26 SEC. 136. Section 11165.7 of the Penal Code is amended to
27 read:

28 11165.7. (a) As used in this article, "mandated reporter" is
29 defined as any of the following:

30 (1) A teacher.

31 (2) An instructional aide.

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

34 (4) A classified employee of a public school.

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

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

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

- 1 (8) An administrator or employee of a public or private
2 organization whose duties require direct contact and supervision
3 of children.
- 4 (9) Any employee of a county office of education or the State
5 Department of Education whose duties bring the employee into
6 contact with children on a regular basis.
- 7 (10) A licensee, an administrator, or an employee of a licensed
8 community care or child day care facility.
- 9 (11) A Head Start program teacher.
- 10 (12) A licensing worker or licensing evaluator employed by a
11 licensing agency, as defined in Section 11165.11.
- 12 (13) A public assistance worker.
- 13 (14) An employee of a child care institution, including, but not
14 limited to, foster parents, group home personnel, and personnel of
15 residential care facilities.
- 16 (15) A social worker, probation officer, or parole officer.
- 17 (16) An employee of a school district police or security
18 department.
- 19 (17) Any person who is an administrator or presenter of, or a
20 counselor in, a child abuse prevention program in a public or
21 private school.
- 22 (18) A district attorney investigator, inspector, or local child
23 support agency caseworker, unless the investigator, inspector, or
24 caseworker is working with an attorney appointed pursuant to
25 Section 317 of the Welfare and Institutions Code to represent a
26 minor.
- 27 (19) A peace officer, as defined in Chapter 4.5 (commencing
28 with Section 830) of Title 3 of Part 2, who is not otherwise
29 described in this section.
- 30 (20) A firefighter, except for volunteer firefighters.
- 31 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
32 resident, intern, podiatrist, chiropractor, licensed nurse, dental
33 hygienist, optometrist, marriage and family therapist, clinical social
34 worker, professional clinical counselor, or any other person who
35 is currently licensed under Division 2 (commencing with Section
36 500) of the Business and Professions Code.
- 37 (22) Any emergency medical technician I or II, paramedic, or
38 other person certified pursuant to Division 2.5 (commencing with
39 Section 1797) of the Health and Safety Code.

1 (23) A psychological assistant registered pursuant to Section
2 2913 of the Business and Professions Code.

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

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

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

11 (27) A coroner.

12 (28) A medical examiner or other person who performs
13 autopsies.

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

22 (30) A child visitation monitor. As used in this article, “child
23 visitation monitor” means a person who, for financial
24 compensation, acts as monitor of a visit between a child and
25 another person when the monitoring of that visit has been ordered
26 by a court of law.

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

30 (A) “Animal control officer” means a person employed by a
31 city, county, or city and county for the purpose of enforcing animal
32 control laws or regulations.

33 (B) “Humane society officer” means a person appointed or
34 employed by a public or private entity as a humane officer who is
35 qualified pursuant to Section 14502 or 14503 of the Corporations
36 Code.

37 (32) A clergy member, as specified in subdivision (d) of Section
38 11166. As used in this article, “clergy member” means a priest,
39 minister, rabbi, religious practitioner, or similar functionary of a
40 church, temple, or recognized denomination or organization.

1 (33) The custodian of records of a clergy member, as specified
2 in this section and subdivision (d) of Section 11166.

3 (34) An employee of a police department, county sheriff's
4 department, county probation department, or county welfare
5 department.

6 (35) An employee or volunteer of a Court Appointed Special
7 Advocate program, as defined in Rule 5.655 of the California Rules
8 of Court.

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

10 (37) A person providing services to a minor child under Section
11 12300 or 12300.1 of the Welfare and Institutions Code.

12 (38) An alcohol and drug counselor. As used in this article, an
13 "alcohol and drug counselor" is a person providing counseling,
14 therapy, or other clinical services for a state licensed or certified
15 drug, alcohol, or drug and alcohol treatment program. However,
16 alcohol or drug abuse, or both alcohol and drug abuse, is not, in
17 and of itself, a sufficient basis for reporting child abuse or neglect.

18 (39) A clinical counselor trainee, as defined in subdivision (g)
19 of Section 4999.12 of the Business and Professions Code.

20 (40) A clinical counselor intern registered under Section 4999.42
21 of the Business and Professions Code.

22 (b) Except as provided in paragraph (35) of subdivision (a),
23 volunteers of public or private organizations whose duties require
24 direct contact with and supervision of children are not mandated
25 reporters but are encouraged to obtain training in the identification
26 and reporting of child abuse and neglect and are further encouraged
27 to report known or suspected instances of child abuse or neglect
28 to an agency specified in Section 11165.9.

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

38 (d) School districts that do not train their employees specified
39 in subdivision (a) in the duties of mandated reporters under the

1 child abuse reporting laws shall report to the State Department of
2 Education the reasons why this training is not provided.

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

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

10 SEC. 137. Section 13750 of the Penal Code is amended to read:

11 13750. (a) The City of San Diego, the City of Anaheim, the
12 County of Alameda, and the County of Sonoma are each hereby
13 authorized to create a two-year pilot project for the establishment
14 of a family justice center in accordance with the provisions of this
15 section and Section 13751.

16 (b) The City of San Diego, the City of Anaheim, the County of
17 Alameda, and the County of Sonoma may each establish a
18 multiagency, multidisciplinary family justice center to assist
19 victims of domestic violence, officer-involved domestic violence,
20 sexual assault, elder or dependent adult abuse, stalking,
21 cyberstalking, cyberbullying, and human trafficking, depending
22 on the availability of services, to ensure that victims of abuse are
23 able to access all needed services in one location in order to
24 enhance victim safety, increase offender accountability, and
25 improve access to services for victims of domestic violence, sexual
26 assault, elder or dependent adult abuse, stalking, cyberstalking,
27 cyberbullying, and human trafficking.

28 (c) For purposes of this title, the following terms have the
29 following meanings:

30 (1) "Abuse" has the same meaning as set forth in Section 6203
31 of the Family Code.

32 (2) "Domestic violence" has the same meaning as set forth in
33 Section 6211 of the Family Code.

34 (3) "Sexual assault" means an act or attempt made punishable
35 by Section 220, 261, 261.5, 262, 264.1, 266c, 269, 285, 286, 288,
36 288.5, 288a, 289, or 647.6.

37 (4) "Elder or dependent adult abuse" means an act made
38 punishable by Section 368.

39 (5) "Human trafficking" has the same meaning as set forth in
40 Section 236.1.

1 (6) “Victim of crime,” “crime victim,” or “victim” means a
2 victim of domestic violence, officer-involved domestic violence,
3 sexual assault, elder or dependent adult abuse, stalking,
4 cyberstalking, cyberbullying, or human trafficking.

5 (d) For purposes of this title, family justice centers shall be
6 defined as multiagency, multidisciplinary service centers where
7 public and private agencies assign staff members on a full-time or
8 part-time basis in order to provide services to victims of crime
9 from one location in order to reduce the number of times victims
10 must tell their story, reduce the number of places victims must go
11 for help, and increase access to services and support for victims
12 and their children. Staff members at a family justice center may
13 be comprised of, but are not limited to, the following:

- 14 (1) Law enforcement personnel.
- 15 (2) Medical personnel.
- 16 (3) District attorneys and city attorneys.
- 17 (4) Victim-witness program personnel.
- 18 (5) Domestic violence shelter service staff.
- 19 (6) Community-based rape crisis, domestic violence, and human
20 trafficking advocates.
- 21 (7) Social service agency staff members.
- 22 (8) Child welfare agency social workers.
- 23 (9) County health department staff.
- 24 (10) City or county welfare and public assistance workers.
- 25 (11) Nonprofit agency counseling professionals.
- 26 (12) Civil legal service providers.
- 27 (13) Supervised volunteers from partner agencies.
- 28 (14) Other professionals providing services.

29 (e) Victims of crime shall not be required to participate in the
30 criminal justice system or cooperate with law enforcement in order
31 to receive counseling, medical care, or other services at a family
32 justice center.

33 (f) Victims of crime shall not be denied services on the grounds
34 of criminal history. No criminal history search shall be conducted
35 of a victim at a family justice center without the victim’s written
36 consent unless the criminal history search is pursuant to an active
37 criminal investigation.

38 (g) (1) Each family justice center shall consult with
39 community-based domestic violence, officer-involved domestic
40 violence, sexual assault, elder or dependent adult abuse, stalking,

1 cyberstalking, cyberbullying, and human trafficking agencies in
2 partnership with survivors of violence and abuse and their
3 advocates in the operations process of the family justice center,
4 and shall establish procedures for the ongoing input, feedback,
5 and evaluation of the family justice center by survivors of violence
6 and abuse and community-based crime victim service providers
7 and advocates.

8 (2) Each family justice center shall develop policies and
9 procedures, in collaboration with local community-based crime
10 victim service providers and local survivors of violence or abuse,
11 to ensure coordinated services are provided to victims and to
12 enhance the safety of victims and professionals at a family justice
13 center who participate in affiliated survivor-centered support or
14 advocacy groups. All family justice centers shall maintain a formal
15 client feedback, complaint, and input process to address client
16 concerns about services provided or the conduct of any family
17 justice center professionals, agency partners, or volunteers
18 providing services in a family justice center.

19 (h) (1) Each family justice center shall maintain an informed
20 client consent policy and shall be in compliance with all state and
21 federal laws protecting the confidentiality of the types of
22 information and documents that may be in a victim's file, including,
23 but not limited to, medical and legal records. Each family justice
24 center shall have a designated privacy officer to develop and
25 oversee privacy policies and procedures consistent with state and
26 federal privacy laws and the Fair Information Practice Principles.
27 At no time shall a victim be required to sign a client consent form
28 to share information in order to access services.

29 (2) Each family justice center is required to inform the victim
30 that information shared with staff members at a family justice
31 center may, under certain circumstances, be shared with law
32 enforcement professionals. Each family justice center shall obtain
33 written acknowledgment that the victim has been informed of this
34 policy.

35 (3) Information obtained from victims in family justice centers
36 shall be privileged and confidential to the extent it is protected
37 from disclosure under existing California law. Nothing in this title
38 related to confidentiality and client-authorized information sharing
39 is intended to change existing state law.

1 (4) A victim’s consent to share information pursuant to the client
2 consent policy shall not be construed as a waiver of confidentiality
3 or any privilege held by the victim or family justice center
4 professionals.

5 (i) (1) The National Family Justice Center Alliance shall, with
6 private funds, contract with an independent organization to conduct
7 an evaluation and prepare a report on the four pilot centers. The
8 independent organization conducting the evaluation shall submit
9 the report to the Office of Privacy Protection and the National
10 Family Justice Center Alliance for review and comment, and then
11 to the Assembly Committee on Judiciary, the Senate Committee
12 on Judiciary, the Assembly Committee on Public Safety, and the
13 Senate Committee on Public Safety, no later than January 1, 2013.
14 The independent organization conducting the evaluation shall, in
15 consultation with the four pilot centers, the National Family Justice
16 Center Alliance, groups that advocate on behalf of victims,
17 community-based crime victim service provider representatives,
18 including one person recommended by the federally recognized
19 state domestic violence coalition, privacy rights organizations, and
20 other relevant stakeholders, develop evaluation criteria, which
21 shall include, but not be limited to, all of the following:

22 (A) The number of clients served, number of children served,
23 reasons for seeking services at the center, services utilized, and
24 number of returning clients.

25 (B) Filing, conviction, and dismissal rates for misdemeanor and
26 felony criminal cases handled at the center.

27 (C) Subjective and objective measurements of the impacts of
28 colocated multiagency services for victims and their children
29 related to safety, empowerment, and mental and emotional
30 well-being, and comparison data from victims, if any, on their
31 access to services outside the family justice center model.

32 (D) Barriers, if any, to receiving needed services, including
33 access to services based on immigration status, criminal history,
34 or substance abuse and mental health issues, and potential ways
35 to mitigate any identified hurdles to accessing needed services.

36 (E) Whether privacy, immigration status, or other barriers
37 prevented victims from utilizing a family justice center and, if so,
38 recommendations to improve utilization rates.

1 (F) Compliance by the four pilot centers, with the service
2 delivery requirements set forth in subdivisions (e), (f), (g), and
3 (h).

4 (G) Recommended best practices and model protocols, if any.

5 (2) The independent organization conducting the evaluation
6 shall gather the evaluation data from preservices victim
7 information, postservices exit interviews, victim focus groups,
8 partner agency focus group data, and other evaluation criteria
9 necessary to conduct the evaluation under paragraph (1).

10 (3) The National Family Justice Center Alliance may include
11 any recommendations for statewide legislation, best practices, and
12 model policies and procedures in the comments submitted to the
13 independent evaluation organization and the Legislature under
14 paragraph (1).

15 SEC. 138. Section 4461 of the Probate Code is amended to
16 read:

17 4461. In a statutory form power of attorney, the language
18 granting power with respect to benefits from social security,
19 Medicare, Medicaid, or other governmental programs, or civil or
20 military service, empowers the agent to do all of the following:

21 (a) Execute vouchers in the name of the principal for allowances
22 and reimbursements payable by the United States or a foreign
23 government or by a state or subdivision of a state to the principal,
24 including allowances and reimbursements for transportation of the
25 individuals described in paragraph (1) of subdivision (a) of Section
26 4460, and for shipment of their household effects.

27 (b) Take possession and order the removal and shipment of
28 property of the principal from a post, warehouse, depot, dock, or
29 other place of storage or safekeeping, either governmental or
30 private, and execute and deliver a release, voucher, receipt, bill of
31 lading, shipping ticket, certificate, or other instrument for that
32 purpose.

33 (c) Prepare, file, and prosecute a claim of the principal to a
34 benefit or assistance, financial or otherwise, to which the principal
35 claims to be entitled, under a statute or governmental regulation.

36 (d) Prosecute, defend, submit to arbitration, settle, and propose
37 or accept a compromise with respect to any benefits the principal
38 may be entitled to receive.

1 (e) Receive the financial proceeds of a claim of the type
2 described in this section, conserve, invest, disburse, or use anything
3 received for a lawful purpose.

4 SEC. 139. Section 7660 of the Probate Code is amended to
5 read:

6 7660. (a) If a public administrator takes possession or control
7 of an estate pursuant to this chapter, the public administrator may,
8 acting as personal representative of the estate, summarily dispose
9 of the estate in the manner provided in this article in either of the
10 following circumstances:

11 (1) The total value of the property in the decedent's estate does
12 not exceed the amount prescribed in Section 13100. The authority
13 provided by this paragraph may be exercised only upon order of
14 the court. The order may be made upon ex parte application. The
15 fee to be allowed to the clerk for the filing of the application is
16 two hundred five dollars (\$205). The authority for this summary
17 administration of the estate shall be evidenced by a court order for
18 summary disposition.

19 (2) The total value of the property in the decedent's estate does
20 not exceed fifty thousand dollars (\$50,000). The authority provided
21 by this paragraph may be exercised without court authorization.

22 (A) A public administrator who is authorized to summarily
23 dispose of property of a decedent pursuant to this paragraph may
24 issue a written certification of Authority for Summary
25 Administration. The written certification is effective for 30 days
26 after the date of issuance.

27 (B) A financial institution, government or private agency,
28 retirement fund administrator, insurance company, licensed
29 securities dealer, or other person shall, without the necessity of
30 inquiring into the truth of the written certification of Authority for
31 Summary Administration and without court order or letters being
32 issued, do all of the following:

33 (i) Provide the public administrator complete information
34 concerning any property held in the name of the decedent,
35 including the names and addresses of any beneficiaries or joint
36 owners.

37 (ii) Grant the public administrator access to a safe-deposit box
38 or storage facility rented in the name of the decedent for the
39 purpose of inspection and removal of property of the decedent.

1 Costs and expenses incurred in accessing a safe-deposit box or
2 storage facility shall be borne by the estate of the decedent.

3 (iii) Surrender to the public administrator any property of the
4 decedent that is held or controlled by the financial institution,
5 agency, retirement fund administrator, insurance company, licensed
6 securities dealer, or other person.

7 (C) Receipt by a financial institution, government or private
8 agency, retirement fund administrator, insurance company, licensed
9 securities dealer, or other person of the written certification
10 provided by this article shall do both of the following:

11 (i) Constitute sufficient acquittance for providing information
12 or granting access to a safe-deposit box or a storage facility and
13 for surrendering any property of the decedent.

14 (ii) Fully discharge the financial institution, government or
15 private agency, retirement fund administrator, insurance company,
16 licensed securities dealer, or other person from liability for any
17 act or omission of the public administrator with respect to the
18 property, a safe-deposit box, or a storage facility.

19 (b) Summary disposition may be made notwithstanding the
20 existence of the decedent's will, if the will does not name an
21 executor or if the named executor refuses to act.

22 (c) Nothing in this article precludes the public administrator
23 from filing a petition with the court under any other provision of
24 this code concerning the administration of the decedent's estate.

25 (d) Petitions filed pursuant to this article shall contain the
26 information required by Section 8002.

27 (e) If a public administrator takes possession or control of an
28 estate pursuant to this chapter, this article conveys the authority
29 of a personal representative as described in Section 9650 to the
30 public administrator to summarily dispose of the estates pursuant
31 to the procedures described in paragraphs (1) and (2) of subdivision
32 (a).

33 (f) The fee charged under paragraph (1) of subdivision (a) shall
34 be distributed as provided in Section 68085.4 of the Government
35 Code. When an application is filed under that paragraph, no other
36 fees shall be charged in addition to the uniform filing fee provided
37 for in Section 68085.4 of the Government Code.

38 SEC. 140. Section 13600 of the Probate Code is amended to
39 read:

1 13600. (a) At any time after a husband or wife dies, the
2 surviving spouse or the guardian or conservator of the estate of
3 the surviving spouse may, without procuring letters of
4 administration or awaiting probate of the will, collect salary or
5 other compensation owed by an employer for personal services of
6 the deceased spouse, including compensation for unused vacation,
7 not in excess of fifteen thousand dollars (\$15,000) net.

8 (b) Not more than fifteen thousand dollars (\$15,000) net in the
9 aggregate may be collected by or for the surviving spouse under
10 this chapter from all of the employers of the decedent.

11 (c) For the purposes of this chapter, a guardian or conservator
12 of the estate of the surviving spouse may act on behalf of the
13 surviving spouse without authorization or approval of the court in
14 which the guardianship or conservatorship proceeding is pending.

15 (d) The fifteen-thousand-dollar (\$15,000) net limitation set forth
16 in subdivisions (a) and (b) does not apply to the surviving spouse
17 or the guardian or conservator of the estate of the surviving spouse
18 of a firefighter or peace officer described in subdivision (a) of
19 Section 22820 of the Government Code.

20 (e) On January 1, 2003, and on January 1 of each year thereafter,
21 the maximum net amount of salary or compensation payable under
22 subdivisions (a) and (b) to the surviving spouse or the guardian or
23 conservator of the estate of the surviving spouse may be adjusted
24 to reflect any increase in the cost of living occurring after January
25 1 of the immediately preceding year. The United States city average
26 of the “Consumer Price Index for All Urban Consumers,” as
27 published by the United States Bureau of Labor Statistics, shall
28 be used as the basis for determining the changes in the cost of
29 living. The cost-of-living increase shall equal or exceed 1 percent
30 before any adjustment is made. The net amount payable may not
31 be decreased as a result of the cost-of-living adjustment.

32 SEC. 141. Section 10490 of the Public Contract Code is
33 amended to read:

34 10490. (a) A scrutinized company is ineligible to, and shall
35 not, bid on or submit a proposal for a contract with a state agency
36 for goods or services related to products or services that are the
37 reason the company must comply with Section 13(p) of the federal
38 Securities Exchange Act of 1934.

39 (b) For purposes of this section, a “scrutinized company” is a
40 person that has been found to be in violation of Section 13(p) of

1 the federal Securities Exchange Act of 1934 by final judgment or
2 settlement entered in a civil or administrative action brought by
3 the United States Securities and Exchange Commission and the
4 person has not remedied or cured the violation in a manner accepted
5 by the commission on or before final judgment or settlement.

6 (c) A person shall cease to be regarded as a scrutinized company
7 when the person is no longer deemed to be in violation of Section
8 13(p) of the federal Securities Exchange Act of 1934, or upon
9 filing by such person of an amended or corrective filing under
10 Section 13(p) of the federal Securities Exchange Act of 1934,
11 which filing corrects the violations described in subdivision (b),
12 or after three years from the date of final judgment or settlement,
13 whichever is earlier.

14 (d) The Department of General Services shall establish in the
15 State Administrative Manual or the State Contracting Manual
16 policies and procedures for all state agencies, departments, boards,
17 and commissions to implement the contract prohibition of this
18 section.

19 (e) For purposes of this section, “goods or services” includes
20 goods and services subject to this chapter (commencing with
21 Section 10290), information technology goods and services subject
22 to Chapter 3 (commencing with Section 12100), and
23 telecommunication goods and services subject to Chapter 3.5
24 (commencing with Section 12120).

25 SEC. 142. Section 2762 of the Public Resources Code is
26 amended to read:

27 2762. (a) Within 12 months of receiving the mineral
28 information described in Section 2761, and also within 12 months
29 of the designation of an area of statewide or regional significance
30 within its jurisdiction, a lead agency shall, in accordance with state
31 policy, establish mineral resource management policies to be
32 incorporated in its general plan that will:

33 (1) Recognize mineral information classified by the State
34 Geologist and transmitted by the board.

35 (2) Assist in the management of land use that affects access to
36 areas of statewide and regional significance.

37 (3) Emphasize the conservation and development of identified
38 mineral deposits.

1 (b) A lead agency shall submit proposed mineral resource
2 management policies to the board for review and comment prior
3 to adoption.

4 (c) A subsequent amendment of the mineral resource
5 management policy previously reviewed by the board shall also
6 require review and comment by the board.

7 (d) (1) If an area is classified by the State Geologist as an area
8 described in paragraph (2) of subdivision (b) of Section 2761 and
9 the lead agency either has designated that area in its general plan
10 as having important minerals to be protected pursuant to
11 subdivision (a), or otherwise has not yet acted pursuant to
12 subdivision (a), then prior to permitting a use that would threaten
13 the potential to extract minerals in that area, the lead agency shall
14 prepare, in conjunction with preparing, if required, an
15 environmental document required by Division 13 (commencing
16 with Section 21000), a statement specifying its reasons for
17 permitting the proposed use, and shall forward a copy to the State
18 Geologist and the board for review.

19 (2) If the proposed use is subject to the requirements of Division
20 13 (commencing with Section 21000), the lead agency shall comply
21 with the public review requirements of that division. Otherwise,
22 the lead agency shall provide public notice of the availability of
23 its statement by all of the following:

24 (A) Publishing the notice at least one time in a newspaper of
25 general circulation in the area affected by the proposed use.

26 (B) Directly mailing the notice to owners of property within
27 one-half mile of the parcel or parcels on which the proposed use
28 is located as those owners are shown on the latest equalized
29 assessment roll.

30 (3) The public review period shall not be less than 60 days from
31 the date of the notice and shall include at least one public hearing.
32 The lead agency shall evaluate comments received and shall
33 prepare a written response. The written response shall describe the
34 disposition of the major issues raised. In particular, if the lead
35 agency's position on the proposed use is at variance with
36 recommendations and objections raised in the comments, the
37 written response shall address in detail why specific comments
38 and suggestions were not accepted.

39 (e) Prior to permitting a use that would threaten the potential to
40 extract minerals in an area classified by the State Geologist as an

1 area described in paragraph (3) of subdivision (b) of Section 2761,
2 the lead agency may cause to be prepared an evaluation of the area
3 in order to ascertain the significance of the mineral deposit located
4 in the area. The results of the evaluation shall be transmitted to
5 the State Geologist and the board.

6 SEC. 143. Section 4214 of the Public Resources Code is
7 amended to read:

8 4214. (a) Fire prevention fees collected pursuant to this chapter
9 shall be expended, upon appropriation by the Legislature, as
10 follows:

11 (1) The State Board of Equalization shall retain moneys
12 necessary for the payment of refunds pursuant to Section 4228 and
13 reimbursement of the State Board of Equalization for expenses
14 incurred in the collection of the fee.

15 (2) The moneys collected, other than that retained by the State
16 Board of Equalization pursuant to paragraph (1), shall be deposited
17 into the State Responsibility Area Fire Prevention Fund, which is
18 hereby created in the State Treasury, and shall be available to the
19 board and the department to expend for fire prevention activities
20 specified in subdivision (d) that benefit the owners of structures
21 within a state responsibility area who are required to pay the fire
22 prevention fee. The amount expended to benefit the owners of
23 structures within a state responsibility area shall be commensurate
24 with the amount collected from the owners within that state
25 responsibility area. All moneys in excess of the costs of
26 administration of the board and the department shall be expended
27 only for fire prevention activities in counties with state
28 responsibility areas.

29 (b) (1) The fund may also be used to cover the costs of
30 administering this chapter.

31 (2) The fund shall cover all startup costs incurred over a period
32 not to exceed two years.

33 (c) It is the intent of the Legislature that the moneys in this fund
34 be fully appropriated to the board and the department each year
35 in order to effectuate the purposes of this chapter.

36 (d) Moneys in the fund shall be used only for the following fire
37 prevention activities, which shall benefit owners of structures
38 within the state responsibility areas who are required to pay the
39 annual fire prevention fee pursuant to this chapter:

40 (1) Local assistance grants pursuant to subdivision (e).

1 (2) Grants to Fire Safe Councils, the California Conservation
2 Corps, or certified local conservation corps for fire prevention
3 projects and activities in the state responsibility areas.

4 (3) Grants to a qualified nonprofit organization with a
5 demonstrated ability to satisfactorily plan, implement, and complete
6 a fire prevention project applicable to the state responsibility areas.
7 The department may establish other qualifying criteria.

8 (4) Inspections by the department for compliance with defensible
9 space requirements around structures in state responsibility areas
10 as required by Section 4291.

11 (5) Public education to reduce fire risk in the state responsibility
12 areas.

13 (6) Fire severity and fire hazard mapping by the department in
14 the state responsibility areas.

15 (7) Other fire prevention projects in the state responsibility
16 areas, authorized by the board.

17 (e) (1) The board shall establish a local assistance grant program
18 for fire prevention activities designed to benefit structures within
19 state responsibility areas, including public education, that are
20 provided by counties and other local agencies, including special
21 districts, with state responsibility areas within their jurisdictions.

22 (2) In order to ensure an equitable distribution of funds, the
23 amount of each grant shall be based on the number of structures
24 in state responsibility areas for which the applicant is legally
25 responsible and the amount of moneys made available in the annual
26 Budget Act for this local assistance grant program.

27 (f) By January 1, 2013, and annually thereafter, the board shall
28 submit to the Legislature a written report on the status and uses of
29 the fund pursuant to this chapter. The written report shall also
30 include an evaluation of the benefits received by counties based
31 on the number of structures in state responsibility areas within
32 their jurisdictions, the effectiveness of the board's grant programs,
33 the number of defensible space inspections in the reporting period,
34 the degree of compliance with defensible space requirements,
35 measures to increase compliance, if any, and any recommendations
36 to the Legislature.

37 (g) (1) The requirement for submitting a report imposed under
38 subdivision (f) is inoperative on January 1, 2017, pursuant to
39 Section 10231.5 of the Government Code.

1 (2) A report to be submitted pursuant to subdivision (f) shall be
2 submitted in compliance with Section 9795 of the Government
3 Code.

4 (h) It is essential that this article be implemented without delay.
5 To permit timely implementation, the department may contract
6 for services related to the establishment of the fire prevention fee
7 collection process. For this purpose only, and for a period not to
8 exceed 24 months, the provisions of the Public Contract Code or
9 any other provision of law related to public contracting shall not
10 apply.

11 SEC. 144. Section 4514.5 of the Public Resources Code is
12 amended to read:

13 4514.5. A person may commence an action on his or her own
14 behalf against the board or the department for a writ of mandate
15 pursuant to Chapter 2 (commencing with Section 1084) of Title 1
16 of Part 3 of the Code of Civil Procedure to compel the board or
17 the department to carry out a duty imposed upon them pursuant
18 to this chapter.

19 SEC. 145. Section 4527 of the Public Resources Code is
20 amended to read:

21 4527. (a) (1) “Timber operations” means the cutting or
22 removal, or both, of timber or other solid wood forest products,
23 including Christmas trees, from timberlands for commercial
24 purposes, together with all the incidental work, including, but not
25 limited to, construction and maintenance of roads, fuelbreaks,
26 firebreaks, stream crossings, landings, skid trails, and beds for the
27 falling of trees, fire hazard abatement, and site preparation that
28 involves disturbance of soil or burning of vegetation following
29 timber harvesting activities, but excluding preparatory work such
30 as treemarking, surveying, or roadflagging.

31 (2) “Commercial purposes” includes (A) the cutting or removal
32 of trees that are processed into logs, lumber, or other wood products
33 and offered for sale, barter, exchange, or trade, or (B) the cutting
34 or removal of trees or other forest products during the conversion
35 of timberlands to land uses other than the growing of timber that
36 are subject to Section 4621, including, but not limited to, residential
37 or commercial developments, production of other agricultural
38 crops, recreational developments, ski developments, water
39 development projects, and transportation projects.

1 (b) For purposes of this section, the removal of trees less than
2 16 inches in diameter at breast height from a firebreak or fuelbreak
3 does not constitute “timber operations” if the removal meets all
4 of the following criteria:

5 (1) It is located within 500 feet of the boundary of an urban
6 wildland interface community at high risk of wildfire, as defined
7 in pages 751 to 776, inclusive, of Volume 66 of the Federal
8 Register (66 FR 751-02), as that definition may be amended from
9 time to time. For purposes of this paragraph, “urban wildland
10 interface community at high risk of wildfire” means an area having
11 one or more structures for every five acres.

12 (2) It is part of a community wildfire protection plan approved
13 by the department or part of a department fire plan.

14 (3) The trees to be removed will not be processed into logs or
15 lumber.

16 (4) The work to be conducted is under a firebreak or fuelbreak
17 project that has been subject to a project-based review pursuant to
18 a negative declaration, mitigated negative declaration, or
19 environmental impact report in compliance with the California
20 Environmental Quality Act (Division 13 (commencing with Section
21 21000)). For projects to be conducted on forested landscapes, as
22 defined in Section 754, the project and the project-based review
23 shall be prepared by or in consultation with a registered
24 professional forester.

25 (5) The removal of surface and ladder fuels is consistent with
26 paragraph (9) of subdivision (j) of Section 4584.

27 SEC. 146. Section 4551.5 of the Public Resources Code is
28 amended to read:

29 4551.5. Rules and regulations shall apply to the conduct of
30 timber operations and shall include, but shall not be limited to,
31 measures for fire prevention and control, for soil erosion control,
32 for site preparation that involves disturbance of soil or burning of
33 vegetation following timber harvesting activities, for water quality
34 and watershed control, for flood control, for stocking, for protection
35 against timber operations that unnecessarily destroy young timber
36 growth or timber productivity of the soil, for prevention and control
37 of damage by forest insects, pests, and disease, for the protection
38 of natural and scenic qualities in special treatment areas identified
39 pursuant to subdivision (b) of Section 30417, and for the
40 preparation of timber harvesting plans. In developing these rules,

1 the board shall solicit and consider recommendations from the
2 department, recommendations from the Department of Fish and
3 Game relating to the protection of fish and wildlife,
4 recommendations from the State Water Resources Control Board
5 and the California regional water quality control boards relating
6 to water quality, recommendations from the State Air Resources
7 Board and local air pollution control districts relating to air
8 pollution control, and recommendations of the California Coastal
9 Commission relating to the protection of natural and scenic coastal
10 zone resources in special treatment areas.

11 SEC. 147. Section 4561 of the Public Resources Code is
12 amended to read:

13 4561. It is the purpose of this section to set forth resource
14 conservation standards for timber operations, and to ensure that a
15 cover of trees of commercial species, sufficient to utilize adequately
16 the suitable and available growing space, is maintained or
17 established after timber operations.

18 To that end, the following resource conservation standards define
19 minimum acceptable stocking, and an area covered by a timber
20 harvesting plan shall be classified as acceptably stocked if either
21 of the following conditions exist within five years after completion
22 of timber operations:

23 (a) The area contains an average point count of 300 per acre,
24 except that in areas that the registered professional forester who
25 prepares the timber harvesting plan has determined are site IV
26 classification or lower, the minimum average point count shall be
27 150 per acre. Point count shall be computed as follows:

28 (1) A countable tree that is not more than four inches in diameter
29 at breast height to count as one.

30 (2) A countable tree over 4 inches and not more than 12 inches
31 in diameter at breast height to count as three.

32 (3) A countable tree over 12 inches in diameter at breast height
33 to count as six.

34 (b) (1) The average residual basal area, measured in stems one
35 inch or larger in diameter is at least 85 square feet per acre, except
36 that in areas that the registered professional forester who prepares
37 the timber harvesting plan has determined are site II classification
38 or lower, the minimum average residual basal area shall be 50
39 square feet per acre.

1 (2) The board, on a finding that it is in furtherance of the
2 purposes of this chapter, may encourage selection, shelterwood,
3 or other types of management of timber if consistent with the
4 biological requirements of the tree species and may regulate the
5 size and shape of areas in which even-age management of timber
6 is utilized.

7 (3) Rock outcroppings and other areas not normally bearing
8 timber shall not be considered as requiring stocking and are exempt
9 from the stocking provisions.

10 SEC. 148. Section 21092 of the Public Resources Code is
11 amended to read:

12 21092. (a) A lead agency that is preparing an environmental
13 impact report or a negative declaration or making a determination
14 pursuant to subdivision (c) of Section 21157.1 shall provide public
15 notice of that fact within a reasonable period of time prior to
16 certification of the environmental impact report, adoption of the
17 negative declaration, or making the determination pursuant to
18 subdivision (c) of Section 21157.1.

19 (b) (1) The notice shall specify the period during which
20 comments will be received on the draft environmental impact
21 report or negative declaration, and shall include the date, time, and
22 place of any public meetings or hearings on the proposed project,
23 a brief description of the proposed project and its location, the
24 significant effects on the environment, if any, anticipated as a result
25 of the project, the address where copies of the draft environmental
26 impact report or negative declaration, and all documents referenced
27 in the draft environmental impact report or negative declaration,
28 are available for review, and a description of how the draft
29 environmental impact report or negative declaration can be
30 provided in an electronic format.

31 (2) This section shall not be construed in any manner that results
32 in the invalidation of an action because of the alleged inadequacy
33 of the notice content if there has been substantial compliance with
34 the notice content requirements of this section.

35 (3) The notice required by this section shall be given to the last
36 known name and address of all organizations and individuals who
37 have previously requested notice, and shall also be given by at
38 least one of the following procedures:

39 (A) Publication, no fewer times than required by Section 6061
40 of the Government Code, by the public agency in a newspaper of

1 general circulation in the area affected by the proposed project. If
2 more than one area will be affected, the notice shall be published
3 in the newspaper of largest circulation from among the newspapers
4 of general circulation in those areas.

5 (B) Posting of notice by the lead agency on- and off-site in the
6 area where the project is to be located.

7 (C) Direct mailing to the owners and occupants of contiguous
8 property shown on the latest equalized assessment roll.

9 (c) For a project involving the burning of municipal wastes,
10 hazardous waste, or refuse-derived fuel, including, but not limited
11 to, tires, meeting the qualifications of subdivision (d), notice shall
12 be given to all organizations and individuals who have previously
13 requested notice and shall also be given by at least the procedures
14 specified in subparagraphs (A), (B), and (C) of paragraph (3) of
15 subdivision (b). In addition, notification shall be given by direct
16 mailing to the owners and occupants of property within one-fourth
17 of a mile of any parcel or parcels on which is located a project
18 subject to this subdivision.

19 (d) The notice requirements of subdivision (c) apply to both of
20 the following:

21 (1) The construction of a new facility.

22 (2) The expansion of an existing facility that burns hazardous
23 waste which would increase its permitted capacity by more than
24 10 percent. For purposes of this paragraph, the amount of expansion
25 of an existing facility shall be calculated by comparing the
26 proposed facility capacity with whichever of the following is
27 applicable:

28 (A) The facility capacity approved in the facility's hazardous
29 waste facilities permit pursuant to Section 25200 of the Health and
30 Safety Code or its grant of interim status pursuant to Section
31 25200.5 of the Health and Safety Code, or the facility capacity
32 authorized in any state or local agency permit allowing the
33 construction or operation of a facility for the burning of hazardous
34 waste, granted before January 1, 1990.

35 (B) The facility capacity authorized in the facility's original
36 hazardous waste facilities permit, grant of interim status, or any
37 state or local agency permit allowing the construction or operation
38 of a facility for the burning of hazardous waste, granted on or after
39 January 1, 1990.

1 (e) The notice requirements specified in subdivision (b) or (c)
2 shall not preclude a public agency from providing additional notice
3 by other means if the agency so desires, or from providing the
4 public notice required by this section at the same time and in the
5 same manner as public notice otherwise required by law for the
6 project.

7 SEC. 149. Section 21108 of the Public Resources Code is
8 amended to read:

9 21108. (a) If a state agency approves or determines to carry
10 out a project that is subject to this division, the state agency shall
11 file notice of that approval or that determination with the Office
12 of Planning and Research. The notice shall identify the person or
13 persons in subdivision (b) or (c) of Section 21065, as reflected in
14 the agency's record of proceedings, and indicate the determination
15 of the state agency whether the project will, or will not, have a
16 significant effect on the environment and shall indicate whether
17 an environmental impact report has been prepared pursuant to this
18 division.

19 (b) If a state agency determines that a project is not subject to
20 this division pursuant to subdivision (b) of Section 21080 or
21 Section 21172, and the state agency approves or determines to
22 carry out the project, the state agency or the person specified in
23 subdivision (b) or (c) of Section 21065 may file notice of the
24 determination with the Office of Planning and Research. A notice
25 filed pursuant to this subdivision shall identify the person or
26 persons in subdivision (b) or (c) of Section 21065, as reflected in
27 the agency's record of proceedings. A notice filed pursuant to this
28 subdivision by a person specified in subdivision (b) or (c) of
29 Section 21065 shall have a certificate of determination attached
30 to it issued by the state agency responsible for making the
31 determination that the project is not subject to this division pursuant
32 to subdivision (b) of Section 21080 or pursuant to Section 21172.
33 The certificate of determination may be in the form of a certified
34 copy of an existing document or record of the state agency.

35 (c) A notice filed pursuant to this section shall be available for
36 public inspection, and a list of these notices shall be posted on a
37 weekly basis in the Office of Planning and Research. Each list
38 shall remain posted for a period of 30 days. The Office of Planning
39 and Research shall retain each notice for not less than 12 months.

1 SEC. 150. Section 21152 of the Public Resources Code is
2 amended to read:

3 21152. (a) If a local agency approves or determines to carry
4 out a project that is subject to this division, the local agency shall
5 file notice of the approval or the determination within five working
6 days after the approval or determination becomes final, with the
7 county clerk of each county in which the project will be located.
8 The notice shall identify the person or persons in subdivision (b)
9 or (c) of Section 21065, as reflected in the agency's record of
10 proceedings, and indicate the determination of the local agency
11 whether the project will, or will not, have a significant effect on
12 the environment and shall indicate whether an environmental
13 impact report has been prepared pursuant to this division. The
14 notice shall also include certification that the final environmental
15 impact report, if one was prepared, together with comments and
16 responses, is available to the general public.

17 (b) If a local agency determines that a project is not subject to
18 this division pursuant to subdivision (b) of Section 21080 or
19 pursuant to Section 21172, and the local agency approves or
20 determines to carry out the project, the local agency or the person
21 specified in subdivision (b) or (c) of Section 21065 may file a
22 notice of the determination with the county clerk of each county
23 in which the project will be located. A notice filed pursuant to this
24 subdivision shall identify the person or persons in subdivision (b)
25 or (c) of Section 21065, as reflected in the agency's record of
26 proceedings. A notice filed pursuant to this subdivision by a person
27 specified in subdivision (b) or (c) of Section 21065 shall have a
28 certificate of determination attached to it issued by the local agency
29 responsible for making the determination that the project is not
30 subject to this division pursuant to subdivision (b) of Section 21080
31 or Section 21172. The certificate of determination may be in the
32 form of a certified copy of an existing document or record of the
33 local agency.

34 (c) A notice filed pursuant to this section shall be available for
35 public inspection, and shall be posted within 24 hours of receipt
36 in the office of the county clerk. A notice shall remain posted for
37 a period of 30 days. Thereafter, the clerk shall return the notice to
38 the local agency with a notation of the period it was posted. The
39 local agency shall retain the notice for not less than 12 months.

1 SEC. 151. Section 21167.6.5 of the Public Resources Code is
2 amended to read:

3 21167.6.5. (a) The petitioner or plaintiff shall name, as a real
4 party in interest, the person or persons identified by the public
5 agency in its notice filed pursuant to subdivision (a) or (b) of
6 Section 21108 or Section 21152 or, if no notice is filed, the person
7 or persons in subdivision (b) or (c) of Section 21065, as reflected
8 in the agency's record of proceedings for the project that is the
9 subject of an action or proceeding brought pursuant to Section
10 21167, 21168, or 21168.5, and shall serve the petition or complaint
11 on that real party in interest, by personal service, mail, facsimile,
12 or any other method permitted by law, not later than 20 business
13 days following service of the petition or complaint on the public
14 agency.

15 (b) The public agency shall provide the petitioner or plaintiff,
16 not later than 10 business days following service of the petition or
17 complaint on the public agency, with a list of responsible agencies
18 and a public agency having jurisdiction over a natural resource
19 affected by the project.

20 (c) The petitioner or plaintiff shall provide the responsible
21 agencies, and a public agency having jurisdiction over a natural
22 resource affected by the project, with notice of the action or
23 proceeding within 15 days of receipt of the list described in
24 subdivision (b).

25 (d) Failure to name potential persons, other than those real
26 parties in interest described in subdivision (a), is not grounds for
27 dismissal pursuant to Section 389 of the Code of Civil Procedure.

28 (e) This section is not intended to affect an existing right of a
29 party to intervene in the action.

30 SEC. 152. Section 25747 of the Public Resources Code is
31 amended to read:

32 25747. (a) The commission shall adopt guidelines governing
33 the funding programs authorized under this chapter, at a publicly
34 noticed meeting offering all interested parties an opportunity to
35 comment. Substantive changes to the guidelines shall not be
36 adopted without at least 10 days' written notice to the public. The
37 public notice of meetings required by this subdivision shall not be
38 less than 30 days. Notwithstanding any other law, any guidelines
39 adopted pursuant to this chapter or Section 399.25 of the Public
40 Utilities Code, shall be exempt from the requirements of Chapter

1 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
2 Title 2 of the Government Code. The Legislature declares that the
3 changes made to this subdivision by the act amending this section
4 during the 2002 portion of the 2001–02 Regular Session are
5 declaratory of, and not a change in, existing law.

6 (b) Funds to further the purposes of this chapter may be
7 committed for multiple years.

8 (c) Awards made pursuant to this chapter are grants, subject to
9 appeal to the commission upon a showing that factors other than
10 those described in the guidelines adopted by the commission were
11 applied in making the awards and payments. Any actions taken
12 by an applicant to apply for, or become or remain eligible and
13 registered to receive, payments or awards, including satisfying
14 conditions specified by the commission, shall not constitute the
15 rendering of goods, services, or a direct benefit to the commission.

16 (d) An award made pursuant to this chapter, the amount of the
17 award, and the terms and conditions of the grant are public
18 information.

19 SEC. 153. Section 278 of the Public Utilities Code is amended
20 to read:

21 278. (a) (1) Commencing on July 1, 2003, there is hereby
22 created the Telecommunications Access for Deaf and Disabled
23 Administrative Committee, formerly the Deaf and Disabled
24 Telecommunications Program Administrative Committee, as an
25 advisory board to advise the commission regarding the
26 development, implementation, and administration of programs to
27 provide specified telecommunications services and equipment to
28 persons in this state who are deaf or disabled, as provided for in
29 Sections 2881, 2881.1, and 2881.2.

30 (2) In addition to the membership qualifications established by
31 the commission pursuant to subdivision (a) of Section 271, the
32 commission shall establish qualifications for persons to serve as
33 members of the Telecommunications Access for Deaf and Disabled
34 Administrative Committee so that consumers of
35 telecommunications services for the deaf and disabled comprise
36 not less than two-thirds of the membership of the committee. To
37 the extent feasible, one of those members shall have experience
38 in the administration of programs similar to those provided for in
39 Sections 2881, 2881.1, and 2881.2.

1 (3) As part of its advisory role, as specified in paragraph (1),
2 the Telecommunications Access for Deaf and Disabled
3 Administrative Committee shall advise the commission regarding
4 contracts and agreements related to the Deaf and Disabled
5 Telecommunications Program as specified in subdivisions (d) and
6 (e) of Section 2881.4.

7 (b) All revenues collected by telephone corporations in rates
8 authorized by the commission to fund the programs specified in
9 subdivision (a) shall be submitted to the commission pursuant to
10 a schedule established by the commission. Commencing on July
11 1, 2003, and continuing thereafter, the commission shall transfer
12 the moneys received, and all unexpended revenue collected prior
13 to July 1, 2003, to the Controller for deposit in the Deaf and
14 Disabled Telecommunications Program Administrative Committee
15 Fund. All interest earned by moneys in the fund shall be deposited
16 in the fund. Those revenues that are collected pursuant to
17 subdivision (g) of Section 2881 shall be accounted for separately,
18 as required by subdivision (b) of Section 2881.2, and deposited in
19 the fund created by the commission pursuant to subdivision (b) of
20 Section 2881.2.

21 (c) Moneys appropriated from the Deaf and Disabled
22 Telecommunications Program Administrative Committee Fund to
23 the commission shall be utilized exclusively by the commission
24 for the programs specified in subdivision (a), including all costs
25 of the committee and the commission associated with the
26 administration and oversight of the programs and the fund.

27 (d) Commencing on July 1, 2003, staffing costs incurred by the
28 commission for oversight and administration of the programs
29 described in subdivision (a) shall be funded by moneys
30 appropriated from the Deaf and Disabled Telecommunications
31 Program Administrative Committee Fund.

32 SEC. 154. Section 366.2 of the Public Utilities Code is
33 amended to read:

34 366.2. (a) (1) Customers shall be entitled to aggregate their
35 electric loads as members of their local community with
36 community choice aggregators.

37 (2) Customers may aggregate their loads through a public
38 process with community choice aggregators, if each customer is
39 given an opportunity to opt out of his or her community's
40 aggregation program.

1 (3) If a customer opts out of a community choice aggregator’s
2 program, or has no community choice aggregation program
3 available, that customer shall have the right to continue to be served
4 by the existing electrical corporation or its successor in interest.

5 (4) The implementation of a community choice aggregation
6 program shall not result in a shifting of costs between the customers
7 of the community choice aggregator and the bundled service
8 customers of an electrical corporation.

9 (5) A community choice aggregator shall be solely responsible
10 for all generation procurement activities on behalf of the
11 community choice aggregator’s customers, except where other
12 generation procurement arrangements are expressly authorized by
13 statute.

14 (b) If a public agency seeks to serve as a community choice
15 aggregator, it shall offer the opportunity to purchase electricity to
16 all residential customers within its jurisdiction.

17 (c) (1) Notwithstanding Section 366, a community choice
18 aggregator is hereby authorized to aggregate the electrical load of
19 interested electricity consumers within its boundaries to reduce
20 transaction costs to consumers, provide consumer protections, and
21 leverage the negotiation of contracts. However, the community
22 choice aggregator may not aggregate electrical load if that load is
23 served by a local publicly owned electric utility. A community
24 choice aggregator may group retail electricity customers to solicit
25 bids, broker, and contract for electricity and energy services for
26 those customers. The community choice aggregator may enter into
27 agreements for services to facilitate the sale and purchase of
28 electricity and other related services. Those service agreements
29 may be entered into by an entity authorized to be a community
30 choice aggregator, as defined in Section 331.1.

31 (2) Under community choice aggregation, customer participation
32 may not require a positive written declaration, but each customer
33 shall be informed of his or her right to opt out of the community
34 choice aggregation program. If no negative declaration is made
35 by a customer, that customer shall be served through the
36 community choice aggregation program. If an existing customer
37 moves the location of his or her electric service within the
38 jurisdiction of the community choice aggregator, the customer
39 shall retain the same subscriber status as prior to the move, unless
40 the customer affirmatively changes his or her subscriber status. If

1 the customer is moving from outside to inside the jurisdiction of
2 the community choice aggregator, customer participation shall not
3 require a positive written declaration, but the customer shall be
4 informed of his or her right to elect not to receive service through
5 the community choice aggregator.

6 (3) A community choice aggregator establishing electrical load
7 aggregation pursuant to this section shall develop an
8 implementation plan detailing the process and consequences of
9 aggregation. The implementation plan, and any subsequent changes
10 to it, shall be considered and adopted at a duly noticed public
11 hearing. The implementation plan shall contain all of the following:

12 (A) An organizational structure of the program, its operations,
13 and its funding.

14 (B) Ratesetting and other costs to participants.

15 (C) Provisions for disclosure and due process in setting rates
16 and allocating costs among participants.

17 (D) The methods for entering and terminating agreements with
18 other entities.

19 (E) The rights and responsibilities of program participants,
20 including, but not limited to, consumer protection procedures,
21 credit issues, and shutoff procedures.

22 (F) Termination of the program.

23 (G) A description of the third parties that will be supplying
24 electricity under the program, including, but not limited to,
25 information about financial, technical, and operational capabilities.

26 (4) A community choice aggregator establishing electrical load
27 aggregation shall prepare a statement of intent with the
28 implementation plan. Any community choice load aggregation
29 established pursuant to this section shall provide for the following:

30 (A) Universal access.

31 (B) Reliability.

32 (C) Equitable treatment of all classes of customers.

33 (D) Any requirements established by state law or by the
34 commission concerning aggregated service, including those rules
35 adopted by the commission pursuant to paragraph (3) of
36 subdivision (b) of Section 8341 for the application of the
37 greenhouse gases emission performance standard to community
38 choice aggregators.

39 (5) In order to determine the cost-recovery mechanism to be
40 imposed on the community choice aggregator pursuant to

1 subdivisions (d), (e), and (f) that shall be paid by the customers of
2 the community choice aggregator to prevent shifting of costs, the
3 community choice aggregator shall file the implementation plan
4 with the commission, and any other information requested by the
5 commission that the commission determines is necessary to develop
6 the cost-recovery mechanism in subdivisions (d), (e), and (f).

7 (6) The commission shall notify any electrical corporation
8 serving the customers proposed for aggregation that an
9 implementation plan initiating community choice aggregation has
10 been filed, within 10 days of the filing.

11 (7) Within 90 days after the community choice aggregator
12 establishing load aggregation files its implementation plan, the
13 commission shall certify that it has received the implementation
14 plan, including any additional information necessary to determine
15 a cost-recovery mechanism. After certification of receipt of the
16 implementation plan and any additional information requested,
17 the commission shall then provide the community choice
18 aggregator with its findings regarding any cost recovery that must
19 be paid by customers of the community choice aggregator to
20 prevent a shifting of costs as provided for in subdivisions (d), (e),
21 and (f).

22 (8) No entity proposing community choice aggregation shall
23 act to furnish electricity to electricity consumers within its
24 boundaries until the commission determines the cost recovery that
25 must be paid by the customers of that proposed community choice
26 aggregation program, as provided for in subdivisions (d), (e), and
27 (f). The commission shall designate the earliest possible effective
28 date for implementation of a community choice aggregation
29 program, taking into consideration the impact on any annual
30 procurement plan of the electrical corporation that has been
31 approved by the commission.

32 (9) All electrical corporations shall cooperate fully with any
33 community choice aggregators that investigate, pursue, or
34 implement community choice aggregation programs. Cooperation
35 shall include providing the entities with appropriate billing and
36 electrical load data, including, but not limited to, electrical
37 consumption data as defined in Section 8380 and other data
38 detailing electricity needs and patterns of usage, as determined by
39 the commission, and in accordance with procedures established
40 by the commission. The commission shall exercise its authority

1 pursuant to Chapter 11 (commencing with Section 2100) to enforce
2 the requirements of this paragraph when it finds that the
3 requirements of this paragraph have been violated. Electrical
4 corporations shall continue to provide all metering, billing,
5 collection, and customer service to retail customers that participate
6 in community choice aggregation programs. Bills sent by the
7 electrical corporation to retail customers shall identify the
8 community choice aggregator as providing the electrical energy
9 component of the bill. The commission shall determine the terms
10 and conditions under which the electrical corporation provides
11 services to community choice aggregators and retail customers.

12 (10) If the commission finds that an electrical corporation has
13 violated this section, the commission shall consider the impact of
14 the violation upon community choice aggregators.

15 (11) The commission shall proactively expedite the complaint
16 process for disputes regarding an electrical corporation's violation
17 of its obligations pursuant to this section in order to provide for
18 timely resolution of complaints made by community choice
19 aggregation programs, so that all complaints are resolved in no
20 more than 180 days following the filing of a complaint by a
21 community choice aggregation program concerning the actions of
22 the incumbent electrical corporation. This deadline may only be
23 extended under either of the following circumstances:

24 (A) Upon agreement of all of the parties to the complaint.

25 (B) The commission makes a written determination that the
26 deadline cannot be met, including findings for the reason for this
27 determination, and issues an order extending the deadline. A single
28 order pursuant to this subparagraph shall not extend the deadline
29 for more than 60 days.

30 (12) (A) An entity authorized to be a community choice
31 aggregator, as defined in Section 331.1, that elects to implement
32 a community choice aggregation program within its jurisdiction
33 pursuant to this chapter, shall do so by ordinance. A city, county,
34 or city and county may request, by affirmative resolution of its
35 governing council or board, that another entity authorized to be a
36 community choice aggregator act as the community choice
37 aggregator on its behalf. If a city, county, or city and county, by
38 resolution, requests another authorized entity be the community
39 choice aggregator for the city, county, or city and county, that
40 authorized entity shall be responsible for adopting the ordinance

1 to implement the community choice aggregation program on behalf
2 of the city, county, or city and county.

3 (B) Two or more entities authorized to be a community choice
4 aggregator, as defined in Section 331.1, may participate as a group
5 in a community choice aggregation program pursuant to this
6 chapter, through a joint powers agency established pursuant to
7 Chapter 5 (commencing with Section 6500) of Division 7 of Title
8 1 of the Government Code, if each entity adopts an ordinance
9 pursuant to subparagraph (A). Pursuant to Section 6508.1 of the
10 Government Code, members of a joint powers agency that is a
11 community choice aggregator may specify in their joint powers
12 agreement that, unless otherwise agreed by the members of the
13 agency, the debts, liabilities, and obligations of the agency shall
14 not be the debts, liabilities, and obligations, either jointly or
15 severally, of the members of the agency. The commission shall
16 not, as a condition of registration or otherwise, require an agency's
17 members to voluntarily assume the debts, liabilities, and obligations
18 of the agency to the electrical corporation unless the commission
19 finds that the agreement by the agency's members is the only
20 reasonable means by which the agency may establish its
21 creditworthiness under the electrical corporation's tariff to pay
22 charges to the electrical corporation under the tariff.

23 (13) Following adoption of aggregation through the ordinance
24 described in paragraph (12), the program shall allow any retail
25 customer to opt out and to continue to be served as a bundled
26 service customer by the existing electrical corporation, or its
27 successor in interest. Delivery services shall be provided at the
28 same rates, terms, and conditions, as approved by the commission,
29 for community choice aggregation customers and customers that
30 have entered into a direct transaction where applicable, as
31 determined by the commission. Once enrolled in the aggregated
32 entity, any ratepayer that chooses to opt out within 60 days or two
33 billing cycles of the date of enrollment may do so without penalty
34 and shall be entitled to receive default service pursuant to paragraph
35 (3) of subdivision (a). Customers that return to the electrical
36 corporation for procurement services shall be subject to the same
37 terms and conditions as are applicable to other returning direct
38 access customers from the same class, as determined by the
39 commission, as authorized by the commission pursuant to this
40 code or any other provision of law, except that those customers

1 shall be subject to no more than a 12-month stay requirement with
2 the electrical corporation. Any reentry fees to be imposed after the
3 opt-out period specified in this paragraph, shall be approved by
4 the commission and shall reflect the cost of reentry. The
5 commission shall exclude any amounts previously determined and
6 paid pursuant to subdivisions (d), (e), and (f) from the cost of
7 reentry.

8 (14) Nothing in this section shall be construed as authorizing
9 any city or any community choice retail load aggregator to restrict
10 the ability of retail electricity customers to obtain or receive service
11 from any authorized electric service provider in a manner consistent
12 with law.

13 (15) (A) The community choice aggregator shall fully inform
14 participating customers at least twice within two calendar months,
15 or 60 days, in advance of the date of commencing automatic
16 enrollment. Notifications may occur concurrently with billing
17 cycles. Following enrollment, the aggregated entity shall fully
18 inform participating customers for not less than two consecutive
19 billing cycles. Notification may include, but is not limited to, direct
20 mailings to customers, or inserts in water, sewer, or other utility
21 bills. Any notification shall inform customers of both of the
22 following:

23 (i) That they are to be automatically enrolled and that the
24 customer has the right to opt out of the community choice
25 aggregator without penalty.

26 (ii) The terms and conditions of the services offered.

27 (B) The community choice aggregator may request the
28 commission to approve and order the electrical corporation to
29 provide the notification required in subparagraph (A). If the
30 commission orders the electrical corporation to send one or more
31 of the notifications required pursuant to subparagraph (A) in the
32 electrical corporation's normally scheduled monthly billing
33 process, the electrical corporation shall be entitled to recover from
34 the community choice aggregator all reasonable incremental costs
35 it incurs related to the notification or notifications. The electrical
36 corporation shall fully cooperate with the community choice
37 aggregator in determining the feasibility and costs associated with
38 using the electrical corporation's normally scheduled monthly
39 billing process to provide one or more of the notifications required
40 pursuant to subparagraph (A).

1 (C) Each notification shall also include a mechanism by which
2 a ratepayer may opt out of community choice aggregated service.
3 The opt out may take the form of a self-addressed return postcard
4 indicating the customer's election to remain with, or return to,
5 electrical energy service provided by the electrical corporation, or
6 another straightforward means by which the customer may elect
7 to derive electrical energy service through the electrical corporation
8 providing service in the area.

9 (16) A community choice aggregator shall have an operating
10 service agreement with the electrical corporation prior to furnishing
11 electric service to consumers within its jurisdiction. The service
12 agreement shall include performance standards that govern the
13 business and operational relationship between the community
14 choice aggregator and the electrical corporation. The commission
15 shall ensure that any service agreement between the community
16 choice aggregator and the electrical corporation includes equitable
17 responsibilities and remedies for all parties. The parties may
18 negotiate specific terms of the service agreement, provided that
19 the service agreement is consistent with this chapter.

20 (17) The community choice aggregator shall register with the
21 commission, which may require additional information to ensure
22 compliance with basic consumer protection rules and other
23 procedural matters.

24 (18) Once the community choice aggregator's contract is signed,
25 the community choice aggregator shall notify the applicable
26 electrical corporation that community choice service will
27 commence within 30 days.

28 (19) Once notified of a community choice aggregator program,
29 the electrical corporation shall transfer all applicable accounts to
30 the new supplier within a 30-day period from the date of the close
31 of the electrical corporation's normally scheduled monthly
32 metering and billing process.

33 (20) An electrical corporation shall recover from the community
34 choice aggregator any costs reasonably attributable to the
35 community choice aggregator, as determined by the commission,
36 of implementing this section, including, but not limited to, all
37 business and information system changes, except for
38 transaction-based costs as described in this paragraph. Any costs
39 not reasonably attributable to a community choice aggregator shall
40 be recovered from ratepayers, as determined by the commission.

1 All reasonable transaction-based costs of notices, billing, metering,
2 collections, and customer communications or other services
3 provided to an aggregator or its customers shall be recovered from
4 the aggregator or its customers on terms and at rates to be approved
5 by the commission.

6 (21) At the request and expense of any community choice
7 aggregator, electrical corporations shall install, maintain, and
8 calibrate metering devices at mutually agreeable locations within
9 or adjacent to the community choice aggregator's political
10 boundaries. The electrical corporation shall read the metering
11 devices and provide the data collected to the community choice
12 aggregator at the aggregator's expense. To the extent that the
13 community choice aggregator requests a metering location that
14 would require alteration or modification of a circuit, the electrical
15 corporation shall only be required to alter or modify a circuit if
16 such alteration or modification does not compromise the safety,
17 reliability, or operational flexibility of the electrical corporation's
18 facilities. All costs incurred to modify circuits pursuant to this
19 paragraph, shall be borne by the community choice aggregator.

20 (d) (1) It is the intent of the Legislature that each retail end-use
21 customer that has purchased power from an electrical corporation
22 on or after February 1, 2001, should bear a fair share of the
23 Department of Water Resources' electricity purchase costs, as well
24 as electricity purchase contract obligations incurred as of the
25 effective date of the act adding this section, that are recoverable
26 from electrical corporation customers in commission-approved
27 rates. It is further the intent of the Legislature to prevent any
28 shifting of recoverable costs between customers.

29 (2) The Legislature finds and declares that this subdivision is
30 consistent with the requirements of Division 27 (commencing with
31 Section 80000) of the Water Code and Section 360.5 of this code,
32 and is therefore declaratory of existing law.

33 (e) A retail end-use customer that purchases electricity from a
34 community choice aggregator pursuant to this section shall pay
35 both of the following:

36 (1) A charge equivalent to the charges that would otherwise be
37 imposed on the customer by the commission to recover
38 bond-related costs pursuant to any agreement between the
39 commission and the Department of Water Resources pursuant to
40 Section 80110 of the Water Code, which charge shall be payable

1 until any obligations of the Department of Water Resources
2 pursuant to Division 27 (commencing with Section 80000) of the
3 Water Code are fully paid or otherwise discharged.

4 (2) Any additional costs of the Department of Water Resources,
5 equal to the customer's proportionate share of the Department of
6 Water Resources' estimated net unavoidable electricity purchase
7 contract costs as determined by the commission, for the period
8 commencing with the customer's purchases of electricity from the
9 community choice aggregator, through the expiration of all then
10 existing electricity purchase contracts entered into by the
11 Department of Water Resources.

12 (f) A retail end-use customer purchasing electricity from a
13 community choice aggregator pursuant to this section shall
14 reimburse the electrical corporation that previously served the
15 customer for all of the following:

16 (1) The electrical corporation's unrecovered past
17 undercollections for electricity purchases, including any financing
18 costs, attributable to that customer, that the commission lawfully
19 determines may be recovered in rates.

20 (2) Any additional costs of the electrical corporation recoverable
21 in commission-approved rates, equal to the share of the electrical
22 corporation's estimated net unavoidable electricity purchase
23 contract costs attributable to the customer, as determined by the
24 commission, for the period commencing with the customer's
25 purchases of electricity from the community choice aggregator,
26 through the expiration of all then existing electricity purchase
27 contracts entered into by the electrical corporation.

28 (g) Estimated net unavoidable electricity costs paid by the
29 customers of a community choice aggregator shall be reduced by
30 the value of any benefits that remain with bundled service
31 customers, unless the customers of the community choice
32 aggregator are allocated a fair and equitable share of those benefits.

33 (h) (1) Any charges imposed pursuant to subdivision (e) shall
34 be the property of the Department of Water Resources. Any charges
35 imposed pursuant to subdivision (f) shall be the property of the
36 electrical corporation. The commission shall establish mechanisms,
37 including agreements with, or orders with respect to, electrical
38 corporations necessary to ensure that charges payable pursuant to
39 this section shall be promptly remitted to the party entitled to
40 payment.

1 (2) Charges imposed pursuant to subdivisions (d), (e), and (f)
2 shall be nonbypassable.

3 (i) The commission shall authorize community choice
4 aggregation only if the commission imposes a cost-recovery
5 mechanism pursuant to subdivisions (d), (e), (f), and (h). Except
6 as provided by this subdivision, this section shall not alter the
7 suspension by the commission of direct purchases of electricity
8 from alternate providers other than by community choice
9 aggregators, pursuant to Section 365.1.

10 (j) (1) The commission shall not authorize community choice
11 aggregation until it implements a cost-recovery mechanism,
12 consistent with subdivisions (d), (e), and (f), that is applicable to
13 customers that elected to purchase electricity from an alternate
14 provider between February 1, 2001, and January 1, 2003.

15 (2) The commission shall not authorize community choice
16 aggregation until it has adopted rules for implementing community
17 choice aggregation.

18 (k) (1) Except for nonbypassable charges imposed by the
19 commission pursuant to subdivisions (d), (e), (f), and (h), and
20 programs authorized by the commission to provide broader
21 statewide or regional benefits to all customers, electric service
22 customers of a community choice aggregator shall not be required
23 to pay nonbypassable charges for goods, services, or programs
24 that do not benefit either, or where applicable, both, the customer
25 and the community choice aggregator serving the customer.

26 (2) The commission, Energy Commission, electrical corporation,
27 or third-party administrator shall administer any program funded
28 through a nonbypassable charge on a nondiscriminatory basis so
29 that the electric service customers of a community choice
30 aggregator may participate in the program on an equal basis with
31 the customers of an electrical corporation.

32 (3) Nothing in this subdivision is intended to modify, or prohibit
33 the use of, charges funding programs for the benefit of low-income
34 customers.

35 (l) (1) An electrical corporation shall not terminate the services
36 of a community choice aggregator unless authorized by a vote of
37 the full commission. The commission shall ensure that prior to
38 authorizing a termination of service, that the community choice
39 aggregator has been provided adequate notice and a reasonable
40 opportunity to be heard regarding any electrical corporation

1 contentions in support of termination. If the contentions made by
2 the electrical corporation in favor of termination include factual
3 claims, the community choice aggregator shall be afforded an
4 opportunity to address those claims in an evidentiary hearing.

5 (2) Notwithstanding paragraph (1), if the Independent System
6 Operator has transferred the community choice aggregator's
7 scheduling coordination responsibilities to the incumbent electrical
8 corporation, an administrative law judge or assigned commissioner,
9 after providing the aggregator with notice and an opportunity to
10 respond, may suspend the aggregator's service to customers
11 pending a full vote of the commission.

12 (m) Any meeting of an entity authorized to be a community
13 choice aggregator, as defined in Section 331.1, for the purpose of
14 developing, implementing, or administering a program of
15 community choice aggregation shall be conducted in the manner
16 prescribed by the Ralph M. Brown Act (Chapter 9 (commencing
17 with Section 54950) of Part 1 of Division 2 of Title 5 of the
18 Government Code).

19 SEC. 155. Section 381.1 of the Public Utilities Code is
20 amended to read:

21 381.1. (a) No later than July 15, 2003, the commission shall
22 establish policies and procedures by which any party, including,
23 but not limited to, a local entity that establishes a community choice
24 aggregation program, may apply to become administrators for
25 cost-effective energy efficiency and conservation programs
26 established pursuant to Section 381. In determining whether to
27 approve an application to become administrators and subject to an
28 aggregator's right to elect to become an administrator pursuant to
29 subdivision (f), the commission shall consider the value of program
30 continuity and planning certainty and the value of allowing
31 competitive opportunities for potentially new administrators. The
32 commission shall weigh the benefits of the party's proposed
33 program to ensure that the program meets the following objectives:

34 (1) Is consistent with the goals of the existing programs
35 established pursuant to Section 381.

36 (2) Advances the public interest in maximizing cost-effective
37 electricity savings and related benefits.

38 (3) Accommodates the need for broader statewide or regional
39 programs.

1 (b) All audit and reporting requirements established by the
2 commission pursuant to Section 381 and other statutes shall apply
3 to the parties chosen as administrators under this section.

4 (c) If a community choice aggregator is not the administrator
5 of energy efficiency and conservation programs for which its
6 customers are eligible, the commission shall require the
7 administrator of cost-effective energy efficiency and conservation
8 programs to direct a proportional share of its approved energy
9 efficiency program activities for which the community choice
10 aggregator's customers are eligible, to the community choice
11 aggregator's territory without regard to customer class. To the
12 extent that energy efficiency and conservation programs are
13 targeted to specific locations to avoid or defer transmission or
14 distribution system upgrades, the targeted expenditures shall
15 continue irrespective of whether the loads in those locations are
16 served by an aggregator or by an electrical corporation. The
17 commission shall also direct the administrator to work with the
18 community choice aggregator, to provide advance information
19 where appropriate about the likely impacts of energy efficiency
20 programs and to accommodate any unique community program
21 needs by placing more, or less, emphasis on particular approved
22 programs to the extent that these special shifts in emphasis in no
23 way diminish the effectiveness of broader statewide or regional
24 programs. If the community choice aggregator proposes energy
25 efficiency programs other than programs already approved for
26 implementation in its territory, it shall do so under established
27 commission policies and procedures. The commission may order
28 an adjustment to the share of energy efficiency program activities
29 directed to a community choice aggregator's territory if necessary
30 to ensure an equitable and cost-effective allocation of energy
31 efficiency program activities.

32 (d) The commission shall establish an impartial process for
33 making the determination of whether a third party, including a
34 community choice aggregator, may become administrators for
35 cost-effective energy efficiency and conservation programs
36 pursuant to subdivision (a), and shall not delegate or otherwise
37 transfer the commission's authority to make this determination for
38 a community choice aggregator to an electrical corporation.

39 (e) The impartial process established by the commission shall
40 allow a registered community choice aggregator to elect to become

1 the administrator of funds collected from the aggregator’s electric
2 service customers and collected through a nonbypassable charge
3 authorized by the commission, for cost-effective energy efficiency
4 and conservation programs, except those funds collected for
5 broader statewide and regional programs authorized by the
6 commission.

7 (f) A community choice aggregator electing to become an
8 administrator shall submit a plan, approved by its governing board,
9 to the commission for the administration of cost-effective energy
10 efficiency and conservation programs for the aggregator’s electric
11 service customers that includes funding requirements, a program
12 description, a cost-effectiveness analysis, and the duration of the
13 program. The commission shall certify that the plan submitted
14 does all of the following:

15 (1) Is consistent with the goals of the programs established
16 pursuant to this section and Section 399.4.

17 (2) Advances the public interest in maximizing cost-effective
18 electricity savings and related benefits.

19 (3) Accommodates the need for broader statewide or regional
20 programs.

21 (4) Includes audit and reporting requirements consistent with
22 the audit and reporting requirements established by the commission
23 pursuant to this section.

24 (5) Includes evaluation, measurement, and verification protocols
25 established by the community choice aggregator.

26 (6) Includes performance metrics regarding the community
27 choice aggregator’s achievement of the objectives listed in
28 paragraphs (1) to (5), inclusive, and in any previous plan.

29 (g) If the commission does not certify the plan for the
30 administration of cost-effective energy efficiency and conservation
31 programs submitted by a community choice aggregator pursuant
32 to subdivision (f), the community choice aggregator electing to
33 administer these programs may submit an amended plan to the
34 commission for certification. No moneys may be released to a
35 community choice aggregator unless the commission certifies the
36 plan pursuant to subdivision (f).

37 SEC. 156. Section 395.5 of the Public Utilities Code is
38 amended to read:

39 395.5. (a) For purposes of this section, the following terms
40 have the following meanings:

1 (1) “Nonprofit charitable organization” means any charitable
2 organization described in Section 501(c)(3) of the federal Internal
3 Revenue Code that has as its primary purpose serving the needs
4 of the poor or elderly.

5 (2) “Electric commodity” means electricity used by the customer
6 or a supply of electricity available for use by the customer, and
7 does not include services associated with the transmission and
8 distribution of electricity.

9 (b) Notwithstanding Section 80110 of the Water Code, a
10 nonprofit charitable organization may acquire electric commodity
11 service through a direct transaction with an electric service provider
12 if electric commodity service is donated free of charge without
13 compensation.

14 (c) A nonprofit charitable organization that acquires donated
15 electric commodity service through a direct transaction pursuant
16 to this section shall be responsible for paying all of the following:

17 (1) Those charges and surcharges that would be imposed upon
18 a retail end-use customer of a community choice aggregator
19 pursuant to subdivisions (d), (e), (f), and (h) of Section 366.2.

20 (2) The transmission and distribution charges of an electrical
21 corporation or a local publicly owned electric utility.

22 (3) A nonbypassable charge imposed pursuant to Article 7
23 (commencing with Section 381), Article 8 (commencing with
24 Section 385), or Article 15 (commencing with Section 399).

25 (4) Costs imposed upon a load-serving entity pursuant to Section
26 380.

27 (d) Existing direct access rules and all service obligations
28 otherwise applicable to electric service providers shall govern
29 transactions under this section.

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

33 SEC. 157. Section 399.11 of the Public Utilities Code is
34 amended to read:

35 399.11. The Legislature finds and declares all of the following:

36 (a) In order to attain a target of generating 20 percent of total
37 retail sales of electricity in California from eligible renewable
38 energy resources by December 31, 2013, and 33 percent by
39 December 31, 2020, it is the intent of the Legislature that the

1 commission and the Energy Commission implement the California
2 Renewables Portfolio Standard Program described in this article.

3 (b) Achieving the renewables portfolio standard through the
4 procurement of various electricity products from eligible renewable
5 energy resources is intended to provide unique benefits to
6 California, including all of the following, each of which
7 independently justifies the program:

8 (1) Displacing fossil fuel consumption within the state.

9 (2) Adding new electrical generating facilities in the
10 transmission network within the Western Electricity Coordinating
11 Council service area.

12 (3) Reducing air pollution in the state.

13 (4) Meeting the state's climate change goals by reducing
14 emissions of greenhouse gases associated with electrical generation.

15 (5) Promoting stable retail rates for electric service.

16 (6) Meeting the state's need for a diversified and balanced
17 energy generation portfolio.

18 (7) Assistance with meeting the state's resource adequacy
19 requirements.

20 (8) Contributing to the safe and reliable operation of the
21 electrical grid, including providing predictable electrical supply,
22 voltage support, lower line losses, and congestion relief.

23 (9) Implementing the state's transmission and land use planning
24 activities related to development of eligible renewable energy
25 resources.

26 (c) The California Renewables Portfolio Standard Program is
27 intended to complement the Renewable Energy Resources Program
28 administered by the Energy Commission and established pursuant
29 to Chapter 8.6 (commencing with Section 25740) of Division 15
30 of the Public Resources Code.

31 (d) New and modified electric transmission facilities may be
32 necessary to facilitate the state achieving its renewables portfolio
33 standard targets.

34 (e) (1) Supplying electricity to California end-use customers
35 that is generated by eligible renewable energy resources is
36 necessary to improve California's air quality and public health,
37 and the commission shall ensure rates are just and reasonable, and
38 are not significantly affected by the procurement requirements of
39 this article. This electricity may be generated anywhere in the

1 interconnected grid that includes many states, and areas of both
2 Canada and Mexico.

3 (2) This article requires generating resources located outside of
4 California that are able to supply that electricity to California
5 end-use customers to be treated identically to generating resources
6 located within the state, without discrimination.

7 (3) California electrical corporations have already executed,
8 and the commission has approved, power purchase agreements
9 with eligible renewable energy resources located outside of
10 California that will supply electricity to California end-use
11 customers. These resources will fully count toward meeting the
12 renewables portfolio standard procurement requirements. In
13 addition, there are nearly 7,000 megawatts of additional proposed
14 renewable energy resources located outside of California that are
15 awaiting interconnection approval from the Independent System
16 Operator. All of these resources, if procured, will count as eligible
17 renewable energy resources that satisfy the portfolio content
18 requirements of paragraph (1) of subdivision (c) of Section 399.16.

19 SEC. 158. Section 399.12 of the Public Utilities Code is
20 amended to read:

21 399.12. For purposes of this article, the following terms have
22 the following meanings:

23 (a) “Conduit hydroelectric facility” means a facility for the
24 generation of electricity that uses only the hydroelectric potential
25 of an existing pipe, ditch, flume, siphon, tunnel, canal, or other
26 manmade conduit that is operated to distribute water for a
27 beneficial use.

28 (b) “Balancing authority” means the responsible entity that
29 integrates resource plans ahead of time, maintains load-interchange
30 generation balance within a balancing authority area, and supports
31 interconnection frequency in real time.

32 (c) “Balancing authority area” means the collection of
33 generation, transmission, and loads within the metered boundaries
34 of the area within which the balancing authority maintains the
35 electrical load-resource balance.

36 (d) “California balancing authority” is a balancing authority
37 with control over a balancing authority area primarily located in
38 this state and operating for retail sellers and local publicly owned
39 electric utilities subject to the requirements of this article and
40 includes the Independent System Operator (ISO) and a local

1 publicly owned electric utility operating a transmission grid that
2 is not under the operational control of the ISO. A California
3 balancing authority is responsible for the operation of the
4 transmission grid within its metered boundaries which may not be
5 limited by the political boundaries of the State of California.

6 (e) “Eligible renewable energy resource” means an electrical
7 generating facility that meets the definition of a “renewable
8 electrical generation facility” in Section 25741 of the Public
9 Resources Code, subject to the following:

10 (1) (A) An existing small hydroelectric generation facility of
11 30 megawatts or less shall be eligible only if a retail seller or local
12 publicly owned electric utility procured the electricity from the
13 facility as of December 31, 2005. A small hydroelectric generation
14 unit with a nameplate capacity not exceeding 40 megawatts that
15 is operated as part of a water supply or conveyance system is an
16 eligible renewable energy resource if the retail seller or local
17 publicly owned electric utility procured the electricity from the
18 facility as of December 31, 2005. A new hydroelectric facility that
19 commences generation of electricity after December 31, 2005, is
20 not an eligible renewable energy resource if it will cause an adverse
21 impact on instream beneficial uses or cause a change in the volume
22 or timing of streamflow.

23 (B) Notwithstanding subparagraph (A), a conduit hydroelectric
24 facility of 30 megawatts or less that commenced operation before
25 January 1, 2006, is an eligible renewable energy resource. A
26 conduit hydroelectric facility of 30 megawatts or less that
27 commences operation after December 31, 2005, is an eligible
28 renewable energy resource so long as it does not cause an adverse
29 impact on instream beneficial uses or cause a change in the volume
30 or timing of streamflow.

31 (C) A facility approved by the governing board of a local
32 publicly owned electric utility prior to June 1, 2010, for
33 procurement to satisfy renewable energy procurement obligations
34 adopted pursuant to former Section 387, shall be certified as an
35 eligible renewable energy resource by the Energy Commission
36 pursuant to this article, if the facility is a “renewable electrical
37 generation facility” as defined in Section 25741 of the Public
38 Resources Code.

39 (2) A facility engaged in the combustion of municipal solid
40 waste shall not be considered an eligible renewable energy resource

1 unless it is located in Stanislaus County and was operational prior
2 to September 26, 1996.

3 (f) “Procure” means to acquire through ownership or contract.

4 (g) “Procurement entity” means any person or corporation
5 authorized by the commission to enter into contracts to procure
6 eligible renewable energy resources on behalf of customers of a
7 retail seller pursuant to subdivision (f) of Section 399.13.

8 (h) (1) “Renewable energy credit” means a certificate of proof
9 associated with the generation of electricity from an eligible
10 renewable energy resource, issued through the accounting system
11 established by the Energy Commission pursuant to Section 399.25,
12 that one unit of electricity was generated and delivered by an
13 eligible renewable energy resource.

14 (2) “Renewable energy credit” includes all renewable and
15 environmental attributes associated with the production of
16 electricity from the eligible renewable energy resource, except for
17 an emissions reduction credit issued pursuant to Section 40709 of
18 the Health and Safety Code and any credits or payments associated
19 with the reduction of solid waste and treatment benefits created
20 by the utilization of biomass or biogas fuels.

21 (3) (A) Electricity generated by an eligible renewable energy
22 resource attributable to the use of nonrenewable fuels, beyond a
23 de minimis quantity used to generate electricity in the same process
24 through which the facility converts renewable fuel to electricity,
25 shall not result in the creation of a renewable energy credit. The
26 Energy Commission shall set the de minimis quantity of
27 nonrenewable fuels for each renewable energy technology at a
28 level of no more than 2 percent of the total quantity of fuel used
29 by the technology to generate electricity. The Energy Commission
30 may adjust the de minimis quantity for an individual facility, up
31 to a maximum of 5 percent, if it finds that all of the following
32 conditions are met:

33 (i) The facility demonstrates that the higher quantity of
34 nonrenewable fuel will lead to an increase in generation from the
35 eligible renewable energy facility that is significantly greater than
36 generation from the nonrenewable fuel alone.

37 (ii) The facility demonstrates that the higher quantity of
38 nonrenewable fuels will reduce the variability of its electrical
39 output in a manner that results in net environmental benefits to the
40 state.

1 (iii) The higher quantity of nonrenewable fuel is limited to either
2 natural gas or hydrogen derived by reformation of a fossil fuel.

3 (B) Electricity generated by a small hydroelectric generation
4 facility shall not result in the creation of a renewable energy credit
5 unless the facility meets the requirements of subparagraph (A) of
6 paragraph (1) of subdivision (e).

7 (C) Electricity generated by a conduit hydroelectric generation
8 facility shall not result in the creation of a renewable energy credit
9 unless the facility meets the requirements of subparagraph (B) of
10 paragraph (1) of subdivision (e).

11 (D) Electricity generated by a facility engaged in the combustion
12 of municipal solid waste shall not result in the creation of a
13 renewable energy credit unless the facility meets the requirements
14 of paragraph (2) of subdivision (e).

15 (i) “Renewables portfolio standard” means the specified
16 percentage of electricity generated by eligible renewable energy
17 resources that a retail seller or a local publicly owned electric utility
18 is required to procure pursuant to this article.

19 (j) “Retail seller” means an entity engaged in the retail sale of
20 electricity to end-use customers located within the state, including
21 any of the following:

22 (1) An electrical corporation, as defined in Section 218.

23 (2) A community choice aggregator. The commission shall
24 institute a rulemaking to determine the manner in which a
25 community choice aggregator will participate in the renewables
26 portfolio standard program subject to the same terms and conditions
27 applicable to an electrical corporation.

28 (3) An electric service provider, as defined in Section 218.3,
29 for all sales of electricity to customers beginning January 1, 2006.
30 The commission shall institute a rulemaking to determine the
31 manner in which electric service providers will participate in the
32 renewables portfolio standard program. The electric service
33 provider shall be subject to the same terms and conditions
34 applicable to an electrical corporation pursuant to this article. This
35 paragraph does not impair a contract entered into between an
36 electric service provider and a retail customer prior to the
37 suspension of direct access by the commission pursuant to Section
38 80110 of the Water Code.

39 (4) “Retail seller” does not include any of the following:

1 (A) A corporation or person employing cogeneration technology
2 or producing electricity consistent with subdivision (b) of Section
3 218.

4 (B) The Department of Water Resources acting in its capacity
5 pursuant to Division 27 (commencing with Section 80000) of the
6 Water Code.

7 (C) A local publicly owned electric utility.

8 (k) “WECC” means the Western Electricity Coordinating
9 Council of the North American Electric Reliability Corporation,
10 or a successor to the corporation.

11 SEC. 159. Section 399.18 of the Public Utilities Code is
12 amended to read:

13 399.18. (a) This section applies to an electrical corporation
14 that as of January 1, 2010, met either of the following conditions:

15 (1) Served 30,000 or fewer customer accounts in California and
16 had issued at least four solicitations for eligible renewable energy
17 resources prior to June 1, 2010.

18 (2) Had 1,000 or fewer customer accounts in California and was
19 not connected to any transmission system or to the Independent
20 System Operator.

21 (b) For an electrical corporation or its successor, electricity
22 products from eligible renewable energy resources may be used
23 for compliance with this article, notwithstanding any procurement
24 content limitation in Section 399.16, provided that both of the
25 following conditions are met:

26 (1) The electrical corporation or its successor participates in,
27 and complies with, the accounting system administered by the
28 Energy Commission pursuant to subdivision (b) of Section 399.25.

29 (2) The Energy Commission verifies that the electricity
30 generated by the facility is eligible to meet the requirements of
31 Section 399.15.

32 SEC. 160. Section 2775.6 of the Public Utilities Code is
33 amended to read:

34 2775.6. Every request for the recovery in rates of any costs or
35 liability incurred by a gas corporation and resulting from any
36 violation of Section 25421 of the Health and Safety Code, or of
37 any costs, damages, penalties, or other liabilities incurred in
38 connection with the sale of landfill gas containing chemicals known
39 to the state to cause cancer or reproductive toxicity shall be
40 reviewed by the commission for the purposes of establishing rates

1 for the gas corporation. If the commission finds that the gas
2 corporation, on or after January 1, 1989, knowingly and
3 intentionally violated Section 25421 of the Health and Safety Code,
4 the costs and liability shall be disallowed by the commission for
5 purposes of determining rates.

6 SEC. 161. Section 2830 of the Public Utilities Code is amended
7 to read:

8 2830. (a) As used in this section, the following terms have the
9 following meanings:

10 (1) "Benefiting account" means an electricity account, or more
11 than one account, located within the geographical boundaries of
12 a local government or, for a campus, within the geographical
13 boundary of the city, county, or city and county in which the
14 campus is located, that is mutually agreed upon by the local
15 government or campus and an electrical corporation.

16 (2) "Bill credit" means an amount of money credited to a
17 benefiting account that is calculated based upon the time-of-use
18 electricity generation component of the electricity usage charge
19 of the generating account, multiplied by the quantities of electricity
20 generated by an eligible renewable generating facility that are
21 exported to the grid during the corresponding time period.
22 Electricity is exported to the grid if it is generated by an eligible
23 renewable generating facility, is not utilized onsite by the local
24 government, and the electricity flows through the meter site and
25 on to the electrical corporation's distribution or transmission
26 infrastructure.

27 (3) "Campus" means an individual community college campus,
28 individual California State University campus, or individual
29 University of California campus.

30 (4) "Eligible renewable generating facility" means a generation
31 facility that meets all of the following requirements:

32 (A) Has a generating capacity of no more than five megawatts.

33 (B) Is an eligible renewable energy resource, as defined in
34 Article 16 (commencing with Section 399.11) of Part 1.

35 (C) Is located within the geographical boundary of the local
36 government or, for a campus, within the geographical boundary
37 of the city or city and county, if the campus is located in an
38 incorporated area, or county, if the campus is located in an
39 unincorporated area.

1 (D) Is owned by, operated by, or on property under the control
2 of the local government or campus.

3 (E) Is sized to offset all or part of the electrical load of the
4 benefiting account. For these purposes, premises that are leased
5 by a local government or campus are under the control of the local
6 government or campus.

7 (5) “Generating account” means the time-of-use electric service
8 account of the local government or campus where the eligible
9 renewable generating facility is located.

10 (6) “Local government” means a city, county, whether general
11 law or chartered, city and county, special district, school district,
12 political subdivision, or other local public agency, but shall not
13 mean a joint powers authority, the state or any agency or
14 department of the state, other than an individual campus of the
15 University of California or the California State University.

16 (b) Subject to the limitation in subdivision (h), a local
17 government may elect to receive electric service pursuant to this
18 section if all of the following conditions are met:

19 (1) The local government designates one or more benefiting
20 accounts to receive a bill credit.

21 (2) A benefiting account receives service under a time-of-use
22 rate schedule.

23 (3) The benefiting account is the responsibility of, and serves
24 property that is owned, operated, or on property under the control
25 of the same local government that owns, operates, or controls the
26 eligible renewable generating facility.

27 (4) The electrical output of the eligible renewable generating
28 facility is metered for time of use to allow calculation of the bill
29 credit based upon when the electricity is exported to the grid.

30 (5) All costs associated with the metering requirements of
31 paragraphs (2) and (4) are the responsibility of the local
32 government.

33 (6) All costs associated with interconnection are the
34 responsibility of the local government. For purposes of this
35 paragraph, “interconnection” has the same meaning as defined in
36 Section 2803, except that it applies to the interconnection of an
37 eligible renewable generating facility rather than the energy source
38 of a private energy producer.

39 (7) The local government does not sell electricity exported to
40 the electrical grid to a third party.

1 (8) All electricity exported to the grid by the local government
2 that is generated by the eligible renewable generating facility
3 becomes the property of the electrical corporation to which the
4 facility is interconnected, but shall not be counted toward the
5 electrical corporation's total retail sales for purposes of Article 16
6 (commencing with Section 399.11) of Chapter 2.3 of Part 1.
7 Ownership of the renewable energy credits, as defined in Section
8 399.12, shall be the same as the ownership of the renewable energy
9 credits associated with electricity that is net metered pursuant to
10 Section 2827.

11 (9) An electrical corporation shall not be required to compensate
12 a local government for electricity generated from an eligible
13 renewable facility pursuant to this section in excess of the bill
14 credits applied to the designated benefiting account. A local
15 government renewable generation facility participating pursuant
16 to this section shall not be eligible for any other tariff or program
17 that requires an electrical corporation to purchase generation from
18 that facility while participating in the local government renewable
19 energy self-generation program pursuant to this section.

20 (c) (1) A benefiting account shall be billed for all electricity
21 usage, and for each bill component, at the rate schedule applicable
22 to the benefiting account, including any cost-responsibility
23 surcharge or other cost recovery mechanism, as determined by the
24 commission, to reimburse the Department of Water Resources for
25 purchases of electricity, pursuant to Division 27 (commencing
26 with Section 80000) of the Water Code.

27 (2) The bill shall then subtract the bill credit applicable to the
28 benefiting account. The generation component credited to the
29 benefiting account shall not include the cost-responsibility
30 surcharge or other cost recovery mechanism, as determined by the
31 commission, to reimburse the Department of Water Resources for
32 purchases of electricity, pursuant to Division 27 (commencing
33 with Section 80000) of the Water Code. The electrical corporation
34 shall ensure that the local government receives the full bill credit.

35 (3) If, during the billing cycle, the generation component of the
36 electricity usage charges exceeds the bill credit, the benefiting
37 account shall be billed for the difference.

38 (4) If, during the billing cycle, the bill credit applied pursuant
39 to paragraph (2) exceeds the generation component of the electricity

1 usage charges, the difference shall be carried forward as a financial
2 credit to the next billing cycle.

3 (5) After the electricity usage charge pursuant to paragraph (1)
4 and the credit pursuant to paragraph (2) are determined for the last
5 billing cycle of a 12-month period, any remaining credit resulting
6 from the application of this section shall be reset to zero.

7 (d) The commission shall ensure that the transfer of a bill credit
8 to a benefiting account does not result in a shifting of costs to
9 bundled service subscribers. The costs associated with the transfer
10 of a bill credit shall include all billing-related expenses.

11 (e) Not more frequently than once per year, and upon providing
12 the electrical corporation with a minimum of 60 days' notice, the
13 local government may elect to change a benefiting account. Any
14 credit resulting from the application of this section earned prior to
15 the change in a benefiting account that has not been used as of the
16 date of the change in the benefiting account shall be applied, and
17 may only be applied, to a benefiting account as changed.

18 (f) A local government shall provide the electrical corporation
19 to which the eligible renewable generating facility will be
20 interconnected with not less than 60 days' notice prior to the
21 eligible renewable generating facility becoming operational. The
22 electrical corporation shall file an advice letter with the commission
23 that complies with this section not later than 30 days after receipt
24 of the notice proposing a rate tariff for a benefiting account. The
25 commission, within 30 days of the date of filing, shall approve the
26 proposed tariff or specify conforming changes to be made by the
27 electrical corporation to be filed in a new advice letter.

28 (g) The local government may terminate its election pursuant
29 to subdivision (b), upon providing the electrical corporation with
30 a minimum of 60 days' notice. Should the local government sell
31 its interest in the eligible renewable generating facility, or sell the
32 electricity generated by the eligible renewable generating facility,
33 in a manner other than required by this section, upon the date of
34 either event, and the earliest date if both events occur, no further
35 bill credit pursuant to paragraph (3) of subdivision (b) may be
36 earned. Only credit earned prior to that date shall be made to a
37 benefiting account.

38 (h) An electrical corporation is not obligated to provide a bill
39 credit to a benefiting account that is not designated by a local
40 government prior to the point in time that the combined statewide

1 cumulative rated generating capacity of all eligible renewable
2 generating facilities within the service territories of the state's
3 three largest electrical corporations reaches 250 megawatts. Only
4 those eligible renewable generating facilities that are providing
5 bill credits to benefiting accounts pursuant to this section shall
6 count toward reaching this 250-megawatt limitation. Each electrical
7 corporation shall only be required to offer service or contracts
8 under this section until that electrical corporation reaches its
9 proportionate share of the 250-megawatt limitation based on the
10 ratio of its peak demand to the total statewide peak demand of all
11 electrical corporations.

12 (i) This chapter does not apply to an electrical corporation with
13 60,000 or fewer customer accounts.

14 SEC. 162. Section 2851 of the Public Utilities Code is amended
15 to read:

16 2851. (a) In implementing the California Solar Initiative, the
17 commission shall do all of the following:

18 (1) The commission shall authorize the award of monetary
19 incentives for up to the first megawatt of alternating current
20 generated by solar energy systems that meet the eligibility criteria
21 established by the Energy Commission pursuant to Chapter 8.8
22 (commencing with Section 25780) of Division 15 of the Public
23 Resources Code. The commission shall determine the eligibility
24 of a solar energy system, as defined in Section 25781 of the Public
25 Resources Code, to receive monetary incentives until the time the
26 Energy Commission establishes eligibility criteria pursuant to
27 Section 25782 of the *Public Resources Code*. Monetary incentives
28 shall not be awarded for solar energy systems that do not meet the
29 eligibility criteria. The incentive level authorized by the
30 commission shall decline each year following implementation of
31 the California Solar Initiative, at a rate of no less than an average
32 of 7 percent per year, and shall be zero as of December 31, 2016.
33 The commission shall adopt and publish a schedule of declining
34 incentive levels no less than 30 days in advance of the first decline
35 in incentive levels. The commission may develop incentives based
36 upon the output of electricity from the system, provided those
37 incentives are consistent with the declining incentive levels of this
38 paragraph and the incentives apply to only the first megawatt of
39 electricity generated by the system.

1 (2) The commission shall adopt a performance-based incentive
2 program so that by January 1, 2008, 100 percent of incentives for
3 solar energy systems of 100 kilowatts or greater and at least 50
4 percent of incentives for solar energy systems of 30 kilowatts or
5 greater are earned based on the actual electrical output of the solar
6 energy systems. The commission shall encourage, and may require,
7 performance-based incentives for solar energy systems of less than
8 30 kilowatts. Performance-based incentives shall decline at a rate
9 of no less than an average of 7 percent per year. In developing the
10 performance-based incentives, the commission may:

11 (A) Apply performance-based incentives only to customer
12 classes designated by the commission.

13 (B) Design the performance-based incentives so that customers
14 may receive a higher level of incentives than under incentives
15 based on installed electrical capacity.

16 (C) Develop financing options that help offset the installation
17 costs of the solar energy system, provided that this financing is
18 ultimately repaid in full by the consumer or through the application
19 of the performance-based rebates.

20 (3) By January 1, 2008, the commission, in consultation with
21 the Energy Commission, shall require reasonable and cost-effective
22 energy efficiency improvements in existing buildings as a condition
23 of providing incentives for eligible solar energy systems, with
24 appropriate exemptions or limitations to accommodate the limited
25 financial resources of low-income residential housing.

26 (4) Notwithstanding subdivision (g) of Section 2827, the
27 commission may develop a time-variant tariff that creates the
28 maximum incentive for ratepayers to install solar energy systems
29 so that the system's peak electricity production coincides with
30 California's peak electricity demands and that ensures that
31 ratepayers receive due value for their contribution to the purchase
32 of solar energy systems and customers with solar energy systems
33 continue to have an incentive to use electricity efficiently. In
34 developing the time-variant tariff, the commission may exclude
35 customers participating in the tariff from the rate cap for residential
36 customers for existing baseline quantities or usage by those
37 customers of up to 130 percent of existing baseline quantities, as
38 required by Section 80110 of the Water Code. Nothing in this
39 paragraph authorizes the commission to require time-variant pricing
40 for ratepayers without a solar energy system.

1 (b) Notwithstanding subdivision (a), in implementing the
2 California Solar Initiative, the commission may authorize the award
3 of monetary incentives for solar thermal and solar water heating
4 devices, in a total amount up to one hundred million eight hundred
5 thousand dollars (\$100,800,000).

6 (c) (1) In implementing the California Solar Initiative, the
7 commission shall not allocate more than fifty million dollars
8 (\$50,000,000) to research, development, and demonstration that
9 explores solar technologies and other distributed generation
10 technologies that employ or could employ solar energy for
11 generation or storage of electricity or to offset natural gas usage.
12 Any program that allocates additional moneys to research,
13 development, and demonstration shall be developed in
14 collaboration with the Energy Commission to ensure there is no
15 duplication of efforts, and adopted by the commission through a
16 rulemaking or other appropriate public proceeding. Any grant
17 awarded by the commission for research, development, and
18 demonstration shall be approved by the full commission at a public
19 meeting. This subdivision does not prohibit the commission from
20 continuing to allocate moneys to research, development, and
21 demonstration pursuant to the self-generation incentive program
22 for distributed generation resources originally established pursuant
23 to Chapter 329 of the Statutes of 2000, as modified pursuant to
24 Section 379.6.

25 (2) The Legislature finds and declares that a program that
26 provides a stable source of monetary incentives for eligible solar
27 energy systems will encourage private investment sufficient to
28 make solar technologies cost effective.

29 (3) On or before June 30, 2009, and by June 30 of every year
30 thereafter, the commission shall submit to the Legislature an
31 assessment of the success of the California Solar Initiative program.
32 That assessment shall include the number of residential and
33 commercial sites that have installed solar thermal devices for which
34 an award was made pursuant to subdivision (b) and the dollar value
35 of the award, the number of residential and commercial sites that
36 have installed solar energy systems, the electrical generating
37 capacity of the installed solar energy systems, the cost of the
38 program, total electrical system benefits, including the effect on
39 electrical service rates, environmental benefits, how the program
40 affects the operation and reliability of the electrical grid, how the

1 program has affected peak demand for electricity, the progress
2 made toward reaching the goals of the program, whether the
3 program is on schedule to meet the program goals, and
4 recommendations for improving the program to meet its goals. If
5 the commission allocates additional moneys to research,
6 development, and demonstration that explores solar technologies
7 and other distributed generation technologies pursuant to paragraph
8 (1), the commission shall include in the assessment submitted to
9 the Legislature, a description of the program, a summary of each
10 award made or project funded pursuant to the program, including
11 the intended purposes to be achieved by the particular award or
12 project, and the results of each award or project.

13 (d) (1) The commission shall not impose any charge upon the
14 consumption of natural gas, or upon natural gas ratepayers, to fund
15 the California Solar Initiative.

16 (2) Notwithstanding any other provision of law, any charge
17 imposed to fund the program adopted and implemented pursuant
18 to this section shall be imposed upon all customers not participating
19 in the California Alternate Rates for Energy (CARE) or ~~family~~
20 ~~electric rate assistance~~ *Family Electric Rate Assistance* (FERA)
21 programs, including those residential customers subject to the rate
22 cap required by Section 80110 of the Water Code for existing
23 baseline quantities or usage up to 130 percent of existing baseline
24 quantities of electricity.

25 (3) The costs of the program adopted and implemented pursuant
26 to this section may not be recovered from customers participating
27 in the CARE program established pursuant to Section 739.1, except
28 to the extent that program costs are recovered out of the
29 nonbypassable system benefits charge authorized pursuant to
30 Section 399.8.

31 (e) In implementing the California Solar Initiative, the
32 commission shall ensure that the total cost over the duration of the
33 program does not exceed three billion five hundred fifty million
34 eight hundred thousand dollars (\$3,550,800,000). The financial
35 components of the California Solar Initiative shall consist of the
36 following:

37 (1) Programs under the supervision of the commission funded
38 by charges collected from customers of San Diego Gas and Electric
39 Company, Southern California Edison Company, and Pacific Gas
40 and Electric Company. The total cost over the duration of these

1 programs shall not exceed two billion three hundred sixty-six
2 million eight hundred thousand dollars (\$2,366,800,000) and
3 includes moneys collected directly into a tracking account for
4 support of the California Solar Initiative and moneys collected
5 into other accounts that are used to further the goals of the
6 California Solar Initiative.

7 (2) Programs adopted, implemented, and financed in the amount
8 of seven hundred eighty-four million dollars (\$784,000,000), by
9 charges collected by local publicly owned electric utilities pursuant
10 to Section 387.5. Nothing in this subdivision shall give the
11 commission power and jurisdiction with respect to a local publicly
12 owned electric utility or its customers.

13 (3) Programs for the installation of solar energy systems on new
14 construction, administered by the Energy Commission pursuant
15 to Chapter 8.6 (commencing with Section 25740) of Division 15
16 of the Public Resources Code, and funded by nonbypassable
17 charges in the amount of four hundred million dollars
18 (\$400,000,000), collected from customers of San Diego Gas and
19 Electric Company, Southern California Edison Company, and
20 Pacific Gas and Electric Company pursuant to Article 15
21 (commencing with Section 399).

22 SEC. 163. Section 2881.1 of the Public Utilities Code is
23 amended to read:

24 2881.1. (a) In addition to the requirements of Section 2881,
25 the commission shall design and implement a program to provide
26 a telecommunications device capable of servicing the needs of the
27 deaf or severely hearing impaired, together with a single party
28 line, at no charge additional to the basic exchange rate, to any
29 subscriber which is an agency of state government and which the
30 commission determines serves a significant portion of the deaf or
31 severely hearing-impaired population, and to an office located in
32 the State Capitol and selected by the Joint Rules Committee, for
33 purposes of access by the deaf or severely hearing impaired to
34 Members of the Legislature.

35 (b) The commission shall permit providers of equipment and
36 service specified in subdivision (a) to recover costs as they are
37 incurred under this section pursuant to subdivision (g) of Section
38 2881.

1 (c) The commission may direct any telephone corporation
2 subject to its jurisdiction to comply with its determinations pursuant
3 to this section.

4 SEC. 164. Section 2881.2 of the Public Utilities Code is
5 amended to read:

6 2881.2. (a) In addition to the requirements of Section 2881,
7 the commission shall design and implement a program that shall
8 provide for publicly available telecommunications devices capable
9 of servicing the needs of the deaf or hearing impaired in existing
10 buildings, structures, facilities, and public accommodations of the
11 type specified in Section 4450 of the Government Code and
12 Sections 19955.5 and 19956 of the Health and Safety Code, making
13 available reasonable access of all phases of public telephone service
14 to individuals who are deaf or hearing impaired. The commission
15 shall direct the appropriate committee under its control to determine
16 and specify locations within existing buildings, structures, facilities,
17 and public accommodations in need of a telecommunications
18 device and to contract for the procurement, installation, and
19 maintenance of these devices. In the letting of the contract, the
20 commission shall direct the committee to ensure consideration of
21 for-profit and nonprofit corporations, including nonprofit
22 corporations with demonstrated service to individuals who are
23 deaf or hearing impaired and whose boards of directors and staff
24 are made up of a majority of those individuals. The commission
25 shall also direct the committee to seek the cooperation of the
26 owners, managers, and tenants of the existing buildings, structures,
27 facilities, and public accommodations that have been determined
28 to be in need of a telecommunications device with regard to its
29 installation and maintenance. The commission shall phase in this
30 program over a reasonable period of time, beginning no later than
31 January 1, 1998, giving priority to those existing buildings,
32 structures, facilities, and public accommodations determined by
33 the commission, with the advice and counsel of statewide nonprofit
34 consumer organizations for the deaf, to be of most importance and
35 usefulness to the deaf or hearing impaired.

36 (b) The commission shall ensure that costs are recovered as they
37 are incurred under this section, including any costs incurred by
38 the owners, managers, or tenants of existing buildings, structures,
39 facilities, and public accommodations, and shall utilize for this
40 purpose the rate recovery mechanism established pursuant to

1 subdivision (g) of Section 2881. The commission shall also
2 establish a fund and require separate accounting for the program
3 implemented under this section and, in addition, shall require that
4 the surcharge utilized to fund the program not exceed
5 two-hundredths of 1 percent, that it be combined with the surcharge
6 required by subdivision (g) of Section 2881, and that it count
7 toward the limits set by that subdivision. This surcharge shall be
8 in effect until January 1, 2006.

9 (c) “Existing buildings, structures, facilities, and public
10 accommodations,” for the purposes of this section, means those
11 buildings, structures, facilities, and public accommodations or
12 parts thereof that were constructed or altered prior to January 26,
13 1993, or are otherwise not required by Section 303 of the federal
14 Americans with Disabilities Act of 1990 (P.L. 101-336; 42 U.S.C.
15 Sec. 12183) or any other section of that act and its implementing
16 regulations and guidelines, to have a publicly available
17 telecommunications device capable of serving the needs of the
18 deaf or hearing impaired.

19 SEC. 165. Section 8283 of the Public Utilities Code is amended
20 to read:

21 8283. (a) The commission shall require each electrical, gas,
22 water, wireless telecommunications service provider, and telephone
23 corporation with gross annual revenues exceeding twenty-five
24 million dollars (\$25,000,000) and their commission-regulated
25 subsidiaries and affiliates, to submit annually, a detailed and
26 verifiable plan for increasing procurement from women, minority,
27 and disabled veteran business enterprises in all categories,
28 including, but not limited to, renewable energy, wireless
29 telecommunications, broadband, smart grid, and rail projects.

30 (b) These annual plans shall include short- and long-term goals
31 and timetables, but not quotas, and shall include methods for
32 encouraging both prime contractors and grantees to engage women,
33 minority, and disabled veteran business enterprises in subcontracts
34 in all categories that provide subcontracting opportunities,
35 including, but not limited to, renewable energy, wireless
36 telecommunications, broadband, smart grid, and rail projects.

37 (c) The commission shall establish guidelines for all electrical,
38 gas, water, wireless telecommunications service ~~provider~~ providers,
39 and telephone corporations with gross annual revenues exceeding
40 twenty-five million dollars (\$25,000,000) and their

1 commission-regulated subsidiaries and affiliates, to be utilized in
2 establishing programs pursuant to this article.

3 (d) Every electrical, gas, water, wireless telecommunications
4 service provider, and telephone corporation with gross annual
5 revenues exceeding twenty-five million dollars (\$25,000,000) shall
6 furnish an annual report to the commission regarding the
7 implementation of programs established pursuant to this article in
8 a form that the commission shall require, and at the time that the
9 commission shall annually designate.

10 (e) (1) The commission shall provide a report to the Legislature
11 on September 1 of each year, on the progress of activities
12 undertaken by each electrical, gas, water, wireless
13 telecommunications service provider, and telephone corporation
14 with gross annual revenues exceeding twenty-five million dollars
15 (\$25,000,000) pursuant to this article in the implementation of
16 women, minority, and disabled veteran business enterprise
17 development programs. The report shall include information about
18 which procurements are made with women, minority, and disabled
19 veteran business enterprises with at least a majority of the
20 enterprise's workforce in California, to the extent that information
21 is readily accessible. The commission shall recommend a program
22 for carrying out the policy declared in this article, together with
23 recommendations for legislation that it deems necessary or
24 desirable to further that policy. The commission shall make the
25 report available on its Internet Web site.

26 (2) In regard to disabled veteran business enterprises, the
27 commission shall ensure that the programs and legislation
28 recommended pursuant to paragraph (1) are consistent with the
29 disabled veteran business enterprise certification eligibility
30 requirements imposed by the Department of General Services and
31 that the recommendations include only those disabled veteran
32 business enterprises certified by the Department of General
33 Services.

34 (f) (1) The Legislature declares that each electrical, gas, water,
35 mobile telephony service provider, and telephone corporation that
36 is not required to submit a plan pursuant to subdivision (a) is
37 encouraged to voluntarily adopt a plan for increasing women,
38 minority, and disabled veteran business enterprise procurement in
39 all categories.

1 (2) The Legislature declares that each cable television
 2 corporation and direct broadcast satellite provider is encouraged
 3 to voluntarily adopt a plan for increasing women, minority, and
 4 disabled veteran business enterprise procurement and to voluntarily
 5 report activity in this area to the Legislature on an annual basis.

6 SEC. 166. Section 214.02 of the Revenue and Taxation Code
 7 is amended to read:

8 214.02. (a) Except as provided in subdivision (b) or (c),
 9 property that is used exclusively for the preservation of native
 10 plants or animals, biotic communities, geological or geographical
 11 formations of scientific or educational interest, or open-space lands
 12 used solely for recreation and for the enjoyment of scenic beauty,
 13 is open to the general public subject to reasonable restrictions
 14 concerning the needs of the land, and is owned and operated by a
 15 scientific or charitable fund, foundation, limited liability company,
 16 or corporation, the primary interest of which is to preserve those
 17 natural areas, and that meets all the requirements of Section 214,
 18 shall be deemed to be within the exemption provided for in
 19 subdivision (b) of Section 4, and Section 5, of Article XIII of the
 20 California Constitution and Section 214 of this code.

21 (b) The exemption provided by this section shall not apply to
 22 any property of an organization that owns in the aggregate 30,000
 23 acres or more in one county that were exempt under this section
 24 prior to March 1, 1983, or that are proposed to be exempt, unless
 25 the nonprofit organization that holds the property is fully
 26 independent of the owner of any taxable real property that is
 27 adjacent to the property otherwise qualifying for tax exemption
 28 under this section. For purposes of this section, the nonprofit
 29 organization that holds the property shall be considered fully
 30 independent if the exempt property is not used or operated by that
 31 organization or by any other person so as to benefit any officer,
 32 trustee, director, shareholder, member, employee, contributor, or
 33 bondholder of the exempt organization or operator, or the owner
 34 of any adjacent property, or any other person, through the
 35 distribution of profits, payment of excessive charges or
 36 compensations, or the more advantageous pursuit of their business
 37 or profession.

38 (c) The exemption provided by this section shall not apply to
 39 property that is reserved for future development.

1 (d) This section shall be operative from the lien date in 1983 to
2 and including the lien date in 2022, after which date this section
3 shall become inoperative, and as of January 1, 2023, this section
4 is repealed.

5 (e) The amendments made by Chapter 354 of the Statutes of
6 2004 shall apply with respect to lien dates occurring on and after
7 January 1, 2005.

8 SEC. 167. Section 3725 of the Revenue and Taxation Code is
9 amended to read:

10 3725. (a) A proceeding based on alleged invalidity or
11 irregularity of any proceedings instituted under this chapter can
12 only be commenced in a court if both of the following are satisfied:

13 (1) The person commencing the proceeding has first petitioned
14 the board of supervisors pursuant to Section 3731 within one year
15 of the date of the execution of the tax collector's deed.

16 (2) The proceeding is commenced within one year of the date
17 the board of supervisors determines that a tax deed sold under this
18 part should not be rescinded pursuant to Section 3731.

19 (b) Sections 351 to 358, inclusive, of the Code of Civil
20 Procedure do not apply to the time within which a proceeding may
21 be brought under this section.

22 (c) The amendments made to this section by Chapter 288 of the
23 Statutes of 2011 shall apply to sales that are completed on or after
24 January 1, 2012.

25 SEC. 168. Section 17053.85 of the Revenue and Taxation Code
26 is amended to read:

27 17053.85. (a) (1) For taxable years beginning on or after
28 January 1, 2011, there shall be allowed to a qualified taxpayer a
29 credit against the "net tax," as defined in Section 17039, in an
30 amount equal to the applicable percentage, as specified in
31 paragraph (4), of the qualified expenditures for the production of
32 a qualified motion picture in California.

33 (2) The credit shall be allowed for the taxable year in which the
34 California Film Commission issues the credit certificate pursuant
35 to subdivision (g) for the qualified motion picture, and shall be for
36 the applicable percentage of all qualified expenditures paid or
37 incurred by the qualified taxpayer in all taxable years for that
38 qualified motion picture.

39 (3) The amount of the credit allowed to a qualified taxpayer
40 shall be limited to the amount specified in the credit certificate

1 issued to the qualified taxpayer by the California Film Commission
2 pursuant to subdivision (g).

3 (4) For purposes of paragraphs (1) and (2), the applicable
4 percentage shall be:

5 (A) Twenty percent of the qualified expenditures attributable
6 to the production of a qualified motion picture in California.

7 (B) Twenty-five percent of the qualified expenditures
8 attributable to the production of a qualified motion picture in
9 California where the qualified motion picture is a television series
10 that relocated to California or an independent film.

11 (b) For purposes of this section:

12 (1) “Ancillary product” means any article for sale to the public
13 that contains a portion of, or any element of, the qualified motion
14 picture.

15 (2) “Budget” means an estimate of all expenses paid or incurred
16 during the production period of a qualified motion picture. It shall
17 be the same budget used by the qualified taxpayer and production
18 company for all qualified motion picture purposes.

19 (3) “Clip use” means a use of any portion of a motion picture,
20 other than the qualified motion picture, used in the qualified motion
21 picture.

22 (4) “Credit certificate” means the certificate issued by the
23 California Film Commission pursuant to subparagraph (C) of
24 paragraph (2) of subdivision (g).

25 (5) (A) “Employee fringe benefits” means the amount allowable
26 as a deduction under this part to the qualified taxpayer involved
27 in the production of the qualified motion picture, exclusive of any
28 amounts contributed by employees, for any year during the
29 production period with respect to any of the following:

30 (i) Employer contributions under any pension, profit-sharing,
31 annuity, or similar plan.

32 (ii) Employer-provided coverage under any accident or health
33 plan for employees.

34 (iii) The employer’s cost of life or disability insurance provided
35 to employees.

36 (B) Any amount treated as wages under clause (i) of
37 subparagraph (A) of paragraph (18) shall not be taken into account
38 under this paragraph.

39 (6) “Independent film” means a motion picture with a minimum
40 budget of one million dollars (\$1,000,000) and a maximum budget

1 of ten million dollars (\$10,000,000) that is produced by a company
2 that is not publicly traded and publicly traded companies do not
3 own, directly or indirectly, more than 25 percent of the producing
4 company.

5 (7) “Licensing” means any grant of rights to distribute the
6 qualified motion picture, in whole or in part.

7 (8) “New use” means any use of a motion picture in a medium
8 other than the medium for which it was initially created.

9 (9) (A) “Postproduction” means the final activities in a qualified
10 motion picture’s production, including editing, foley recording,
11 automatic dialogue replacement, sound editing, scoring and music
12 editing, beginning and end credits, negative cutting, negative
13 processing and duplication, the addition of sound and visual effects,
14 soundmixing, film-to-tape transfers, encoding, and color correction.

15 (B) “Postproduction” does not include the manufacture or
16 shipping of release prints.

17 (10) “Preproduction” means the process of preparation for actual
18 physical production which begins after a qualified motion picture
19 has received a firm agreement of financial commitment, or is
20 greenlit, with, for example, the establishment of a dedicated
21 production office, the hiring of key crew members, and includes,
22 but is not limited to, activities that include location scouting and
23 execution of contracts with vendors of equipment and stage space.

24 (11) “Principal photography” means the phase of production
25 during which the motion picture is actually shot, as distinguished
26 from preproduction and postproduction.

27 (12) “Production period” means the period beginning with
28 preproduction and ending upon completion of postproduction.

29 (13) “Qualified entity” means a personal service corporation as
30 defined in Section 269A(b)(1) of the Internal Revenue Code, a
31 payroll services corporation, or any entity receiving qualified wages
32 with respect to services performed by a qualified individual.

33 (14) (A) “Qualified individual” means any individual who
34 performs services during the production period in an activity related
35 to the production of a qualified motion picture.

36 (B) “Qualified individual” shall not include either of the
37 following:

38 (i) Any individual related to the qualified taxpayer as described
39 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
40 Revenue Code.

- 1 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
2 the Internal Revenue Code, of the qualified taxpayer.
- 3 (15) (A) “Qualified motion picture” means a motion picture
4 that is produced for distribution to the general public, regardless
5 of medium, that is one of the following:
- 6 (i) A feature with a minimum production budget of one million
7 dollars (\$1,000,000) and a maximum production budget of
8 seventy-five million dollars (\$75,000,000).
- 9 (ii) A movie of the week or miniseries with a minimum
10 production budget of five hundred thousand dollars (\$500,000).
- 11 (iii) A new television series produced in California with a
12 minimum production budget of one million dollars (\$1,000,000)
13 licensed for original distribution on basic cable.
- 14 (iv) An independent film.
- 15 (v) A television series that relocated to California.
- 16 (B) To qualify as a “qualified motion picture,” all of the
17 following conditions shall be satisfied:
- 18 (i) At least 75 percent of the production days occur wholly in
19 California or 75 percent of the production budget is incurred for
20 payment for services performed within the state and the purchase
21 or rental of property used within the state.
- 22 (ii) Production of the qualified motion picture is completed
23 within 30 months from the date on which the qualified taxpayer’s
24 application is approved by the California Film Commission. For
25 purposes of this section, a qualified motion picture is “completed”
26 when the process of postproduction has been finished.
- 27 (iii) The copyright for the motion picture is registered with the
28 United States Copyright Office pursuant to Title 17 of the United
29 States Code.
- 30 (iv) Principal photography of the qualified motion picture
31 commences after the date on which the application is approved by
32 the California Film Commission, but no later than 180 days after
33 the date of that approval.
- 34 (C) For the purposes of subparagraph (A), in computing the
35 total wages paid or incurred for the production of a qualified
36 motion picture, all amounts paid or incurred by all persons or
37 entities that share in the costs of the qualified motion picture shall
38 be aggregated.
- 39 (D) “Qualified motion picture” shall not include commercial
40 advertising, music videos, a motion picture produced for private

1 noncommercial use, such as weddings, graduations, or as part of
2 an educational course and made by students, a news program,
3 current events or public events program, talk show, game show,
4 sporting event or activity, awards show, telethon or other
5 production that solicits funds, reality television program, clip-based
6 programming if more than 50 percent of the content is comprised
7 of licensed footage, documentaries, variety programs, daytime
8 dramas, strip shows, one-half hour (air time) episodic television
9 shows, or any production that falls within the recordkeeping
10 requirements of Section 2257 of Title 18 of the United States Code.

11 (16) “Qualified expenditures” means amounts paid or incurred
12 to purchase or lease tangible personal property used within this
13 state in the production of a qualified motion picture and payments,
14 including qualified wages, for services performed within this state
15 in the production of a qualified motion picture.

16 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
17 or incurred qualified expenditures and has been issued a credit
18 certificate by the California Film Commission pursuant to
19 subdivision (g).

20 (B) In the case of any passthrough entity, the determination of
21 whether a taxpayer is a qualified taxpayer under this section shall
22 be made at the entity level and any credit under this section is not
23 allowed to the passthrough entity, but shall be passed through to
24 the partners or shareholders in accordance with applicable
25 provisions of Part 10 (commencing with Section 17001) or Part
26 11 (commencing with Section 23001). For purposes of this
27 paragraph, “passthrough entity” means any entity taxed as a
28 partnership or “S” corporation.

29 (18) (A) “Qualified wages” means all of the following:

30 (i) Any wages subject to withholding under Division 6
31 (commencing with Section 13000) of the Unemployment Insurance
32 Code that were paid or incurred by any taxpayer involved in the
33 production of a qualified motion picture with respect to a qualified
34 individual for services performed on the qualified motion picture
35 production within this state.

36 (ii) The portion of any employee fringe benefits paid or incurred
37 by any taxpayer involved in the production of the qualified motion
38 picture that are properly allocable to qualified wage amounts
39 described in clause (i).

1 (iii) Any payments made to a qualified entity for services
2 performed in this state by qualified individuals within the meaning
3 of paragraph (14).

4 (iv) Remuneration paid to an independent contractor who is a
5 qualified individual for services performed within this state by that
6 qualified individual.

7 (B) “Qualified wages” shall not include any of the following:

8 (i) Expenses, including wages, related to new use, reuse, clip
9 use, licensing, secondary markets, or residual compensation, or
10 the creation of any ancillary product, including, but not limited to,
11 a soundtrack album, toy, game, trailer, or teaser.

12 (ii) Expenses, including wages, paid or incurred with respect to
13 acquisition, development, turnaround, or any rights thereto.

14 (iii) Expenses, including wages, related to financing, overhead,
15 marketing, promotion, or distribution of a qualified motion picture.

16 (iv) Expenses, including wages, paid per person per qualified
17 motion picture for writers, directors, music directors, music
18 composers, music supervisors, producers, and performers, other
19 than background actors with no scripted lines.

20 (19) “Residual compensation” means supplemental
21 compensation paid at the time that a motion picture is exhibited
22 through new use, reuse, clip use, or in secondary markets, as
23 distinguished from payments made during production.

24 (20) “Reuse” means any use of a qualified motion picture in the
25 same medium for which it was created, following the initial use
26 in that medium.

27 (21) “Secondary markets” means media in which a qualified
28 motion picture is exhibited following the initial media in which it
29 is exhibited.

30 (22) “Television series that relocated to California” means a
31 television series, without regard to episode length or initial media
32 exhibition, that filmed all of its prior season or seasons outside of
33 California and for which the taxpayer certifies that the credit
34 provided pursuant to this section is the primary reason for
35 relocating to California.

36 (c) (1) Notwithstanding any other law, a qualified taxpayer
37 may sell any credit allowed under this section that is attributable
38 to an independent film, as defined in paragraph (6) of subdivision
39 (b), to an unrelated party.

1 (2) The qualified taxpayer shall report to the Franchise Tax
2 Board prior to the sale of the credit, in the form and manner
3 specified by the Franchise Tax Board, all required information
4 regarding the purchase and sale of the credit, including the social
5 security or other taxpayer identification number of the unrelated
6 party to whom the credit has been sold, the face amount of the
7 credit sold, and the amount of consideration received by the
8 qualified taxpayer for the sale of the credit.

9 (3) In the case where the credit allowed under this section
10 exceeds the “net tax,” the excess credit may be carried over to
11 reduce the “net tax” in the following taxable year, and succeeding
12 five taxable years, if necessary, until the credit has been exhausted.

13 (4) A credit shall not be sold pursuant to this subdivision to
14 more than one taxpayer, nor may the credit be resold by the
15 unrelated party to another taxpayer or other party.

16 (5) A party that has acquired tax credits under this section shall
17 be subject to the requirements of this section.

18 (6) In no event may a qualified taxpayer assign or sell any tax
19 credit to the extent the tax credit allowed by this section is claimed
20 on any tax return of the qualified taxpayer.

21 (7) In the event that both the taxpayer originally allocated a
22 credit under this section by the California Film Commission and
23 a taxpayer to whom the credit has been sold both claim the same
24 amount of credit on their tax returns, the Franchise Tax Board may
25 disallow the credit of either taxpayer, so long as the statute of
26 limitations upon assessment remains open.

27 (8) Chapter 3.5 (commencing with Section 11340) of Part 1 of
28 Division 3 of Title 2 of the Government Code does not apply to
29 any standard, criterion, procedure, determination, rule, notice, or
30 guideline established or issued by the Franchise Tax Board
31 pursuant to this subdivision.

32 (9) Subdivision (g) of Section 17039 shall not apply to any
33 credit sold pursuant to this subdivision.

34 (10) For purposes of this subdivision, the unrelated party or
35 parties that purchase a credit pursuant to this subdivision shall be
36 treated as a qualified taxpayer pursuant to paragraph (1) of
37 subdivision (a).

38 (d) No credit shall be allowed pursuant to this section unless
39 the qualified taxpayer provides the following to the California
40 Film Commission:

- 1 (1) Identification of each qualified individual.
- 2 (2) The specific start and end dates of production.
- 3 (3) The total wages paid.
- 4 (4) The amount of qualified wages paid to each qualified
5 individual.
- 6 (5) The copyright registration number, as reflected on the
7 certificate of registration issued under the authority of Section 410
8 of Title 17 of the United States Code, relating to registration of
9 claim and issuance of certificate. The registration number shall be
10 provided on the return claiming the credit.
- 11 (6) The total amounts paid or incurred to purchase or lease
12 tangible personal property used in the production of a qualified
13 motion picture.
- 14 (7) Information to substantiate its qualified expenditures.
- 15 (8) Information required by the California Film Commission
16 under regulations promulgated pursuant to subdivision (e)
17 necessary to verify the amount of credit claimed.
- 18 (e) The California Film Commission may prescribe rules and
19 regulations to carry out the purposes of this section, including any
20 rules and regulations necessary to establish procedures, processes,
21 requirements, and rules identified in or required to implement this
22 section. The regulations shall include provisions to set aside a
23 percentage of annual credit allocations for independent films.
- 24 (f) If the qualified taxpayer fails to provide the copyright
25 registration number as required in paragraph (5) of subdivision
26 (d), the credit shall be disallowed and assessed and collected under
27 Section 19051 until the procedures are satisfied.
- 28 (g) For purposes of this section, the California Film Commission
29 shall do the following:
 - 30 (1) On or after July 1, 2009, and before July 1, 2015, allocate
31 tax credits to applicants.
 - 32 (A) Establish a procedure for applicants to file with the
33 California Film Commission a written application, on a form jointly
34 prescribed by the California Film Commission and the Franchise
35 Tax Board for the allocation of the tax credit. The application shall
36 include, but not be limited to, the following information:
 - 37 (i) The budget for the motion picture production.
 - 38 (ii) The number of production days.
 - 39 (iii) A financing plan for the production.

1 (iv) The diversity of the workforce employed by the applicant,
2 including, but not limited to, the ethnic and racial makeup of the
3 individuals employed by the applicant during the production of
4 the qualified motion picture, to the extent possible.

5 (v) All members of a combined reporting group and any
6 members to which the credit is assigned, including, if readily
7 available, the states, provinces, or other jurisdictions in which any
8 of those members finance motion picture productions.

9 (vi) Financial information, if available, including, but not limited
10 to, the most recently produced balance sheets, annual statements
11 of profits and losses, audited or unaudited financial statements,
12 summary budget projections or results, or the functional equivalent
13 of these documents of a partnership or owner of a single member
14 limited liability company that is disregarded pursuant to Section
15 23038. The information provided pursuant to this clause shall be
16 confidential and shall not be subject to public disclosure.

17 (vii) The names of all partners in a partnership not publicly
18 traded or the names of all members of a limited liability company
19 classified as a partnership not publicly traded for California income
20 tax purposes. The information provided pursuant to this clause
21 shall be confidential and shall not be subject to public disclosure.

22 (viii) Detailed narratives, for use only by the Legislative
23 Analyst's Office in conducting a study of the effectiveness of this
24 credit, that describe the extent to which the credit is expected to
25 influence or affect filming and other business location decisions,
26 hiring decisions, salary decisions, and any other financial matters
27 of the applicant.

28 (ix) Any other information deemed relevant by the California
29 Film Commission or the Franchise Tax Board.

30 (B) Establish criteria, consistent with the requirements of this
31 section, for allocating tax credits.

32 (C) Determine and designate applicants who meet the
33 requirements of this section.

34 (D) Process and approve, or reject, all applications on a
35 first-come-first-served basis.

36 (E) Subject to the annual cap established as provided in
37 subdivision (i), allocate an aggregate amount of credits under this
38 section and Section 23685, and allocate any carryover of
39 unallocated credits from prior years.

40 (2) Certify tax credits allocated to qualified taxpayers.

1 (A) Establish a verification procedure for the amount of qualified
2 expenditures paid or incurred by the applicant, including, but not
3 limited to, updates to the information in subparagraph (A) of
4 paragraph (1).

5 (B) Establish audit requirements that must be satisfied before
6 a credit certificate may be issued by the California Film
7 Commission.

8 (C) Issue a credit certificate to a qualified taxpayer upon
9 completion of the qualified motion picture reflecting the credit
10 amount allocated after qualified expenditures have been verified
11 under this section. The amount of credit shown in the credit
12 certificate shall not exceed the amount of credit allocated to that
13 qualified taxpayer pursuant to this section.

14 (3) Provide the Legislative Analyst's Office, upon request, any
15 application materials or any other materials received from
16 applicants, including, but not limited to, information in electronic
17 format when available.

18 (A) Financial information, including, but not limited to,
19 statements of profits and losses of a partnership or of an owner of
20 a single member limited liability company that is disregarded
21 pursuant to Section 23038.

22 (B) The names of all members of the qualified taxpayer's
23 combined reporting group and any member to which the credit is
24 assigned.

25 (C) The names of all partners in a partnership or the names of
26 all members of a limited liability company classified as a
27 partnership for California income tax purposes that is not publicly
28 traded.

29 (D) The sales price of a credit certificate provided by the
30 Franchise Tax Board. The Franchise Tax Board, upon request and
31 subject to confidentiality requirements, shall provide aggregate
32 information on the identity of the qualified taxpayer, the amount
33 of the credit, and the credit recipient.

34 (h) The California Film Commission shall provide the Franchise
35 Tax Board and the board annually with a list of qualified taxpayers
36 and the tax credit amounts allocated to each qualified taxpayer by
37 the California Film Commission. The list shall include the names
38 and taxpayer identification numbers, including taxpayer
39 identification numbers of each partner or shareholder, as applicable,
40 of the qualified taxpayer.

1 (i) (1) The aggregate amount of credits that may be allocated
2 in any fiscal year pursuant to this section and Section 23685 shall
3 be an amount equal to the sum of all of the following:

4 (A) One hundred million dollars (\$100,000,000) in credits for
5 the 2009–10 fiscal year and each fiscal year thereafter, through
6 and including the 2014–15 fiscal year.

7 (B) The unused allocation credit amount, if any, for the
8 preceding fiscal year.

9 (C) The amount of previously allocated credits not certified.

10 (2) If the amount of credits applied for in any particular fiscal
11 year exceeds the aggregate amount of tax credits authorized to be
12 allocated under this section, such excess shall be treated as having
13 been applied for on the first day of the subsequent fiscal year.
14 However, credits may not be allocated from a fiscal year other
15 than the fiscal year in which the credit was originally applied for
16 or the immediately succeeding fiscal year.

17 (3) Notwithstanding the foregoing, the California Film
18 Commission shall set aside up to ten million dollars (\$10,000,000)
19 of tax credits each fiscal year for independent films allocated in
20 accordance with rules and regulations developed pursuant to
21 subdivision (e).

22 (4) Any act that reduces the amount that may be allocated
23 pursuant to paragraph (1) constitutes a change in state taxes for
24 the purpose of increasing revenues within the meaning of Section
25 3 of Article XIII A of the California Constitution and may be passed
26 by not less than two-thirds of all Members elected to each of the
27 two houses of the Legislature.

28 (j) The California Film Commission shall have the authority to
29 allocate tax credits in accordance with this section and in
30 accordance with any regulations prescribed pursuant to subdivision
31 (e) upon adoption.

32 SEC. 169. Section 17085 of the Revenue and Taxation Code
33 is amended to read:

34 17085. Section 72 of the Internal Revenue Code, relating to
35 annuities, certain proceeds of endowment and life insurance
36 contracts, is modified as follows:

37 (a) The amendments and transitional rules made by Public Law
38 99-514 shall be applicable to this part for the same transactions
39 and the same years as they are applicable for federal purposes,
40 except that the repeal of Section 72(d) of the Internal Revenue

1 Code, relating to repeal of special rule for employees' annuities,
2 shall apply only to the following:

3 (1) Any individual whose annuity starting date is after December
4 31, 1986.

5 (2) At the election of the taxpayer, any individual whose annuity
6 starting date is after July 1, 1986, and before January 1, 1987.

7 (b) The amount of a distribution from an individual retirement
8 account or annuity or employee trust or employee annuity that is
9 includable in gross income for federal purposes shall be reduced
10 for purposes of this part by the lesser of either of the following:

11 (1) An amount equal to the amount includable in federal gross
12 income for the taxable year.

13 (2) An amount equal to the basis in the account or annuity
14 allowed by Section 17507 (relating to individual retirement
15 accounts and simplified employee pensions), the increased basis
16 allowed by Sections 17504 and 17506 (relating to plans of
17 self-employed individuals), the increased basis allowed by Section
18 17501, or the increased basis allowed by Section 17551 that is
19 remaining after adjustment for reductions in gross income under
20 this provision in prior taxable years.

21 (c) (1) Except as provided in paragraph (2), the amount of the
22 additional tax imposed under this part shall be computed in
23 accordance with Sections 72(m), (q), (t), and (v) of the Internal
24 Revenue Code, as applicable for federal income tax purposes for
25 the same taxable year, using a rate of 2½ percent, in lieu of the
26 rate provided in those sections.

27 (2) In the case where Section 72(t)(6) of the Internal Revenue
28 Code, relating to special rules for simple retirement accounts, as
29 applicable for federal income tax purposes for the same taxable
30 year, applies, the rate in paragraph (1) shall be 6 percent in lieu of
31 the 2½ percent rate specified therein.

32 (d) Section 72(f)(2) of the Internal Revenue Code shall be
33 applicable without applying the exceptions which immediately
34 follow that paragraph.

35 (e) The amendments made by Section 844 of the federal Pension
36 Protection Act of 2006 (P.L. 109-280) to Section 72(e) of the
37 Internal Revenue Code, shall not apply.

38 SEC. 170. Section 17131.10 of the Revenue and Taxation
39 Code, as added by Section 15 of Chapter 727 of the Statutes of
40 2011, is amended and renumbered to read:

1 17131.14. (a) For taxable years beginning on or after January
2 1, 2011, Section 125(j) of the Internal Revenue Code, relating to
3 simple cafeteria plans for small businesses, as added by Section
4 9022 of the federal Patient Protection and Affordable Care Act
5 (P.L. 111-148), shall apply, except as otherwise provided.

6 (b) For taxable years beginning on or after January 1, 2014,
7 Section 125(f) of the Internal Revenue Code, relating to qualified
8 benefits defined, as amended by Section 1515 of the federal Patient
9 Protection and Affordable Care Act (P.L. 111-148), shall apply,
10 except as otherwise provided.

11 SEC. 171. Section 17282 of the Revenue and Taxation Code
12 is amended to read:

13 17282. (a) In computing taxable income, deductions, including
14 deductions for cost of goods sold, shall not be allowed to any
15 taxpayer from any of his or her gross income directly derived from
16 any act or omission of criminal profiteering activity, as defined in
17 Section 186.2 of the Penal Code, or as defined in Chapter 6
18 (commencing with Section 11350) of Division 10 of the Health
19 and Safety Code, or Article 5 (commencing with Section 750) of
20 Chapter 1 of Part 2 of Division 1 of the Insurance Code; and
21 deductions shall not be allowed to any taxpayer from any of his
22 or her gross income derived from any other activities which directly
23 tend to promote or to further, or are directly connected or associated
24 with, those acts or omissions.

25 (b) A prior, final determination by a court of competent
26 jurisdiction of this state in any criminal proceedings or any
27 proceeding in which the state, county, city and county, city, or
28 other political subdivision was a party thereto on the merits of the
29 legality of the activities of a taxpayer, or predecessor in interest
30 of a taxpayer, shall be required in order for subdivision (a) to apply
31 and shall be binding upon the Franchise Tax Board and the State
32 Board of Equalization.

33 (c) (1) Except as provided in paragraphs (2) and (3), this section
34 shall be applied with respect to taxable years that have not been
35 closed by a statute of limitations, res judicata, or otherwise as of
36 September 14, 1982.

37 (2) The amendments made to this section by Chapter 962 of the
38 Statutes of 1984 shall be applied with respect to taxable years that
39 have not been closed by a statute of limitations, res judicata, or
40 otherwise as of January 1, 1985.

1 (3) The amendments made to this section by Chapter 454 of the
2 Statutes of 2011 shall be applied with respect to taxable years that
3 have not been closed by a statute of limitations, res judicata, or
4 otherwise as of the effective date of that act.

5 SEC. 172. Section 19191 of the Revenue and Taxation Code
6 is amended to read:

7 19191. (a) The Franchise Tax Board may enter into a voluntary
8 disclosure agreement with any qualified entity, qualified
9 shareholder, qualified member, or qualified beneficiary as defined
10 in Section 19192, that is binding on both the Franchise Tax Board
11 and the qualified entity, qualified shareholder, qualified member,
12 or qualified beneficiary.

13 (b) The Franchise Tax Board shall do all of the following:

14 (1) Provide guidelines and establish procedures for qualified
15 entities and their qualified shareholders, qualified members, or
16 qualified beneficiaries to apply for voluntary disclosure agreements.

17 (2) Accept applications on an anonymous basis from qualified
18 entities and their qualified shareholders, qualified members, or
19 qualified beneficiaries for voluntary disclosure agreements.

20 (3) Implement procedures for accepting applications for
21 voluntary disclosure agreements through the National Nexus
22 Program administered by the Multistate Tax Commission.

23 (4) For purposes of considering offers from qualified entities
24 and their qualified shareholders, qualified members, or qualified
25 beneficiaries to enter into voluntary disclosure agreements, take
26 into account the following criteria:

27 (A) The nature and magnitude of the qualified entity's previous
28 presence and activity in this state and the facts and circumstances
29 by which the nexus of the qualified entity or qualified shareholder,
30 qualified member, or qualified beneficiary was established.

31 (B) The extent to which the weight of the factual circumstances
32 demonstrates that a prudent business person exercising reasonable
33 care would conclude that the previous activities and presence in
34 this state were or were not immune from taxation by this state by
35 reason of Public Law 86-272 or otherwise.

36 (C) Reasonable reliance on the advice of a person in a fiduciary
37 position or other competent advice that the qualified entity or
38 qualified shareholder, qualified member, or qualified beneficiary
39 activities were immune from taxation by this state.

1 (D) Lack of evidence of willful disregard or neglect of the tax
2 laws of this state on the part of the qualified entity or qualified
3 shareholder, qualified member, or qualified beneficiary.

4 (E) Demonstrations of good faith on the part of the qualified
5 entity.

6 (F) Benefits that will accrue to the state by entering into a
7 voluntary disclosure agreement.

8 (5) Act on any application of a voluntary disclosure agreement
9 within 120 days of receipt.

10 (6) Enter into voluntary disclosure agreements with qualified
11 entities, qualified shareholders, qualified members, or qualified
12 beneficiaries, as authorized in subdivision (a) and based on the
13 criteria set forth in paragraph (4).

14 (c) Before any voluntary disclosure agreement becomes binding,
15 the Franchise Tax Board, itself, shall approve the agreement in the
16 following manner:

17 (1) The Executive Officer and Chief Counsel of the Franchise
18 Tax Board shall recommend and submit the voluntary disclosure
19 agreement to the Franchise Tax Board for approval.

20 (2) Each voluntary disclosure agreement recommendation shall
21 be submitted in a manner as to maintain the anonymity of the
22 taxpayer applying for the voluntary disclosure agreement.

23 (3) Any recommendation for approval of a voluntary disclosure
24 agreement shall be approved or disapproved by the Franchise Tax
25 Board, itself, within 45 days of the submission of that
26 recommendation to the board.

27 (4) Any recommendation of a voluntary disclosure agreement
28 that is not either approved or disapproved by the board within 45
29 days of the submission of that recommendation shall be deemed
30 approved.

31 (5) Disapproval of a recommendation of a voluntary disclosure
32 agreement shall be made only by a majority vote of the Franchise
33 Tax Board.

34 (6) The members of the Franchise Tax Board shall not
35 participate in any voluntary disclosure agreement except as
36 provided in this subdivision.

37 (d) The voluntary disclosure agreement entered into by the
38 Franchise Tax Board and the qualified entity, qualified shareholder,
39 qualified member, or qualified beneficiary as provided for in
40 subdivision (a) shall to the extent applicable specify that:

1 (1) The Franchise Tax Board shall with respect to a qualified
2 entity, qualified shareholder, qualified member, or qualified
3 beneficiary, except as provided in paragraph (4), (6), or (9) of
4 subdivision (a) of Section 19192:

5 (A) Waive its authority under this part, Part 10 (commencing
6 with Section 17001), or Part 11 (commencing with Section 23001)
7 to assess or propose to assess taxes, additions to tax, fees, or
8 penalties with respect to each taxable year ending prior to six years
9 from the signing date of the voluntary disclosure agreement.

10 (B) With respect to each of the six taxable years ending
11 immediately preceding the signing date of the voluntary disclosure
12 agreement, based on its discretion, agree to waive any or all of the
13 following:

14 (i) Any penalty related to a failure to make and file a return, as
15 provided in Section 19131.

16 (ii) Any penalty related to a failure to pay any amount due by
17 the date prescribed for payment, as provided in Section 19132.

18 (iii) Any addition to tax related to an underpayment of estimated
19 tax, as provided in Section 19136.

20 (iv) Any penalty related to Section 6810 or subdivision (a) of
21 Section 8810 of the Corporations Code, as provided in Section
22 19141 of this code.

23 (v) Any penalty related to a failure to furnish information or
24 maintain records, as provided in Section 19141.5.

25 (vi) Any addition to tax related to an underpayment of tax
26 imposed under Part 11 (commencing with Section 23001), as
27 provided in Section 19142.

28 (vii) Any penalty related to a partnership required to file a return
29 under Section 18633, as provided in Section 19172.

30 (viii) Any penalty related to a failure to file information returns,
31 as provided in Section 19183.

32 (ix) Any penalty related to relief from contract voidability, as
33 provided in Section 23305.1.

34 (2) The qualified entity, qualified shareholder, qualified member,
35 or qualified beneficiary shall:

36 (A) With respect to each of the six taxable years ending
37 immediately preceding the signing date of the written agreement:

38 (i) Voluntarily and fully disclose on the qualified entity's
39 application all material facts pertinent to the qualified entity's,
40 shareholder's, member's, or beneficiary's liability for any taxes

1 imposed under Part 10 (commencing with Section 17001) or Part
2 11 (commencing with Section 23001).

3 (ii) Except as provided in paragraph (3), within 30 days from
4 the signing date of the voluntary disclosure agreement:

5 (I) File all returns required under this part, Part 10 (commencing
6 with Section 17001), or Part 11 (commencing with Section 23001).

7 (II) Pay in full any tax, interest, fee, and penalties, other than
8 those penalties specifically waived by the Franchise Tax Board
9 under the terms of the voluntary disclosure agreement, imposed
10 under this part, Part 10 (commencing with Section 17001), or Part
11 11 (commencing with Section 23001) in a manner as may be
12 prescribed by the Franchise Tax Board. Paragraph (1) of
13 subdivision (f) of Section 23153 shall not apply to qualified entities
14 admitted into the voluntary disclosure program.

15 (B) Agree to comply with all franchise and income tax laws of
16 this state in subsequent taxable years by filing all returns required
17 and paying all amounts due under this part, Part 10 (commencing
18 with Section 17001), or Part 11 (commencing with Section 23001).

19 (3) The Franchise Tax Board may extend the time for filing
20 returns and paying amounts due to 120 days from the signing date
21 of the voluntary disclosure agreement or to the latest extended due
22 date of the return for a taxable year for which relief is granted,
23 whichever is later.

24 (e) No addition to tax under ~~Sections~~ *Section* 19136 or 19142
25 shall be made for any underpayment of estimated tax attributable
26 to the underpayment of an installment of estimated tax due before
27 the signing date of the voluntary disclosure agreement.

28 (f) The amendments to this section made by Chapter 954 of the
29 Statutes of 1996 shall apply to taxable years beginning on or after
30 January 1, 1997.

31 (g) The amendments to this section made by Chapter 543 of the
32 Statutes of 2001 shall apply to voluntary disclosure agreements
33 entered into on or after January 1, 2002.

34 (h) The amendments to this section made by Chapter 543 of the
35 Statutes of 2001 shall apply to voluntary disclosure agreements
36 entered into on or after January 1, 2005.

37 (i) The amendments to this section made by Chapter 296 of the
38 Statutes of 2011 shall apply to voluntary disclosure agreements
39 entered into on or after January 1, 2011.

1 SEC. 173. Section 24436.1 of the Revenue and Taxation Code
2 is amended to read:

3 24436.1. (a) In computing net income, deductions, including
4 deductions for cost of goods sold, shall not be allowed to any
5 taxpayer from any of its gross income directly derived from any
6 act or omission of criminal profiteering activity, as defined in
7 Section 186.2 of the Penal Code, or as defined in Chapter 6
8 (commencing with Section 11350) of Division 10 of the Health
9 and Safety Code, or Article 5 (commencing with Section 750) of
10 Chapter 1 of Part 2 of Division 1 of the Insurance Code; and
11 deductions shall not be allowed to any taxpayer on any of its gross
12 income derived from any other activities which directly tend to
13 promote or to further, or are directly connected or associated with,
14 those acts or omissions.

15 (b) A prior, final determination by a court of competent
16 jurisdiction of this state in any criminal proceedings or any
17 proceeding in which the state, county, city and county, city, or
18 other political subdivision was a party thereto on the merits of the
19 legality of the activities of a taxpayer, or predecessor in interest
20 of a taxpayer, shall be required in order for subdivision (a) to apply
21 and shall be binding upon the Franchise Tax Board and the State
22 Board of Equalization.

23 (c) (1) Except as provided in paragraphs (2) and (3), this section
24 shall be applied with respect to taxable years that have not been
25 closed by a statute of limitations, res judicata, or otherwise as of
26 September 14, 1982.

27 (2) The amendments made to this section by Chapter 962 of the
28 Statutes of 1984 shall be applied with respect to taxable years that
29 have not been closed by a statute of limitations, res judicata, or
30 otherwise as of January 1, 1985.

31 (3) The amendments made to this section by Chapter 454 of the
32 Statutes of 2011 shall be applied with respect to taxable years that
33 have not been closed by a statute of limitations, res judicata, or
34 otherwise as of the effective date of that act.

35 SEC. 174. Section 30459.15 of the Revenue and Taxation
36 Code, as amended by Section 575 of Chapter 15 of the Statutes of
37 2011, is amended to read:

38 30459.15. (a) (1) The executive director and chief counsel of
39 the board, or their delegates, may compromise any final tax liability

1 where the reduction of tax is seven thousand five hundred dollars
2 (\$7,500) or less.

3 (2) Except as provided in paragraph (3), the board, upon
4 recommendation by its executive director and chief counsel, jointly,
5 may compromise a final tax liability involving a reduction in tax
6 in excess of seven thousand five hundred dollars (\$7,500). Any
7 recommendation for approval of an offer in compromise that is
8 not either approved or disapproved within 45 days of the
9 submission of the recommendation shall be deemed approved.

10 (3) The board, itself, may by resolution delegate to the executive
11 director and the chief counsel, jointly, the authority to compromise
12 a final tax liability in which the reduction of tax is in excess of
13 seven thousand five hundred dollars (\$7,500), but less than ten
14 thousand dollars (\$10,000).

15 (b) For purposes of this section, “a final tax liability” means
16 any final tax liability arising under Part 13 (commencing with
17 Section 30001), or related interest, additions to tax, penalties, or
18 other amounts assessed under this part.

19 (c) Offers in compromise shall be considered only for liabilities
20 that were generated by the following:

21 (1) A business that has been discontinued or transferred, where
22 the taxpayer making the offer no longer has a controlling interest
23 or association with the transferred business or has a controlling
24 interest or association with a similar type of business as the
25 transferred or discontinued business.

26 (2) A taxpayer that has purchased untaxed cigarettes or tobacco
27 products from out-of-state vendors for their own use or
28 consumption.

29 (d) Offers in compromise shall not be considered under the
30 following conditions:

31 (1) The taxpayer has been convicted of felony tax evasion under
32 this part during the liability period.

33 (2) The taxpayer has filed a statement under paragraph (3) of
34 subdivision (e) and continues to purchase untaxed cigarettes or
35 tobacco products from out-of-state vendors for the taxpayer’s own
36 use or consumption.

37 (e) For amounts to be compromised under this section, the
38 following conditions shall exist:

39 (1) The taxpayer shall establish that:

1 (A) The amount offered in payment is the most that can be
2 expected to be paid or collected from the taxpayer's present assets
3 or income.

4 (B) The taxpayer does not have reasonable prospects of
5 acquiring increased income or assets that would enable the taxpayer
6 to satisfy a greater amount of the liability than the amount offered,
7 within a reasonable period of time.

8 (2) The board shall have determined that acceptance of the
9 compromise is in the best interest of the state.

10 (3) For liabilities generated in the manner described in paragraph
11 (2) of subdivision (c), the taxpayer shall file with the board a
12 statement, under penalty of perjury, that he or she will no longer
13 purchase untaxed cigarettes or tobacco products from out-of-state
14 vendors for his or her own use or consumption.

15 (f) A determination by the board that it would not be in the best
16 interest of the state to accept an offer in compromise in satisfaction
17 of a final tax liability shall not be subject to administrative appeal
18 or judicial review.

19 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
20 require a minimum offer of the unpaid tax and fraud or evasion
21 penalty.

22 (2) The minimum offer may be waived if it can be shown that
23 the taxpayer making the offer was not the person responsible for
24 perpetrating the fraud or evasion. This authorization to waive only
25 applies to partnership accounts where the intent to commit fraud
26 or evasion can be clearly attributed to a partner of the taxpayer.

27 (h) When an offer in compromise is either accepted or rejected,
28 or the terms and conditions of a compromise agreement are
29 fulfilled, the board shall notify the taxpayer in writing. In the event
30 an offer is rejected, the amount posted will either be applied to the
31 liability or refunded, at the discretion of the taxpayer.

32 (i) When more than one taxpayer is liable for the debt, such as
33 with spouses or partnerships or other business combinations,
34 including, but not limited to, taxpayers who are liable through dual
35 determination or successor's liability, the acceptance of an offer
36 in compromise from one liable taxpayer shall reduce the amount
37 of the liability of the other taxpayers by the amount of the accepted
38 offer.

39 (j) Whenever a compromise of tax or penalties or total tax and
40 penalties in excess of five hundred dollars (\$500) is approved,

1 there shall be placed on file for at least one year in the office of
2 the executive director of the board a public record with respect to
3 that compromise. The public record shall include all of the
4 following information:

- 5 (1) The name of the taxpayer.
- 6 (2) The amount of unpaid tax and related penalties, additions
7 to tax, interest, or other amounts involved.
- 8 (3) The amount offered.
- 9 (4) A summary of the reason why the compromise is in the best
10 interest of the state.

11 The public record shall not include any information that relates
12 to any trade secrets, patent, process, style of work, apparatus,
13 business secret, or organizational structure, that if disclosed, would
14 adversely affect the taxpayer or violate the confidentiality
15 provisions of Section 30455. No list shall be prepared and no
16 releases distributed by the board in connection with these
17 statements.

18 (k) Any compromise made under this section may be rescinded,
19 all compromised liabilities may be reestablished, without regard
20 to any statute of limitations that otherwise may be applicable, and
21 no portion of the amount offered in compromise refunded, if either
22 of the following occurs:

23 (1) The board determines that any person did any of the
24 following acts regarding the making of the offer:

25 (A) Concealed from the board any property belonging to the
26 estate of any taxpayer or other person liable for the tax.

27 (B) Received, withheld, destroyed, mutilated, or falsified any
28 book, document, or record or made any false statement, relating
29 to the estate or financial condition of the taxpayer or other person
30 liable for the tax.

31 (2) The taxpayer fails to comply with any of the terms and
32 conditions relative to the offer.

33 (l) Any person who, in connection with any offer or compromise
34 under this section, or offer of that compromise to enter into that
35 agreement, willfully does either of the following shall be guilty of
36 a felony and, upon conviction, shall be fined not more than fifty
37 thousand dollars (\$50,000) or imprisoned pursuant to subdivision

38 (h) of Section 1170 of the Penal Code, or both, together with the
39 costs of investigation and prosecution:

1 (1) Conceals from any officer or employee of this state any
2 property belonging to the estate of a taxpayer or other person liable
3 in respect of the tax.

4 (2) Receives, withholds, destroys, mutilates, or falsifies any
5 book, document, or record, or makes any false statement, relating
6 to the estate or financial condition of the taxpayer or other person
7 liable in respect of the tax.

8 (m) For purposes of this section, “person” means the taxpayer,
9 any member of the taxpayer’s family, any corporation, agent,
10 fiduciary, or representative of, or any other individual or entity
11 acting on behalf of, the taxpayer, or any other corporation or entity
12 owned or controlled by the taxpayer, directly or indirectly, or that
13 owns or controls the taxpayer, directly or indirectly.

14 (n) This section shall become operative on January 1, 2013.

15 SEC. 175. Section 50156.18 of the Revenue and Taxation
16 Code, as amended by Section 591 of Chapter 15 of the Statutes of
17 2011, is amended to read:

18 50156.18. (a) (1) The executive director and chief counsel of
19 the board, or their delegates, may compromise any final fee liability
20 in which the reduction of the fee is seven thousand five hundred
21 dollars (\$7,500) or less.

22 (2) Except as provided in paragraph (3), the board, upon
23 recommendation by its executive director and chief counsel, jointly,
24 may compromise a final fee liability involving a reduction in the
25 fee in excess of seven thousand five hundred dollars (\$7,500). Any
26 recommendation for approval of an offer in compromise that is
27 not either approved or disapproved within 45 days of the
28 submission of the recommendation shall be deemed approved.

29 (3) The board, itself, may by resolution delegate to the executive
30 director and the chief counsel, jointly, the authority to compromise
31 a final fee liability in which the reduction of the fee is in excess
32 of seven thousand five hundred dollars (\$7,500), but less than ten
33 thousand dollars (\$10,000).

34 (b) For purposes of this section, “a final fee liability” means
35 any final fee liability arising under Part 26 (commencing with
36 Section 50101), or related interest, additions to the fee, penalties,
37 or other amounts assessed under this part.

38 (c) Offers in compromise shall be considered only for liabilities
39 that were generated from a business that has been discontinued or
40 transferred, where the taxpayer making the offer no longer has a

1 controlling interest or association with the transferred business or
2 has a controlling interest or association with a similar type of
3 business as the transferred or discontinued business.

4 (d) For amounts to be compromised under this section, the
5 following conditions shall exist:

6 (1) The feepayer shall establish that:

7 (A) The amount offered in payment is the most that can be
8 expected to be paid or collected from the feepayer's present assets
9 or income.

10 (B) The feepayer does not have reasonable prospects of
11 acquiring increased income or assets that would enable the feepayer
12 to satisfy a greater amount of the liability than the amount offered,
13 within a reasonable period of time.

14 (2) The board shall have determined that acceptance of the
15 compromise is in the best interest of the state.

16 (e) A determination by the board that it would not be in the best
17 interest of the state to accept an offer in compromise in satisfaction
18 of a final fee liability shall not be subject to administrative appeal
19 or judicial review.

20 (f) When an offer in compromise is either accepted or rejected,
21 or the terms and conditions of a compromise agreement are
22 fulfilled, the board shall notify the feepayer in writing. In the event
23 an offer is rejected, the amount posted will either be applied to the
24 liability or refunded, at the discretion of the feepayer.

25 (g) When more than one feepayer is liable for the debt, such as
26 with spouses or partnerships or other business combinations, the
27 acceptance of an offer in compromise from one liable feepayer
28 shall not relieve the other feepayers from paying the entire liability.
29 However, the amount of the liability shall be reduced by the amount
30 of the accepted offer.

31 (h) Whenever a compromise of the fee or penalties or total fees
32 and penalties in excess of five hundred dollars (\$500) is approved,
33 there shall be placed on file for a *at* least one year in the office of
34 the executive director of the board a public record with respect to
35 that compromise. The public record shall include all of the
36 following information:

37 (1) The name of the feepayer.

38 (2) The amount of unpaid fees and related penalties, additions
39 to fees, interest, or other amounts involved.

40 (3) The amount offered.

1 (4) A summary of the reason why the compromise is in the best
2 interest of the state.

3 The public record shall not include any information that relates
4 to any trade secrets, patent, process, style of work, apparatus,
5 business secret, or organizational structure, that if disclosed, would
6 adversely affect the feepayer or violate the confidentiality
7 provisions of Chapter 8 (commencing with Section 50159). No
8 list shall be prepared and no releases distributed by the board in
9 connection with these statements.

10 (i) Any compromise made under this section may be rescinded,
11 all compromised liabilities may be reestablished (without regard
12 to any statute of limitations that otherwise may be applicable), and
13 no portion of the amount offered in compromise refunded, if either
14 of the following occurs:

15 (1) The board determines that any person did any of the
16 following acts regarding the making of the offer:

17 (A) Concealed from the board any property belonging to the
18 estate of any feepayer or other person liable for the fee.

19 (B) Received, withheld, destroyed, mutilated, or falsified any
20 book, document, or record or made any false statement, relating
21 to the estate or financial condition of the feepayer or other person
22 liable for the fee.

23 (2) The feepayer fails to comply with any of the terms and
24 conditions relative to the offer.

25 (j) Any person who, in connection with any offer or compromise
26 under this section, or offer of that compromise to enter into that
27 agreement, willfully does either of the following shall be guilty of
28 a felony and, upon conviction, shall be fined not more than fifty
29 thousand dollars (\$50,000) or imprisoned pursuant to subdivision
30 (h) of Section 1170 of the Penal Code, or both, together with the
31 costs of investigation and prosecution:

32 (1) Conceals from any officer or employee of this state any
33 property belonging to the estate of a feepayer or other person liable
34 in respect of the fee.

35 (2) Receives, withholds, destroys, mutilates, or falsifies any
36 book, document, or record, or makes any false statement, relating
37 to the estate or financial condition of the feepayer or other person
38 liable in respect of the fee.

39 (k) For purposes of this section, “person” means the feepayer,
40 any member of the feepayer’s family, any corporation, agent,

1 fiduciary, or representative of, or any other individual or entity
2 acting on behalf of, the feepayer, or any other corporation or entity
3 owned or controlled by the feepayer, directly or indirectly, or that
4 owns or controls the feepayer, directly or indirectly.

5 (l) This section shall become operative on January 1, 2013.

6 SEC. 176. The heading of Article 9 (commencing with Section
7 6850) of Chapter 6 of Part 1 of Division 2 of the Revenue and
8 Taxation Code is amended to read:

9

10 Article 9. Collection of Tax Debts Due to the Internal Revenue
11 Service or Other States

12

13 SEC. 177. Section 1962.4 of the Streets and Highways Code
14 is amended to read:

15 1962.4. If the County of Riverside or any city in the county
16 adopts a NEV transportation plan for the plan area pursuant to
17 Section 1962.2, it shall do all of the following:

18 (a) Establish minimum general design criteria for the
19 development, planning, and construction of separated NEV lanes,
20 including, but not limited to, the design speed of the facility, the
21 space requirements of the NEV, and roadway design criteria, if
22 the plan envisions separated NEV lanes.

23 (b) In cooperation with the department, establish uniform
24 specifications and symbols for signs, markers, and traffic control
25 devices to control NEV traffic; to warn of dangerous conditions,
26 obstacles, or hazards; to designate the right-of-way as between
27 NEVs, other vehicles, and bicycles, as may be applicable; to state
28 the nature and destination of the NEV lane; and to warn
29 pedestrians, bicyclists, and motorists of the presence of NEV
30 traffic.

31 (c) Submit the transportation plan to the director for approval
32 following a review and recommendation by the California Traffic
33 Control Devices Committee.

34 SEC. 178. Section 679 of the Unemployment Insurance Code
35 is amended to read:

36 679. (a) Notwithstanding Sections 606.5 and 678, for the
37 purposes of this code, “employer” means any employing unit that
38 is a motion picture payroll services company that pays and controls
39 the payment of wages of a motion picture production worker for
40 services either to a motion picture production company or to an

1 allied motion picture services company, and files a timely statement
2 of its intent to be the employer of motion picture production
3 workers pursuant to subdivision (b).

4 (b) (1) Any employing unit meeting the requirements of a
5 motion picture payroll services company that intends to be treated
6 as an employer of motion picture production workers pursuant to
7 subdivision (a) shall file a statement with the department that
8 declares its intent to be the employer of motion picture production
9 workers, pursuant to this section, within 15 days after first paying
10 wages to the workers. The statement shall include identification
11 of each affiliated entity.

12 (2) Any employing unit operating as a motion picture payroll
13 services company as of January 1, 2007, that intends to be treated
14 as an employer of motion picture production workers pursuant to
15 this section, shall file a statement with the department that declares
16 its intent to be the employer of motion picture production workers,
17 pursuant to this section, by January 15, 2007. The statement shall
18 include identification of each affiliated entity.

19 (3) Any motion picture payroll company that quits business
20 shall:

21 (A) Within 10 days of quitting business:

22 (i) File with the director a final return and report of wages of
23 its workers, as required by Section 1116.

24 (ii) File all statements required by this subdivision.

25 (B) Forty-five days in advance of quitting business, notify each
26 motion picture production company and allied motion picture
27 services company, with respect to which they have been treated
28 as the employer of the motion picture production workers, of its
29 intent to quit business.

30 (4) The director may prevent a motion picture payroll services
31 company that fails to file a timely statement from being treated as
32 an employer of motion picture production workers, for a period
33 not to exceed the period for which the statement is required.

34 (5) Any statement filed by a motion picture payroll services
35 company pursuant to this subdivision shall be applied to each
36 affiliated entity of the motion picture payroll services company in
37 existence at the time the statement is filed.

38 (c) For each rating period beginning on or after January 1, 2007,
39 in which an employer operating as a motion picture payroll services
40 company obtains or attempts to obtain a more favorable rate of

1 contributions under this section in a manner that is due to deliberate
2 ignorance, reckless disregard, fraud, intent to evade,
3 misrepresentation, or willful nondisclosure, the director shall assign
4 the maximum contribution rate plus 2 percent for each applicable
5 rating period, the current rating period, and the subsequent rating
6 period. Contributions paid in excess of the maximum rate under
7 this section shall not be credited to the employing unit's reserve
8 account.

9 (d) (1) On and after January 1, 2007, whenever a motion picture
10 payroll services company creates or acquires a motion picture
11 payroll services company, or acquires substantially all of the assets
12 of a motion picture payroll services company, the created or
13 acquired motion picture payroll services company shall:

14 (A) Constitute a separate employing unit, notwithstanding
15 Sections 135.1 and 135.2.

16 (B) Have its reserve account and rate of contributions
17 determined in accordance with subdivision (e).

18 (C) Notify the department of the entity being created or acquired
19 and the nature of its affiliation to that entity.

20 (2) The department may promulgate regulations requiring a
21 motion picture payroll services company, prior to the creation or
22 acquisition of a motion picture payroll services company that will
23 be an affiliated entity, to seek the approval of the department to
24 apply this section to the created or acquired entity.

25 (e) When a motion picture payroll services company transfers
26 all or part of its business or payroll to another motion picture
27 payroll services company the reserve account attributable to the
28 transferor shall be transferred to the transferee motion picture
29 payroll services company, and the transferee's rate of contribution
30 shall be determined in accordance with Section 1052. The
31 transferee shall notify the department within 15 days of the transfer
32 of the business or payroll.

33 (f) For purposes of this section:

34 (1) "Affiliated entity" means any one or more motion picture
35 payroll services company or companies that are united by factors
36 of common ownership, management, or control as prescribed by
37 Section 1061.

38 (2) "Allied motion picture services company" means any person
39 engaged in an industry closely allied with, and whose work is
40 integral to, a motion picture production company in the

1 development, production, or postproduction of a motion picture,
2 excluding the distribution of the completed motion picture and
3 any activity occurring thereafter, and who hires from the same
4 pool of craft and guild or union workers, actors, or extras as a
5 motion picture production company.

6 (3) “Motion picture” means a motion picture of any type,
7 including, but not limited to, a theatrical motion picture, a
8 television production, a television commercial, or a music video,
9 regardless of its theme or the technology used in its production or
10 distribution.

11 (4) (A) “Motion picture payroll services company” means any
12 employing unit that directly or through its affiliated entities meets
13 all of the following criteria:

14 (i) Contractually provides the services of motion picture
15 production workers to a motion picture production company or to
16 an allied motion picture services company.

17 (ii) Is a signatory to a collective bargaining agreement for one
18 or more of its clients.

19 (iii) Controls the payment of wages to the motion picture
20 production workers and pays those wages from its own account
21 or accounts.

22 (iv) Is contractually obligated to pay wages to the motion picture
23 production workers without regard to payment or reimbursement
24 by the motion picture production company or allied motion picture
25 services company.

26 (v) At least 80 percent of the wages paid by the motion picture
27 payroll services company each calendar year are paid to workers
28 associated between contracts with motion picture production
29 companies and motion picture payroll services companies.

30 (B) If the director determines that any employing unit is
31 operating as a motion picture payroll services company but is
32 failing to comply with any of the provisions of subparagraph (A)
33 of paragraph (4), the employing unit is subject to determination
34 of the employer-employee relationship pursuant to this code. When
35 the director’s ruling becomes final, the director may preclude the
36 employing unit from being classified as a motion picture payroll
37 services company pursuant to this section for up to three years
38 from the date of the determination.

39 (5) “Motion picture production company” means any employing
40 unit engaged in the development, production, and postproduction

1 of a motion picture, excluding the distribution of the completed
2 motion picture and any activities occurring thereafter.

3 (6) “Motion picture production worker” means an individual
4 who provides services to a motion picture production company or
5 allied motion picture services company and who, with regard to
6 those services, is reported under this part as an employee by the
7 motion picture payroll services company. An individual who has
8 been reported as an employee by the motion picture payroll services
9 company, without regard to the individual’s status as an employee
10 or independent contractor, shall be the employee of the motion
11 picture payroll services company for the purposes of this code
12 throughout the contractual period with the motion picture payroll
13 services company.

14 (7) “Wages” shall have the same meaning given the term in
15 Article 2 (commencing with Section 926) of Chapter 4 of Part 1
16 of Division 1, and shall include residual payments.

17 (g) If the director determines that an entity does not meet any
18 requirement of this section, the director shall give notice of its
19 determination to that entity pursuant to Section 1206. The notice
20 shall contain a statement of the facts and circumstances upon which
21 the determination was made. The entity so noticed shall have the
22 right to petition for review of the director’s determination within
23 30 days of the notice, as provided in Section 1222.

24 (h) The director shall prescribe the form and manner of the
25 statements and information required to be filed or reported by this
26 section.

27 SEC. 179. Article 2 (commencing with Section 10521) of
28 Chapter 4.5 of Part 1 of Division 3 of the Unemployment Insurance
29 Code is repealed.

30 SEC. 180. Section 11713.3 of the Vehicle Code is amended to
31 read:

32 11713.3. It is unlawful and a violation of this code for a
33 manufacturer, manufacturer branch, distributor, or distributor
34 branch licensed pursuant to this code to do, directly or indirectly
35 through an affiliate, any of the following:

36 (a) To refuse or fail to deliver in reasonable quantities and within
37 a reasonable time after receipt of an order from a dealer having a
38 franchise for the retail sale of a new vehicle sold or distributed by
39 the manufacturer or distributor, a new vehicle or parts or
40 accessories to new vehicles as are covered by the franchise, if the

1 vehicle, parts, or accessories are publicly advertised as being
2 available for delivery or actually being delivered. This subdivision
3 is not violated, however, if the failure is caused by acts or causes
4 beyond the control of the manufacturer, manufacturer branch,
5 distributor, or distributor branch.

6 (b) To prevent or require, or attempt to prevent or require, by
7 contract or otherwise, a change in the capital structure of a
8 dealership or the means by or through which the dealer finances
9 the operation of the dealership, if the dealer at all times meets
10 reasonable capital standards agreed to by the dealer and the
11 manufacturer or distributor, and if a change in capital structure
12 does not cause a change in the principal management or have the
13 effect of a sale of the franchise without the consent of the
14 manufacturer or distributor.

15 (c) To prevent or require, or attempt to prevent or require, a
16 dealer to change the executive management of a dealership, other
17 than the principal dealership operator or operators, if the franchise
18 was granted to the dealer in reliance upon the personal
19 qualifications of that person.

20 (d) (1) Except as provided in subdivision (t), to prevent or
21 require, or attempt to prevent or require, by contract or otherwise,
22 a dealer, or an officer, partner, or stockholder of a dealership, the
23 sale or transfer of a part of the interest of any of them to another
24 person. A dealer, officer, partner, or stockholder shall not, however,
25 have the right to sell, transfer, or assign the franchise, or a right
26 thereunder, without the consent of the manufacturer or distributor
27 except that the consent shall not be unreasonably withheld.

28 (2) (A) For the transferring franchisee to fail, prior to the sale,
29 transfer, or assignment of a franchisee or the sale, assignment, or
30 transfer of all, or substantially all, of the assets of the franchised
31 business or a controlling interest in the franchised business to
32 another person, to notify the manufacturer or distributor of the
33 franchisee's decision to sell, transfer, or assign the franchise. The
34 notice shall be in writing and shall include all of the following:

35 (i) The proposed transferee's name and address.

36 (ii) A copy of all of the agreements relating to the sale,
37 assignment, or transfer of the franchised business or its assets.

38 (iii) The proposed transferee's application for approval to
39 become the successor franchisee. The application shall include
40 forms and related information generally utilized by the

1 manufacturer or distributor in reviewing prospective franchisees,
2 if those forms are readily made available to existing franchisees.
3 As soon as practicable after receipt of the proposed transferee's
4 application, the manufacturer or distributor shall notify the
5 franchisee and the proposed transferee of information needed to
6 make the application complete.

7 (B) For the manufacturer or distributor, to fail, on or before 60
8 days after the receipt of all of the information required pursuant
9 to subparagraph (A), or as extended by a written agreement
10 between the manufacturer or distributor and the franchisee, to
11 notify the franchisee of the approval or the disapproval of the sale,
12 transfer, or assignment of the franchise. The notice shall be in
13 writing and shall be personally served or sent by certified mail,
14 return receipt requested, or by guaranteed overnight delivery
15 service that provides verification of delivery and shall be directed
16 to the franchisee. A proposed sale, assignment, or transfer shall
17 be deemed approved, unless disapproved by the franchisor in the
18 manner provided by this subdivision. If the proposed sale,
19 assignment, or transfer is disapproved, the franchisor shall include
20 in the notice of disapproval a statement setting forth the reasons
21 for the disapproval.

22 (3) In an action in which the manufacturer's or distributor's
23 withholding of consent under this subdivision or subdivision (e)
24 is an issue, whether the withholding of consent was unreasonable
25 is a question of fact requiring consideration of all the existing
26 circumstances.

27 (e) To prevent, or attempt to prevent, a dealer from receiving
28 fair and reasonable compensation for the value of the franchised
29 business. There shall not be a transfer or assignment of the dealer's
30 franchise without the consent of the manufacturer or distributor,
31 which consent shall not be unreasonably withheld or conditioned
32 upon the release, assignment, novation, waiver, estoppel, or
33 modification of a claim or defense by the dealer.

34 (f) To obtain money, goods, services, or another benefit from
35 a person with whom the dealer does business, on account of, or in
36 relation to, the transaction between the dealer and that other person,
37 other than for compensation for services rendered, unless the
38 benefit is promptly accounted for, and transmitted to, the dealer.

39 (g) (1) Except as provided in paragraph (3), to obtain from a
40 dealer or enforce against a dealer an agreement, provision, release,

1 assignment, novation, waiver, or estoppel that does any of the
2 following:

3 (A) Modifies or disclaims a duty or obligation of a manufacturer,
4 manufacturer branch, distributor, distributor branch, or
5 representative, or a right or privilege of a dealer, pursuant to
6 Chapter 4 (commencing with Section 11700) of Division 5 or
7 Chapter 6 (commencing with Section 3000) of Division 2.

8 (B) Limits or constrains the right of a dealer to file, pursue, or
9 submit evidence in connection with a protest before the board.

10 (C) Requires a dealer to terminate a franchise.

11 (D) Requires a controversy between a manufacturer,
12 manufacturer branch, distributor, distributor branch, or
13 representative and a dealer to be referred to a person for a binding
14 determination. However, this subparagraph does not prohibit
15 arbitration before an independent arbitrator, provided that whenever
16 a motor vehicle franchise contract provides for the use of arbitration
17 to resolve a controversy arising out of, or relating to, that contract,
18 arbitration may be used to settle the controversy only if, after the
19 controversy arises, all parties to the controversy consent in writing
20 to use arbitration to settle the controversy. For the purpose of this
21 subparagraph, the terms “motor vehicle” and “motor vehicle
22 franchise contract” shall have the same meaning as defined in
23 Section 1226 of Title 15 of the United States Code. If arbitration
24 is elected to settle a dispute under a motor vehicle franchise
25 contract, the arbitrator shall provide the parties to the arbitration
26 with a written explanation of the factual and legal basis for the
27 award.

28 (2) An agreement, provision, release, assignment, novation,
29 waiver, or estoppel prohibited by this subdivision shall be
30 unenforceable and void.

31 (3) This subdivision does not do any of the following:

32 (A) Limit or restrict the terms upon which parties to a protest
33 before the board, civil action, or other proceeding can settle or
34 resolve, or stipulate to evidentiary or procedural matters during
35 the course of, a protest, civil action, or other proceeding.

36 (B) Affect the enforceability of any stipulated order or other
37 order entered by the board.

38 (C) Affect the enforceability of any provision in a contract if
39 the provision is not prohibited under this subdivision or any other
40 law.

1 (D) Affect the enforceability of a provision in any contract
2 entered into on or before December 31, 2011.

3 (E) Prohibit a dealer from waiving its right to file a protest
4 pursuant to Section 3065.1 if the waiver agreement is entered into
5 after a franchisor incentive program claim has been disapproved
6 by the franchisor and the waiver is voluntarily given as part of an
7 agreement to settle that claim.

8 (F) Prohibit a voluntary agreement supported by valuable
9 consideration, other than granting or renewing a franchise, that
10 does both of the following:

11 (i) Provides that a dealer establish or maintain exclusive
12 facilities, personnel, or display space or provides that a dealer
13 make a material alteration, expansion, or addition to a dealership
14 facility.

15 (ii) Contains no waiver or other provision prohibited by
16 subparagraph (A), (B), (C), or (D) of paragraph (1).

17 (G) Prohibit an agreement separate from the franchise agreement
18 that implements a dealer's election to terminate the franchise if
19 the agreement is conditioned only on a specified time for
20 termination or payment of consideration to the dealer.

21 (H) (i) Prohibit a voluntary waiver agreement, supported by
22 valuable consideration, other than the consideration of renewing
23 a franchise, to waive the right of a dealer to file a protest under
24 Section 3062 for the proposed establishment or relocation of a
25 specific proposed dealership, if the waiver agreement provides all
26 of the following:

27 (I) The approximate address at which the proposed dealership
28 will be located.

29 (II) The planning potential used to establish the proposed
30 dealership's facility, personnel, and capital requirements.

31 (III) An approximation of projected vehicle and parts sales, and
32 number of vehicles to be serviced at the proposed dealership.

33 (IV) Whether the franchisor or affiliate will hold an ownership
34 interest in the proposed dealership or real property of the proposed
35 dealership, and the approximate percentage of any franchisor or
36 affiliate ownership interest in the proposed dealership.

37 (V) The line-makes to be operated at the proposed dealership.

38 (VI) If known at the time the waiver agreement is executed, the
39 identity of the dealer who will operate the proposed dealership.

1 (VII) The date the waiver agreement is to expire, which may
2 not be more than 30 months after the date of execution of the
3 waiver agreement.

4 (ii) Notwithstanding the provisions of a waiver agreement
5 entered into pursuant to the provisions of this subparagraph, a
6 dealer may file a protest under Section 3062 if any of the
7 information provided pursuant to clause (i) has become materially
8 inaccurate since the waiver agreement was executed. Any
9 determination of the enforceability of a waiver agreement shall be
10 determined by the board and the franchisor shall have the burden
11 of proof.

12 (h) To increase prices of motor vehicles that the dealer had
13 ordered for private retail consumers prior to the dealer's receipt
14 of the written official price increase notification. A sales contract
15 signed by a private retail consumer is evidence of the order. In the
16 event of manufacturer price reductions, the amount of the reduction
17 received by a dealer shall be passed on to the private retail
18 consumer by the dealer if the retail price was negotiated on the
19 basis of the previous higher price to the dealer. Price reductions
20 apply to all vehicles in the dealer's inventory that were subject to
21 the price reduction. Price differences applicable to new model or
22 series motor vehicles at the time of the introduction of new models
23 or series shall not be considered a price increase or price decrease.
24 This subdivision does not apply to price changes caused by either
25 of the following:

26 (1) The addition to a motor vehicle of required or optional
27 equipment pursuant to state or federal law.

28 (2) Revaluation of the United States dollar in the case of a
29 foreign-make vehicle.

30 (i) To fail to pay to a dealer, within a reasonable time following
31 receipt of a valid claim by a dealer thereof, a payment agreed to
32 be made by the manufacturer or distributor to the dealer by reason
33 of the fact that a new vehicle of a prior year model is in the dealer's
34 inventory at the time of introduction of new model vehicles.

35 (j) To deny the widow, widower, or heirs designated by a
36 deceased owner of a dealership the opportunity to participate in
37 the ownership of the dealership or successor dealership under a
38 valid franchise for a reasonable time after the death of the owner.

39 (k) To offer refunds or other types of inducements to a person
40 for the purchase of new motor vehicles of a certain line-make to

1 be sold to the state or a political subdivision of the state without
2 making the same offer to all other dealers in the same line-make
3 within the relevant market area.

4 (l) To modify, replace, enter into, relocate, terminate, or refuse
5 to renew a franchise in violation of Article 4 (commencing with
6 Section 3060) of Chapter 6 of Division 2.

7 (m) To employ a person as a representative who has not been
8 licensed pursuant to Article 3 (commencing with Section 11900)
9 of Chapter 4 of Division 5.

10 (n) To deny a dealer the right of free association with another
11 dealer for a lawful purpose.

12 (o) (1) To compete with a dealer in the same line-make
13 operating under an agreement or franchise from a manufacturer
14 or distributor in the relevant market area.

15 (2) A manufacturer, branch, or distributor or an entity that
16 controls or is controlled by, a manufacturer, branch, or distributor,
17 shall not, however, be deemed to be competing in the following
18 limited circumstances:

19 (A) Owning or operating a dealership for a temporary period,
20 not to exceed one year at the location of a former dealership of the
21 same line-make that has been out of operation for less than six
22 months. However, after a showing of good cause by a
23 manufacturer, branch, or distributor that it needs additional time
24 to operate a dealership in preparation for sale to a successor
25 independent franchisee, the board may extend the time period.

26 (B) Owning an interest in a dealer as part of a bona fide dealer
27 development program that satisfies all of the following
28 requirements:

29 (i) The sole purpose of the program is to make franchises
30 available to persons lacking capital, training, business experience,
31 or other qualities ordinarily required of prospective franchisees
32 and the dealer development candidate is an individual who is
33 unable to acquire the franchise without assistance of the program.

34 (ii) The dealer development candidate has made a significant
35 investment subject to loss in the franchised business of the dealer.

36 (iii) The program requires the dealer development candidate to
37 manage the day-to-day operations and business affairs of the dealer
38 and to acquire, within a reasonable time and on reasonable terms
39 and conditions, beneficial ownership and control of a majority

1 interest in the dealer and disassociation of any direct or indirect
2 ownership or control by the manufacturer, branch, or distributor.

3 (C) Owning a wholly owned subsidiary corporation of a
4 distributor that sells motor vehicles at retail, if, for at least three
5 years prior to January 1, 1973, the subsidiary corporation has been
6 a wholly owned subsidiary of the distributor and engaged in the
7 sale of vehicles at retail.

8 (3) (A) A manufacturer, branch, and distributor that owns or
9 operates a dealership in the manner described in subparagraph (A)
10 of paragraph (2) shall give written notice to the board, within 10
11 days, each time it commences or terminates operation of a
12 dealership and each time it acquires, changes, or divests itself of
13 an ownership interest.

14 (B) A manufacturer, branch, and distributor that owns an interest
15 in a dealer in the manner described in subparagraph (B) of
16 paragraph (2) shall give written notice to the board, annually, of
17 the name and location of each dealer in which it has an ownership
18 interest, the name of the bona fide dealer development owner or
19 owners, and the ownership interests of each owner expressed as a
20 percentage.

21 (p) To unfairly discriminate among its franchisees with respect
22 to warranty reimbursement or authority granted to its franchisees
23 to make warranty adjustments with retail customers.

24 (q) To sell vehicles to a person not licensed pursuant to this
25 chapter for resale.

26 (r) To fail to affix an identification number to a park trailer, as
27 described in Section 18009.3 of the Health and Safety Code, that
28 is manufactured on or after January 1, 1987, and that does not
29 clearly identify the unit as a park trailer to the department. The
30 configuration of the identification number shall be approved by
31 the department.

32 (s) To dishonor a warranty, rebate, or other incentive offered
33 to the public or a dealer in connection with the retail sale of a new
34 motor vehicle, based solely upon the fact that an autobroker
35 arranged or negotiated the sale. This subdivision shall not prohibit
36 the disallowance of that rebate or incentive if the purchaser or
37 dealer is ineligible to receive the rebate or incentive pursuant to
38 any other term or condition of a rebate or incentive program.

39 (t) To exercise a right of first refusal or other right requiring a
40 franchisee or an owner of the franchise to sell, transfer, or assign

1 to the franchisor, or to a nominee of the franchisor, all or a material
2 part of the franchised business or of the assets of the franchised
3 business unless all of the following requirements are met:

4 (1) The franchise authorizes the franchisor to exercise a right
5 of first refusal to acquire the franchised business or assets of the
6 franchised business in the event of a proposed sale, transfer, or
7 assignment.

8 (2) The franchisor gives written notice of its exercise of the
9 right of first refusal no later than 45 days after the franchisor
10 receives all of the information required pursuant to subparagraph
11 (A) of paragraph (2) of subdivision (d).

12 (3) The sale, transfer, or assignment being proposed relates to
13 not less than all or substantially all of the assets of the franchised
14 business or to a controlling interest in the franchised business.

15 (4) The proposed transferee is neither a family member of an
16 owner of the franchised business, nor a managerial employee of
17 the franchisee owning 15 percent or more of the franchised
18 business, nor a corporation, partnership, or other legal entity owned
19 by the existing owners of the franchised business. For purposes of
20 this paragraph, a “family member” means the spouse of an owner
21 of the franchised business, the child, grandchild, brother, sister,
22 or parent of an owner, or a spouse of one of those family members.
23 This paragraph does not limit the rights of the franchisor to
24 disapprove a proposed transferee as provided in subdivision (d).

25 (5) Upon the franchisor’s exercise of the right of first refusal,
26 the consideration paid by the franchisor to the franchisee and
27 owners of the franchised business shall equal or exceed all
28 consideration that each of them were to have received under the
29 terms of, or in connection with, the proposed sale, assignment, or
30 transfer, and the franchisor shall comply with all the terms and
31 conditions of the agreement or agreements to sell, transfer, or
32 assign the franchised business.

33 (6) The franchisor shall reimburse the proposed transferee for
34 expenses paid or incurred by the proposed transferee in evaluating,
35 investigating, and negotiating the proposed transfer to the extent
36 those expenses do not exceed the usual, customary, and reasonable
37 fees charged for similar work done in the area in which the
38 franchised business is located. These expenses include, but are not
39 limited to, legal and accounting expenses, and expenses incurred
40 for title reports and environmental or other investigations of real

1 property on which the franchisee's operations are conducted. The
2 proposed transferee shall provide the franchisor a written
3 itemization of those expenses, and a copy of all nonprivileged
4 reports and studies for which expenses were incurred, if any, within
5 30 days of the proposed transferee's receipt of a written request
6 from the franchisor for that accounting. The franchisor shall make
7 payment within 30 days of exercising the right of first refusal.

8 (u) (1) To unfairly discriminate in favor of a dealership owned
9 or controlled, in whole or in part, by a manufacturer or distributor
10 or an entity that controls or is controlled by the manufacturer or
11 distributor. Unfair discrimination includes, but is not limited to,
12 the following:

13 (A) The furnishing to a franchisee or dealer that is owned or
14 controlled, in whole or in part, by a manufacturer, branch, or
15 distributor of any of the following:

16 (i) A vehicle that is not made available to each franchisee
17 pursuant to a reasonable allocation formula that is applied
18 uniformly, and a part or accessory that is not made available to all
19 franchisees on an equal basis when there is no reasonable allocation
20 formula that is applied uniformly.

21 (ii) A vehicle, part, or accessory that is not made available to
22 each franchisee on comparable delivery terms, including the time
23 of delivery after the placement of an order. Differences in delivery
24 terms due to geographic distances or other factors beyond the
25 control of the manufacturer, branch, or distributor shall not
26 constitute unfair competition.

27 (iii) Information obtained from a franchisee by the manufacturer,
28 branch, or distributor concerning the business affairs or operations
29 of a franchisee in which the manufacturer, branch, or distributor
30 does not have an ownership interest. The information includes,
31 but is not limited to, information contained in financial statements
32 and operating reports, the name, address, or other personal
33 information or buying, leasing, or service behavior of a dealer
34 customer, and other information that, if provided to a franchisee
35 or dealer owned or controlled by a manufacturer or distributor,
36 would give that franchisee or dealer a competitive advantage. This
37 clause does not apply if the information is provided pursuant to a
38 subpoena or court order, or to aggregated information made
39 available to all franchisees.

1 (iv) Sales or service incentives, discounts, or promotional
2 programs that are not made available to all California franchises
3 of the same line-make on an equal basis.

4 (B) Referring a prospective purchaser or lessee to a dealer in
5 which a manufacturer, branch, or distributor has an ownership
6 interest, unless the prospective purchaser or lessee resides in the
7 area of responsibility assigned to that dealer or the prospective
8 purchaser or lessee requests to be referred to that dealer.

9 (2) This subdivision does not prohibit a franchisor from granting
10 a franchise to prospective franchisees or assisting those franchisees
11 during the course of the franchise relationship as part of a program
12 or programs to make franchises available to persons lacking capital,
13 training, business experience, or other qualifications ordinarily
14 required of prospective franchisees.

15 (v) (1) To access, modify, or extract information from a
16 confidential dealer computer record, as defined in Section
17 11713.25, without obtaining the prior written consent of the dealer
18 and without maintaining administrative, technical, and physical
19 safeguards to protect the security, confidentiality, and integrity of
20 the information.

21 (2) Paragraph (1) does not limit a duty that a dealer may have
22 to safeguard the security and privacy of records maintained by the
23 dealer.

24 (w) (1) To use electronic, contractual, or other means to prevent
25 or interfere with any of the following:

26 (A) The lawful efforts of a dealer to comply with federal and
27 state data security and privacy laws.

28 (B) The ability of a dealer to do either of the following:

29 (i) Ensure that specific data accessed from the dealer's computer
30 system is within the scope of consent specified in subdivision (v).

31 (ii) Monitor specific data accessed from or written to the dealer's
32 computer system.

33 (2) Paragraph (1) does not limit a duty that a dealer may have
34 to safeguard the security and privacy of records maintained by the
35 dealer.

36 (x) (1) To unfairly discriminate against a franchisee selling a
37 service contract, debt cancellation agreement, maintenance
38 agreement, or similar product not approved, endorsed, sponsored,
39 or offered by the manufacturer, manufacturer branch, distributor,
40 or distributor branch or affiliate. For purposes of this subdivision,

1 unfair discrimination includes, but is not limited to, any of the
2 following:

3 (A) Express or implied statements that the dealer is under an
4 obligation to exclusively sell or offer to sell service contracts, debt
5 cancellation agreements, or similar products approved, endorsed,
6 sponsored, or offered by the manufacturer, manufacturer branch,
7 distributor, or distributor branch or affiliate.

8 (B) Express or implied statements that selling or offering to sell
9 service contracts, debt cancellation agreements, maintenance
10 agreements, or similar products not approved, endorsed, sponsored,
11 or offered by the manufacturer, manufacturer branch, distributor,
12 or distributor branch or affiliate, or the failure to sell or offer to
13 sell service contracts, debt cancellation agreements, maintenance
14 agreements, or similar products approved, endorsed, sponsored,
15 or offered by the manufacturer, manufacturer branch, distributor,
16 or distributor branch or affiliate will have any negative
17 consequences for the dealer.

18 (C) Measuring a dealer's performance under a franchise
19 agreement based upon the sale of service contracts, debt
20 cancellation agreements, or similar products approved, endorsed,
21 sponsored, or offered by the manufacturer, manufacturer branch,
22 distributor, or distributor branch or affiliate.

23 (D) Requiring a dealer to actively promote the sale of service
24 contracts, debt cancellation agreements, or similar products
25 approved, endorsed, sponsored, or offered by the manufacturer,
26 manufacturer branch, distributor, or distributor branch or affiliate.

27 (E) Conditioning access to vehicles or parts, or vehicle sales or
28 service incentives upon the sale of service contracts, debt
29 cancellation agreements, or similar products approved, endorsed,
30 sponsored, or offered by the manufacturer, manufacturer branch,
31 distributor, or distributor branch or affiliate.

32 (2) Unfair discrimination does not include, and nothing shall
33 prohibit a manufacturer from, offering an incentive program to
34 vehicle dealers who voluntarily sell or offer to sell service
35 contracts, debt cancellation agreements, or similar products
36 approved, endorsed, sponsored, or offered by the manufacturer,
37 manufacturer branch, distributor, or distributor branch or affiliate,
38 if the program does not provide vehicle sales or service incentives.

39 (3) This subdivision does not prohibit a manufacturer,
40 manufacturer branch, distributor, or distributor branch from

1 requiring a franchisee that sells a used vehicle as “certified” under
2 a certified used vehicle program established by the manufacturer,
3 manufacturer branch, distributor, or distributor branch to provide
4 a service contract approved, endorsed, sponsored, or offered by
5 the manufacturer, manufacturer branch, distributor, or distributor
6 branch.

7 (4) Unfair discrimination does not include, and nothing shall
8 prohibit a franchisor from requiring a franchisee to provide, the
9 following notice prior to the sale of the service contract if the
10 service contract is not provided or backed by the franchisor and
11 the vehicle is of the franchised line-make:
12

13 “Service Contract Disclosure

14 The service contract you are purchasing is not provided or backed
15 by the manufacturer of the vehicle you are purchasing. The
16 manufacturer of the vehicle is not responsible for claims or repairs
17 under this service contract.
18

19 _____
19 Signature of Purchaser”

20 (y) As used in this section, “area of responsibility” is a
21 geographic area specified in a franchise that is used by the
22 franchisor for the purpose of evaluating the franchisee’s
23 performance of its sales and service obligations.

24 SEC. 181. Section 12804.11 of the Vehicle Code is amended
25 to read:

26 12804.11. (a) To operate firefighting equipment, a driver,
27 including a tiller operator, is required to do either of the following:

28 (1) Obtain and maintain a firefighter endorsement issued by the
29 department and obtain and maintain a class C license as described
30 in Section 12804.9, a restricted class A license as described in
31 Section 12804.12, or a noncommercial class B license as described
32 in Section 12804.10.

33 (2) Obtain and maintain a class A or B license as described in
34 Section 12804.9 and, as appropriate, for the size and configuration
35 of the firefighting equipment operated.

36 (b) To qualify for a firefighter endorsement the driver shall do
37 all of the following:

38 (1) (A) Provide to the department proof of current employment
39 as a firefighter or registration as a volunteer firefighter with a fire
40 department and evidence of fire equipment operation training by

1 providing a letter, or other indication, from the chief of the fire
2 department, or his or her designee.

3 (B) For purposes of this section, evidence of fire equipment
4 operation training means the applicant has successfully completed
5 Fire Apparatus Driver/Operator 1A taught by an instructor
6 registered with the Office of the State Fire Marshal or fire
7 department driver training that meets all of the following
8 requirements:

9 (i) Meets or exceeds the standards outlined in NFPA 1002,
10 Chapter 4 (2008 version) or the Fire Apparatus Driver/Operator
11 1A course adopted by the Office of the State Fire Marshal.

12 (ii) Prepares the applicant to safely operate the department's
13 fire equipment that the applicant will be authorized to operate.

14 (iii) Includes a classroom (cognitive) portion of at least 16 hours.

15 (iv) Includes a manipulative portion of at least 14 hours, which
16 includes directly supervised behind-the-wheel driver training.

17 (C) Driver training shall be conducted by a person who is
18 registered with the Office of the State Fire Marshal to instruct *Fire*
19 *Apparatus* Driver/Operator 1A or a person who meets all of the
20 following criteria:

21 (i) Possesses a minimum of five years of fire service experience
22 as an emergency vehicle operator, three of which must be at the
23 rank of engineer or higher.

24 (ii) Possesses a valid California class A or B license or a class
25 A or B license restricted to the operation of firefighting equipment.

26 (iii) Is certified as a qualified training instructor or training
27 officer by the State of California, the federal government, or a
28 county training officers' association.

29 (2) Pass the written firefighter examination developed by the
30 department with the cooperation of the *Office of the State Fire*
31 ~~Marshal's office~~ *Marshal*.

32 (3) Submit a report of medical examination on a form approved
33 by the department. The report shall be dated within four years
34 preceding the application date, except as required by paragraph
35 (2) of subdivision (a) of Section 12804.9. Holders of a restricted
36 firefighter's license as of January 1, 2011, are not subject to the
37 requirement for a medical exam until he or she renews his or her
38 license.

39 (c) There shall be no additional charge for adding a firefighter
40 endorsement to an original license or when renewing a license. To

1 add a firefighter endorsement to an existing license when not
2 renewing the license, the applicant shall pay the fee for a duplicate
3 license pursuant to Section 14901.

4 (d) (1) A driver of firefighting equipment is subject to the
5 requirements of subdivision (a) if both of the following conditions
6 exist:

7 (A) The equipment is operated by a person employed as a
8 firefighter by a federal or state agency, by a regularly organized
9 fire department of a city, county, city and county, or district, or by
10 a tribal fire department or registered as a volunteer member of a
11 regularly organized fire department having official recognition of
12 the city, county, city and county, or district in which the department
13 is located, or of a tribal fire department.

14 (B) The motor vehicle is used to travel to and from the scene
15 of any emergency situation, or to transport equipment used in the
16 control of any emergency situation, and which is owned, leased,
17 or rented by, or under the exclusive control of, a federal or state
18 agency, a regularly organized fire department of a city, county,
19 city and county, or district, a volunteer fire department having
20 official recognition of the city, county, city and county, or district
21 in which the department is located, or a tribal fire department.

22 (2) A driver of firefighting equipment is not required to obtain
23 and maintain a firefighter endorsement pursuant to paragraph (1)
24 of subdivision (a) if the driver is operating the firefighting
25 equipment for training purposes, during a nonemergency, while
26 under the direct supervision of a fire department employee who is
27 properly licensed to operate the equipment and is authorized by
28 the fire department to provide training.

29 (e) For purposes of this section, a tiller operator is the driver of
30 the rear free-axle portion of a ladder truck.

31 (f) For purposes of this section, “firefighting equipment” means
32 a motor vehicle, that meets the definition of a class A or class B
33 vehicle described in subdivision (b) of Section 12804.9, that is
34 used to travel to and from the scene of an emergency situation, or
35 to transport equipment used in the control of an emergency
36 situation, and that is owned, leased, or rented by, or under the
37 exclusive control of, a federal or state agency, a regularly organized
38 fire department of a city, county, city and county, or district, or a
39 volunteer fire department having official recognition of the city,

1 county, city and county, or district in which the department is
2 located.

3 (g) Notwithstanding paragraph (1) of subdivision (a), a regularly
4 organized fire department, having official recognition of the city,
5 county, city and county, or district in which the department is
6 located, may require an employee or a volunteer of the fire
7 department who is a driver or operator of firefighting equipment
8 to hold a class A or B license.

9 (h) This section applies to a person hired by a fire department,
10 or to a person renewing a driver’s license, on or after January 1,
11 2011.

12 SEC. 182. Section 23575 of the Vehicle Code is amended to
13 read:

14 23575. (a) (1) In addition to any other law, the court may
15 require that a person convicted of a first offense violation of
16 Section 23152 or 23153 install a certified ignition interlock device
17 on any vehicle that the person owns or operates and prohibit that
18 person from operating a motor vehicle unless that vehicle is
19 equipped with a functioning, certified ignition interlock device.
20 The court shall give heightened consideration to applying this
21 sanction to a first offense violator with 0.15 percent or more, by
22 weight, of alcohol in his or her blood at arrest, or with two or more
23 prior moving traffic violations, or to persons who refused the
24 chemical tests at arrest. If the court orders the ignition interlock
25 device restriction, the term shall be determined by the court for a
26 period not to exceed three years from the date of conviction. The
27 court shall notify the Department of Motor Vehicles, as specified
28 in subdivision (a) of Section 1803, of the terms of the restrictions
29 in accordance with subdivision (a) of Section 1804. The
30 Department of Motor Vehicles shall place the restriction in the
31 person’s records in the Department of Motor Vehicles.

32 (2) The court shall require a person convicted of a violation of
33 Section 14601.2 to install an ignition interlock device on any
34 vehicle that the person owns or operates and prohibit the person
35 from operating a motor vehicle unless the vehicle is equipped with
36 a functioning, certified ignition interlock device. The term of the
37 restriction shall be determined by the court for a period not to
38 exceed three years from the date of conviction. The court shall
39 notify the Department of Motor Vehicles, as specified in
40 subdivision (a) of Section 1803, of the terms of the restrictions in

1 accordance with subdivision (a) of Section 1804. The Department
2 of Motor Vehicles shall place the restriction in the person's records
3 in the Department of Motor Vehicles.

4 (b) The court shall include on the abstract of conviction or
5 violation submitted to the Department of Motor Vehicles under
6 Section 1803 or 1816 the requirement and term for the use of a
7 certified ignition interlock device. The records of the department
8 shall reflect mandatory use of the device for the term ordered by
9 the court.

10 (c) The court shall advise the person that installation of an
11 ignition interlock device on a vehicle does not allow the person to
12 drive without a valid driver's license.

13 (d) A person whose driving privilege is restricted by the court
14 pursuant to this section shall arrange for each vehicle with an
15 ignition interlock device to be serviced by the installer at least
16 once every 60 days in order for the installer to recalibrate and
17 monitor the operation of the device. The installer shall notify the
18 court if the device is removed or indicates that the person has
19 attempted to remove, bypass, or tamper with the device, or if the
20 person fails three or more times to comply with a requirement for
21 the maintenance or calibration of the ignition interlock device.
22 There is no obligation for the installer to notify the court if the
23 person has complied with all of the requirements of this article.

24 (e) The court shall monitor the installation and maintenance of
25 an ignition interlock device restriction ordered pursuant to
26 subdivision (a) or (l). If a person fails to comply with the court
27 order, the court shall give notice of the fact to the department
28 pursuant to Section 40509.1.

29 (f) (1) If a person is convicted of a violation of Section 23152
30 or 23153 and the offense occurred within 10 years of one or more
31 separate violations of Section 23152 or 23153 that resulted in a
32 conviction, or if a person is convicted of a violation of Section
33 23103, as specified in Section 23103.5, and is suspended for one
34 year under Section 13353.3, the person may apply to the
35 Department of Motor Vehicles for a restricted driver's license
36 pursuant to Section 13352 or 13353.3 that prohibits the person
37 from operating a motor vehicle unless that vehicle is equipped
38 with a functioning ignition interlock device, certified pursuant to
39 Section 13386. The restriction shall remain in effect for at least
40 the remaining period of the original suspension or revocation and

1 until all reinstatement requirements in Section 13352 or 13353.4
2 are met.

3 (2) Pursuant to subdivision (g), the Department of Motor
4 Vehicles shall immediately terminate the restriction issued pursuant
5 to Section 13352 or 13353.3 and shall immediately suspend or
6 revoke the privilege to operate a motor vehicle of a person who
7 attempts to remove, bypass, or tamper with the device, who has
8 the device removed prior to the termination date of the restriction,
9 or who fails three or more times to comply with any requirement
10 for the maintenance or calibration of the ignition interlock device
11 ordered pursuant to Section 13352 or 13353.3. The privilege shall
12 remain suspended or revoked for the remaining period of the
13 originating suspension or revocation and until all reinstatement
14 requirements in Section 13352 or 13353.4 are met.

15 (g) A person whose driving privilege is restricted by the
16 Department of Motor Vehicles pursuant to Section 13352 or
17 13353.3 shall arrange for each vehicle with an ignition interlock
18 device to be serviced by the installer at least once every 60 days
19 in order for the installer to recalibrate the device and monitor the
20 operation of the device. The installer shall notify the Department
21 of Motor Vehicles if the device is removed or indicates that the
22 person has attempted to remove, bypass, or tamper with the device,
23 or if the person fails three or more times to comply with any
24 requirement for the maintenance or calibration of the ignition
25 interlock device. There is no obligation on the part of the installer
26 to notify the department or the court if the person has complied
27 with all of the requirements of this section.

28 (h) Nothing in this section permits a person to drive without a
29 valid driver's license.

30 (i) The Department of Motor Vehicles shall include information
31 along with the order of suspension or revocation for repeat
32 offenders informing them that after a specified period of suspension
33 or revocation has been completed, the person may either install an
34 ignition interlock device on any vehicle that the person owns or
35 operates or remain with a suspended or revoked driver's license.

36 (j) Pursuant to this section, an out-of-state resident who
37 otherwise would qualify for an ignition interlock device restricted
38 license in California shall be prohibited from operating a motor
39 vehicle in California unless that vehicle is equipped with a
40 functioning ignition interlock device. An ignition interlock device

1 is not required to be installed on any vehicle owned by the
2 defendant that is not driven in California.

3 (k) If a person has a medical problem that does not permit the
4 person to breathe with sufficient strength to activate the device,
5 then that person shall only have the suspension option.

6 (l) This section does not restrict a court from requiring
7 installation of an ignition interlock device and prohibiting operation
8 of a motor vehicle unless that vehicle is equipped with a
9 functioning, certified ignition interlock device for a person to
10 whom subdivision (a) or (b) does not apply. The term of the
11 restriction shall be determined by the court for a period not to
12 exceed three years from the date of conviction. The court shall
13 notify the Department of Motor Vehicles, as specified in
14 subdivision (a) of Section 1803, of the terms of the restrictions in
15 accordance with subdivision (a) of Section 1804. The Department
16 of Motor Vehicles shall place the restriction in the person's records
17 in the Department of Motor Vehicles.

18 (m) For the purposes of this section, "vehicle" does not include
19 a motorcycle until the state certifies an ignition interlock device
20 that can be installed on a motorcycle. Any person subject to an
21 ignition interlock device restriction shall not operate a motorcycle
22 for the duration of the ignition interlock device restriction period.

23 (n) For the purposes of this section, "owned" means solely
24 owned or owned in conjunction with another person or legal entity.
25 For purposes of this section, "operates" includes operating a vehicle
26 that is not owned by the person subject to this section.

27 (o) For the purposes of this section, "bypass" includes, but is
28 not limited to, either of the following:

29 (1) A combination of failing or not taking the ignition interlock
30 device rolling retest three consecutive times.

31 (2) An incidence of failing or not taking the ignition interlock
32 device rolling retest, when not followed by an incidence of passing
33 the ignition interlock rolling retest prior to turning off the vehicle's
34 engine.

35 SEC. 183. Section 40240 of the Vehicle Code is amended to
36 read:

37 40240. (a) The City and County of San Francisco may install
38 automated forward facing parking control devices on city-owned
39 public transit vehicles, as defined by Section 99211 of the Public
40 Utilities Code, for the purpose of video imaging of parking

1 violations occurring in transit-only traffic lanes. Citations shall be
2 issued only for violations captured during the posted hours of
3 operation for a transit-only traffic lane. The devices shall be angled
4 and focused so as to capture video images of parking violations
5 and not unnecessarily capture identifying images of other drivers,
6 vehicles, and pedestrians. The devices shall record the date and
7 time of the violation at the same time as the video images are
8 captured.

9 (b) Prior to issuing notices of parking violations pursuant to
10 subdivision (a) of Section 40241, the City and County of San
11 Francisco shall commence a program to issue only warning notices
12 for 30 days. The City and County of San Francisco shall also make
13 a public announcement of the program at least 30 days prior to
14 commencement of issuing notices of parking violations.

15 (c) A designated employee of the City and County of San
16 Francisco, who is qualified by the city and county to issue parking
17 citations, shall review video image recordings for the purpose of
18 determining whether a parking violation occurred in a transit-only
19 traffic lane. A violation of a statute, regulation, or ordinance
20 governing vehicle parking under this code, under a federal or state
21 statute or regulation, or under an ordinance enacted by the City
22 and County of San Francisco occurring in a transit-only traffic
23 lane observed by the designated employee in the recordings is
24 subject to a civil penalty.

25 (d) The registered owner shall be permitted to review the video
26 image evidence of the alleged violation during normal business
27 hours at no cost.

28 (e) (1) Except as it may be included in court records described
29 in Section 68152 of the Government Code, or as provided in
30 paragraph (2), the video image evidence may be retained for up
31 to six months from the date the information was first obtained, or
32 60 days after final disposition of the citation, whichever date is
33 later, after which time the information shall be destroyed.

34 (2) Notwithstanding Section 26202.6 of the Government Code,
35 video image evidence from forward facing automated enforcement
36 devices that does not contain evidence of a parking violation
37 occurring in a transit-only traffic lane shall be destroyed within
38 15 days after the information was first obtained.

39 (f) Notwithstanding Section 6253 of the Government Code, or
40 any other provision of law, the video image records are

1 confidential. Public agencies shall use and allow access to these
2 records only for the purposes authorized by this article.

3 (g) For purposes of this article, “local agency” means the City
4 and County of San Francisco.

5 (h) For purposes of this article, “transit-only traffic lane” means
6 any designated transit-only lane on which use is restricted to mass
7 transit vehicles, or other designated vehicles including taxis and
8 vanpools, during posted times.

9 SEC. 184. Section 1486 of the Water Code is amended to read:

10 1486. (a) The Sacramento Regional County Sanitation District,
11 and any successor thereto, with respect to treated wastewater
12 produced by the sanitation district that meets the requirements of
13 the Central Valley Regional Water Quality Control Board, as may
14 be amended or modified, and that is discharged into the Sacramento
15 River, may file an application for a permit to appropriate an amount
16 of water up to the amount of treated wastewater that is discharged
17 into the Sacramento River, less diminution by seepage, evaporation,
18 transportation, or other natural causes between the point of
19 discharge from its wastewater treatment plant and the point of
20 diversion out of the Sacramento River or the Sacramento-San
21 Joaquin Delta.

22 (b) Upon application for a permit to appropriate water pursuant
23 to subdivision (a), the board may grant the permit subject to the
24 terms and conditions as in the board’s judgment are necessary for
25 the protection of the rights of any legal user of the water.

26 (c) Prior to the board granting a permit under subdivision (b),
27 the board shall comply with the provisions of this part, and other
28 applicable law, and may impose terms and conditions authorized
29 thereunder.

30 (d) Water appropriated in accordance with this section may be
31 sold or utilized for any beneficial purpose.

32 SEC. 185. Section 10753 of the Water Code is amended to
33 read:

34 10753. (a) Any local agency, whose service area includes a
35 groundwater basin, or a portion of a groundwater basin, that is not
36 subject to groundwater management pursuant to other provisions
37 of law or a court order, judgment, or decree, may, by ordinance,
38 or by resolution if the local agency is not authorized to act by
39 ordinance, adopt and implement a groundwater management plan
40 pursuant to this part within all or a portion of its service area.

1 (b) Notwithstanding subdivision (a), a local public agency, other
2 than an agency defined in subdivision (g) of Section 10752, that
3 provides flood control, groundwater management, or groundwater
4 replenishment, or a local agency formed pursuant to this code for
5 the principal purpose of providing water service that has not yet
6 provided that service, may exercise the authority of this part within
7 a groundwater basin that is located within its boundaries within
8 areas that are either of the following:

9 (1) Not served by a local agency.

10 (2) Served by a local agency whose governing body, by a
11 majority vote, declines to exercise the authority of this part and
12 enters into an agreement with the local public agency pursuant to
13 Section 10750.7 or 10750.8.

14 (c) Except as provided in subdivision (b), this chapter does not
15 authorize a local agency to manage groundwater planning within
16 the service area of another local agency.

17 (d) Except as otherwise provided in this part, the process for
18 developing and adopting a revised groundwater management plan
19 shall be the same as the process for developing and adopting a new
20 groundwater management plan.

21 SEC. 186. Section 74209 of the Water Code is amended to
22 read:

23 74209. (a) A district with a board consisting of seven directors
24 may reduce the number of directors to five pursuant to this section.
25 A reduction in the number of directors shall not be made within
26 180 days preceding the election of a director.

27 (b) In order to reduce the number of directors pursuant to this
28 section, the board shall adopt, by a recorded vote of two-thirds of
29 the total membership of the board, a resolution proposing to reduce
30 the number of directors from seven to five. The resolution shall
31 contain a map and description of the boundaries for the five
32 divisions proposed to be established.

33 (c) The secretary of the district shall set a date for a public
34 hearing on the proposal to reduce the number of directors, which
35 shall be not less than 30 days and not more than 60 days after the
36 date on which the board adopted the resolution described in
37 subdivision (b). The secretary shall give notice of the hearing,
38 which shall include a description of the proposal and shall contain
39 a map and general description of the proposed boundaries of the
40 five divisions. The secretary shall give notice of the hearing by

1 publishing a notice pursuant to Section 6063 of the Government
2 Code in at least one newspaper of general circulation within the
3 jurisdiction of the district at least 10 days before the hearing. In
4 addition, the secretary shall mail the notice to a person who has
5 filed a written request for notice with the secretary at least 10 days
6 before the hearing.

7 (d) At the hearing, the board shall receive and consider any
8 written or oral comments regarding the proposed reduction in the
9 number of directors. After receiving and considering those
10 comments, the board, by a recorded vote of two-thirds of the total
11 membership of the board, shall do either of the following:

12 (1) Disapprove the proposal.

13 (2) Adopt a resolution that orders the reduction in the number
14 of members of the board.

15 (e) The adoption of a resolution that orders a reduction in the
16 number of members of the board pursuant to this section is a
17 legislative act that is subject to referendum pursuant to Article 2
18 (commencing with Section 9340) of Chapter 4 of Division 9 of
19 the Elections Code.

20 (f) A reduction in the number of directors and a change in
21 division boundaries pursuant to this section shall not affect the
22 term of office of any director. A director of a division for which
23 boundaries have been changed shall continue to be the director of
24 the division bearing the number of his or her division until the
25 office becomes vacant by means of term expiration or otherwise,
26 whether or not the director is a resident within the boundaries of
27 the division as changed. The successor to the office of a director
28 of a division for which boundaries have been changed shall be a
29 resident and voter of that division.

30 (g) This section does not apply to districts within the County
31 of Ventura, which are subject to the provisions of Chapter 4
32 (commencing with Section 74450) of Part 4.

33 SEC. 187. Section 319 of the Welfare and Institutions Code is
34 amended to read:

35 319. (a) At the initial petition hearing, the court shall examine
36 the child's parents, guardians, or other persons having relevant
37 knowledge and hear the relevant evidence as the child, the child's
38 parents or guardians, the petitioner, or their counsel desires to
39 present. The court may examine the child, as provided in Section
40 350.

1 (b) The social worker shall report to the court on the reasons
2 why the child has been removed from the parent's physical custody,
3 the need, if any, for continued detention, the available services
4 and the referral methods to those services that could facilitate the
5 return of the child to the custody of the child's parents or guardians,
6 and whether there are any relatives who are able and willing to
7 take temporary physical custody of the child. The court shall order
8 the release of the child from custody unless a prima facie showing
9 has been made that the child comes within Section 300, the court
10 finds that continuance in the parent's or guardian's home is
11 contrary to the child's welfare, and any of the following
12 circumstances exist:

13 (1) There is a substantial danger to the physical health of the
14 child or the child is suffering severe emotional damage, and there
15 are no reasonable means by which the child's physical or emotional
16 health may be protected without removing the child from the
17 parent's or guardian's physical custody.

18 (2) There is substantial evidence that a parent, guardian, or
19 custodian of the child is likely to flee the jurisdiction of the court.

20 (3) The child has left a placement in which he or she was placed
21 by the juvenile court.

22 (4) The child indicates an unwillingness to return home, if the
23 child has been physically or sexually abused by a person residing
24 in the home.

25 (c) If the matter is continued pursuant to Section 322 or for any
26 other reason, the court shall find that the continuance of the child
27 in the parent's or guardian's home is contrary to the child's welfare
28 at the initial petition hearing or order the release of the child from
29 custody.

30 (d) (1) The court shall also make a determination on the record,
31 referencing the social worker's report or other evidence relied
32 upon, as to whether reasonable efforts were made to prevent or
33 eliminate the need for removal of the child from his or her home,
34 pursuant to subdivision (b) of Section 306, and whether there are
35 available services that would prevent the need for further detention.
36 Services to be considered for purposes of making this determination
37 are case management, counseling, emergency shelter care,
38 emergency in-home caretakers, out-of-home respite care, teaching
39 and demonstrating homemakers, parenting training, transportation,
40 and any other child welfare services authorized by the State

1 Department of Social Services pursuant to Chapter 5 (commencing
2 with Section 16500) of Part 4 of Division 9. The court shall also
3 review whether the social worker has considered whether a referral
4 to public assistance services pursuant to Chapter 2 (commencing
5 with Section 11200) and Chapter 7 (commencing with Section
6 14000) of Part 3, Chapter 1 (commencing with Section 17000) of
7 Part 5, and Chapter 10 (commencing with Section 18900) of Part
8 6 of Division 9 would have eliminated the need to take temporary
9 custody of the child or would prevent the need for further detention.

10 (2) If the child can be returned to the custody of his or her parent
11 or guardian through the provision of those services, the court shall
12 place the child with his or her parent or guardian and order that
13 the services shall be provided. If the child cannot be returned to
14 the physical custody of his or her parent or guardian, the court
15 shall determine if there is a relative who is able and willing to care
16 for the child, and has been assessed pursuant to paragraph (1) of
17 subdivision (d) of Section 309.

18 (e) If a court orders a child detained, the court shall state the
19 facts on which the decision is based, specify why the initial removal
20 was necessary, reference the social worker's report or other
21 evidence relied upon to make its determination whether
22 continuance in the home of the parent or legal guardian is contrary
23 to the child's welfare, order temporary placement and care of the
24 child to be vested with the county child welfare department pending
25 the hearing held pursuant to Section 355 or further order of the
26 court, and order services to be provided as soon as possible to
27 reunify the child and his or her family if appropriate.

28 (f) (1) If the child is not released from custody, the court may
29 order that the child shall be placed in the assessed home of a
30 relative, in an emergency shelter or other suitable licensed place,
31 in a place exempt from licensure designated by the juvenile court,
32 or in the assessed home of a nonrelative extended family member
33 as defined in Section 362.7 for a period not to exceed 15 judicial
34 days.

35 (2) As used in this section, "relative" means an adult who is
36 related to the child by blood, adoption, or affinity within the fifth
37 degree of kinship, including stepparents, stepsiblings, and all
38 relatives whose status is preceded by the words "great,"
39 "great-great," or "grand," or the spouse of any of these persons,
40 even if the marriage was terminated by death or dissolution.

1 However, only the following relatives shall be given preferential
2 consideration for placement of the child: an adult who is a
3 grandparent, aunt, uncle, or sibling of the child.

4 (3) The court shall consider the recommendations of the social
5 worker based on the assessment pursuant to paragraph (1) of
6 subdivision (d) of Section 309 of the relative's home, including
7 the results of a criminal records check and prior child abuse
8 allegations, if any, prior to ordering that the child be placed with
9 a relative. The court shall order the parent to disclose to the social
10 worker the names, residences, and any known identifying
11 information of any maternal or paternal relatives of the child. The
12 social worker shall initiate the assessment pursuant to Section
13 361.3 of any relative to be considered for continuing placement.

14 (g) (1) At the initial hearing upon the petition filed in
15 accordance with subdivision (c) of Rule 5.520 of the California
16 Rules of Court or anytime thereafter up until the time that the
17 minor is adjudged a dependent child of the court or a finding is
18 made dismissing the petition, the court may temporarily limit the
19 right of the parent or guardian to make educational or
20 developmental services decisions for the child and temporarily
21 appoint a responsible adult to make educational or developmental
22 services decisions for the child if all of the following conditions
23 are found:

24 (A) The parent or guardian is unavailable, unable, or unwilling
25 to exercise educational or developmental services rights for the
26 child.

27 (B) The county placing agency has made diligent efforts to
28 locate and secure the participation of the parent or guardian in
29 educational or developmental services decisionmaking.

30 (C) The child's educational and developmental services needs
31 cannot be met without the temporary appointment of a responsible
32 adult.

33 (2) If the court cannot identify a responsible adult to make
34 educational decisions for the child and the appointment of a
35 surrogate parent, as defined in subdivision (a) of Section 56050
36 of the Education Code, is not warranted, the court may, with the
37 input of any interested person, make educational decisions for the
38 child. If the child is receiving services from a regional center, the
39 provision of any developmental services related to the court's
40 decision must be consistent with the child's individual program

1 plan and pursuant to the provisions of the Lanterman
2 Developmental Disabilities Services Act (Division 4.5
3 (commencing with Section 4500)). If the court cannot identify a
4 responsible adult to make developmental services decisions for
5 the child, the court may, with the input of any interested person,
6 make developmental services decisions for the child. If the court
7 makes educational or developmental services decisions for the
8 child, the court shall also issue appropriate orders to ensure that
9 every effort is made to identify a responsible adult to make future
10 educational or developmental services decisions for the child.

11 (3) Any temporary appointment of a responsible adult and
12 temporary limitation on the right of the parent or guardian to make
13 educational or developmental services decisions for the child shall
14 be specifically addressed in the court order. Any order made under
15 this section shall expire at the conclusion of the hearing held
16 pursuant to Section 361 or upon dismissal of the petition. Upon
17 the entering of disposition orders, any additional needed limitation
18 on the parent's or guardian's educational or developmental services
19 rights shall be addressed pursuant to Section 361.

20 (4) If the court appoints a developmental services decisionmaker
21 pursuant to this section, he or she shall have the authority to access
22 the child's information and records pursuant to subdivision (u) of
23 Section 4514 and subdivision (y) of Section 5328, and to act on
24 the child's behalf for the purposes of the individual program plan
25 process pursuant to Sections 4646, 4646.5, and 4648 and the fair
26 hearing process pursuant to Chapter 7 (commencing with Section
27 4700), and as set forth in the court order.

28 SEC. 188. Section 366.21 of the Welfare and Institutions Code,
29 as amended by Section 3 of Chapter 59 of the Statutes of 2011, is
30 amended to read:

31 366.21. (a) Every hearing conducted by the juvenile court
32 reviewing the status of a dependent child shall be placed on the
33 appearance calendar. The court shall advise all persons present at
34 the hearing of the date of the future hearing and of their right to
35 be present and represented by counsel.

36 (b) Except as provided in Sections 294 and 295, notice of the
37 hearing shall be provided pursuant to Section 293.

38 (c) At least 10 calendar days prior to the hearing, the social
39 worker shall file a supplemental report with the court regarding
40 the services provided or offered to the parent or legal guardian to

1 enable him or her to assume custody and the efforts made to
2 achieve legal permanence for the child if efforts to reunify fail,
3 including, but not limited to, efforts to maintain relationships
4 between a child who is 10 years of age or older and has been in
5 out-of-home placement for six months or longer and individuals
6 who are important to the child, consistent with the child's best
7 interests; the progress made; and, where relevant, the prognosis
8 for return of the child to the physical custody of his or her parent
9 or legal guardian; and shall make his or her recommendation for
10 disposition. If the child is a member of a sibling group described
11 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
12 361.5, the report and recommendation may also take into account
13 those factors described in subdivision (e) relating to the child's
14 sibling group. If the recommendation is not to return the child to
15 a parent or legal guardian, the report shall specify why the return
16 of the child would be detrimental to the child. The social worker
17 shall provide the parent or legal guardian, counsel for the child,
18 and any court-appointed child advocate with a copy of the report,
19 including his or her recommendation for disposition, at least 10
20 calendar days prior to the hearing. In the case of a child removed
21 from the physical custody of his or her parent or legal guardian,
22 the social worker shall, at least 10 calendar days prior to the
23 hearing, provide a summary of his or her recommendation for
24 disposition to any foster parents, relative caregivers, and certified
25 foster parents who have been approved for adoption by the State
26 Department of Social Services when it is acting as an adoption
27 agency in counties that are not served by a county adoption agency
28 or by a licensed county adoption agency, community care facility,
29 or foster family agency having the physical custody of the child.
30 The social worker shall include a copy of the Judicial Council
31 Caregiver Information Form (JV-290) with the summary of
32 recommendations to the child's foster parents, relative caregivers,
33 or foster parents approved for adoption, in the caregiver's primary
34 language when available, along with information on how to file
35 the form with the court.

36 (d) Prior to any hearing involving a child in the physical custody
37 of a community care facility or a foster family agency that may
38 result in the return of the child to the physical custody of his or
39 her parent or legal guardian, or in adoption or the creation of a
40 legal guardianship, or in the case of an Indian child, in consultation

1 with the child’s tribe, tribal customary adoption, the facility or
2 agency shall file with the court a report, or a Judicial Council
3 Caregiver Information Form (JV-290), containing its
4 recommendation for disposition. Prior to the hearing involving a
5 child in the physical custody of a foster parent, a relative caregiver,
6 or a certified foster parent who has been approved for adoption by
7 the State Department of Social Services when it is acting as an
8 adoption agency or by a licensed adoption agency, the foster parent,
9 relative caregiver, or the certified foster parent who has been
10 approved for adoption by the State Department of Social Services
11 when it is acting as an adoption agency in counties that are not
12 served by a county adoption agency or by a licensed county
13 adoption agency, may file with the court a report containing his
14 or her recommendation for disposition. The court shall consider
15 the report and recommendation filed pursuant to this subdivision
16 prior to determining any disposition.

17 (e) At the review hearing held six months after the initial
18 dispositional hearing, but no later than 12 months after the date
19 the child entered foster care as determined in Section 361.49,
20 whichever occurs earlier, the court shall order the return of the
21 child to the physical custody of his or her parent or legal guardian
22 unless the court finds, by a preponderance of the evidence, that
23 the return of the child to his or her parent or legal guardian would
24 create a substantial risk of detriment to the safety, protection, or
25 physical or emotional well-being of the child. The social worker
26 shall have the burden of establishing that detriment. At the hearing,
27 the court shall consider the criminal history, obtained pursuant to
28 paragraph (1) of subdivision (f) of Section 16504.5, of the parent
29 or legal guardian subsequent to the child’s removal to the extent
30 that the criminal record is substantially related to the welfare of
31 the child or the parent’s or guardian’s ability to exercise custody
32 and control regarding his or her child, provided the parent or legal
33 guardian agreed to submit fingerprint images to obtain criminal
34 history information as part of the case plan. The failure of the
35 parent or legal guardian to participate regularly and make
36 substantive progress in court-ordered treatment programs shall be
37 prima facie evidence that return would be detrimental. In making
38 its determination, the court shall review and consider the social
39 worker’s report and recommendations and the report and
40 recommendations of any child advocate appointed pursuant to

1 Section 356.5; and shall consider the efforts or progress, or both,
2 demonstrated by the parent or legal guardian and the extent to
3 which he or she availed himself or herself of services provided,
4 taking into account the particular barriers to an incarcerated or
5 institutionalized parent or legal guardian's access to those
6 court-mandated services and ability to maintain contact with his
7 or her child.

8 Regardless of whether the child is returned to a parent or legal
9 guardian, the court shall specify the factual basis for its conclusion
10 that the return would be detrimental or would not be detrimental.
11 The court also shall make appropriate findings pursuant to
12 subdivision (a) of Section 366; and, where relevant, shall order
13 any additional services reasonably believed to facilitate the return
14 of the child to the custody of his or her parent or legal guardian.
15 The court shall also inform the parent or legal guardian that if the
16 child cannot be returned home by the 12-month permanency
17 hearing, a proceeding pursuant to Section 366.26 may be instituted.
18 This section does not apply in a case where, pursuant to Section
19 361.5, the court has ordered that reunification services shall not
20 be provided.

21 If the child was under three years of age on the date of the initial
22 removal, or is a member of a sibling group described in
23 subparagraph (C) of paragraph (1) of subdivision (a) of Section
24 361.5, and the court finds by clear and convincing evidence that
25 the parent failed to participate regularly and make substantive
26 progress in a court-ordered treatment plan, the court may schedule
27 a hearing pursuant to Section 366.26 within 120 days. If, however,
28 the court finds there is a substantial probability that the child, who
29 was under three years of age on the date of initial removal or is a
30 member of a sibling group described in subparagraph (C) of
31 paragraph (1) of subdivision (a) of Section 361.5, may be returned
32 to his or her parent or legal guardian within six months or that
33 reasonable services have not been provided, the court shall continue
34 the case to the 12-month permanency hearing.

35 For the purpose of placing and maintaining a sibling group
36 together in a permanent home, the court, in making its
37 determination to schedule a hearing pursuant to Section 366.26
38 for some or all members of a sibling group, as described in
39 subparagraph (C) of paragraph (1) of subdivision (a) of Section
40 361.5, shall review and consider the social worker's report and

1 recommendations. Factors the report shall address, and the court
2 shall consider, may include, but need not be limited to, whether
3 the sibling group was removed from parental care as a group, the
4 closeness and strength of the sibling bond, the ages of the siblings,
5 the appropriateness of maintaining the sibling group together, the
6 detriment to the child if sibling ties are not maintained, the
7 likelihood of finding a permanent home for the sibling group,
8 whether the sibling group is currently placed together in a
9 preadoptive home or has a concurrent plan goal of legal
10 permanency in the same home, the wishes of each child whose
11 age and physical and emotional condition permit a meaningful
12 response, and the best interest of each child in the sibling group.
13 The court shall specify the factual basis for its finding that it is in
14 the best interest of each child to schedule a hearing pursuant to
15 Section 366.26 in 120 days for some or all of the members of the
16 sibling group.

17 If the child was removed initially under subdivision (g) of
18 Section 300 and the court finds by clear and convincing evidence
19 that the whereabouts of the parent are still unknown, or the parent
20 has failed to contact and visit the child, the court may schedule a
21 hearing pursuant to Section 366.26 within 120 days. The court
22 shall take into account any particular barriers to a parent's ability
23 to maintain contact with his or her child due to the parent's
24 incarceration or institutionalization. If the court finds by clear and
25 convincing evidence that the parent has been convicted of a felony
26 indicating parental unfitness, the court may schedule a hearing
27 pursuant to Section 366.26 within 120 days.

28 If the child had been placed under court supervision with a
29 previously noncustodial parent pursuant to Section 361.2, the court
30 shall determine whether supervision is still necessary. The court
31 may terminate supervision and transfer permanent custody to that
32 parent, as provided for by paragraph (1) of subdivision (b) of
33 Section 361.2.

34 In all other cases, the court shall direct that any reunification
35 services previously ordered shall continue to be offered to the
36 parent or legal guardian pursuant to the time periods set forth in
37 subdivision (a) of Section 361.5, provided that the court may
38 modify the terms and conditions of those services.

39 If the child is not returned to his or her parent or legal guardian,
40 the court shall determine whether reasonable services that were

1 designed to aid the parent or legal guardian in overcoming the
2 problems that led to the initial removal and the continued custody
3 of the child have been provided or offered to the parent or legal
4 guardian. The court shall order that those services be initiated,
5 continued, or terminated.

6 (f) The permanency hearing shall be held no later than 12
7 months after the date the child entered foster care, as that date is
8 determined pursuant to Section 361.49. At the permanency hearing,
9 the court shall determine the permanent plan for the child, which
10 shall include a determination of whether the child will be returned
11 to the child's home and, if so, when, within the time limits of
12 subdivision (a) of Section 361.5. The court shall order the return
13 of the child to the physical custody of his or her parent or legal
14 guardian unless the court finds, by a preponderance of the evidence,
15 that the return of the child to his or her parent or legal guardian
16 would create a substantial risk of detriment to the safety, protection,
17 or physical or emotional well-being of the child. The social worker
18 shall have the burden of establishing that detriment. At the
19 permanency hearing, the court shall consider the criminal history,
20 obtained pursuant to paragraph (1) of subdivision (f) of Section
21 16504.5, of the parent or legal guardian subsequent to the child's
22 removal to the extent that the criminal record is substantially related
23 to the welfare of the child or the parent or legal guardian's ability
24 to exercise custody and control regarding his or her child, provided
25 that the parent or legal guardian agreed to submit fingerprint images
26 to obtain criminal history information as part of the case plan. The
27 court shall also determine whether reasonable services that were
28 designed to aid the parent or legal guardian to overcome the
29 problems that led to the initial removal and continued custody of
30 the child have been provided or offered to the parent or legal
31 guardian. For each youth 16 years of age and older, the court shall
32 also determine whether services have been made available to assist
33 him or her in making the transition from foster care to independent
34 living. The failure of the parent or legal guardian to participate
35 regularly and make substantive progress in court-ordered treatment
36 programs shall be prima facie evidence that return would be
37 detrimental. In making its determination, the court shall review
38 and consider the social worker's report and recommendations and
39 the report and recommendations of any child advocate appointed
40 pursuant to Section 356.5, shall consider the efforts or progress,

1 or both, demonstrated by the parent or legal guardian and the extent
2 to which he or she availed himself or herself of services provided,
3 taking into account the particular barriers to an incarcerated or
4 institutionalized parent or legal guardian's access to those
5 court-mandated services and ability to maintain contact with his
6 or her child and shall make appropriate findings pursuant to
7 subdivision (a) of Section 366.

8 Regardless of whether the child is returned to his or her parent
9 or legal guardian, the court shall specify the factual basis for its
10 decision. If the child is not returned to a parent or legal guardian,
11 the court shall specify the factual basis for its conclusion that the
12 return would be detrimental. The court also shall make a finding
13 pursuant to subdivision (a) of Section 366. If the child is not
14 returned to his or her parent or legal guardian, the court shall
15 consider, and state for the record, in-state and out-of-state
16 placement options. If the child is placed out of the state, the court
17 shall make a determination whether the out-of-state placement
18 continues to be appropriate and in the best interests of the child.

19 (g) If the time period in which the court-ordered services were
20 provided has met or exceeded the time period set forth in
21 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)
22 of Section 361.5, as appropriate, and a child is not returned to the
23 custody of a parent or legal guardian at the permanency hearing
24 held pursuant to subdivision (f), the court shall do one of the
25 following:

26 (1) Continue the case for up to six months for a permanency
27 review hearing, provided that the hearing shall occur within 18
28 months of the date the child was originally taken from the physical
29 custody of his or her parent or legal guardian. The court shall
30 continue the case only if it finds that there is a substantial
31 probability that the child will be returned to the physical custody
32 of his or her parent or legal guardian and safely maintained in the
33 home within the extended period of time or that reasonable services
34 have not been provided to the parent or legal guardian. For the
35 purposes of this section, in order to find a substantial probability
36 that the child will be returned to the physical custody of his or her
37 parent or legal guardian and safely maintained in the home within
38 the extended period of time, the court shall be required to find all
39 of the following:

1 (A) That the parent or legal guardian has consistently and
2 regularly contacted and visited with the child.

3 (B) That the parent or legal guardian has made significant
4 progress in resolving problems that led to the child's removal from
5 the home.

6 (C) The parent or legal guardian has demonstrated the capacity
7 and ability both to complete the objectives of his or her treatment
8 plan and to provide for the child's safety, protection, physical and
9 emotional well-being, and special needs.

10 For purposes of this subdivision, the court's decision to continue
11 the case based on a finding or substantial probability that the child
12 will be returned to the physical custody of his or her parent or legal
13 guardian is a compelling reason for determining that a hearing
14 held pursuant to Section 366.26 is not in the best interests of the
15 child.

16 The court shall inform the parent or legal guardian that if the
17 child cannot be returned home by the next permanency review
18 hearing, a proceeding pursuant to Section 366.26 may be instituted.
19 The court may not order that a hearing pursuant to Section 366.26
20 be held unless there is clear and convincing evidence that
21 reasonable services have been provided or offered to the parent or
22 legal guardian.

23 (2) Order that a hearing be held within 120 days, pursuant to
24 Section 366.26, but only if the court does not continue the case to
25 the permanency planning review hearing and there is clear and
26 convincing evidence that reasonable services have been provided
27 or offered to the parents or legal guardians. On and after January
28 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered
29 if the child is a nonminor dependent.

30 (3) Order that the child remain in long-term foster care, but only
31 if the court finds by clear and convincing evidence, based upon
32 the evidence already presented to it, including a recommendation
33 by the State Department of Social Services when it is acting as an
34 adoption agency in counties that are not served by a county
35 adoption agency or by a licensed county adoption agency, that
36 there is a compelling reason for determining that a hearing held
37 pursuant to Section 366.26 is not in the best interest of the child
38 because the child is not a proper subject for adoption and has no
39 one willing to accept legal guardianship. For purposes of this
40 section, a recommendation by the State Department of Social

1 Services when it is acting as an adoption agency in counties that
2 are not served by a county adoption agency or by a licensed county
3 adoption agency that adoption is not in the best interest of the child
4 shall constitute a compelling reason for the court's determination.
5 That recommendation shall be based on the present circumstances
6 of the child and shall not preclude a different recommendation at
7 a later date if the child's circumstances change. On and after
8 January 1, 2012, the nonminor dependent's legal status as an adult
9 is in and of itself a compelling reason not to hold a hearing pursuant
10 to Section 366.26. The court may order that a nonminor dependent
11 who otherwise is eligible pursuant to Section 11403 remain in a
12 planned, permanent living arrangement.

13 If the court orders that a child who is 10 years of age or older
14 remain in long-term foster care, the court shall determine whether
15 the agency has made reasonable efforts to maintain the child's
16 relationships with individuals other than the child's siblings who
17 are important to the child, consistent with the child's best interests,
18 and may make any appropriate order to ensure that those
19 relationships are maintained.

20 If the child is not returned to his or her parent or legal guardian,
21 the court shall consider, and state for the record, in-state and
22 out-of-state options for permanent placement. If the child is placed
23 out of the state, the court shall make a determination whether the
24 out-of-state placement continues to be appropriate and in the best
25 interests of the child.

26 (h) In any case in which the court orders that a hearing pursuant
27 to Section 366.26 shall be held, it shall also order the termination
28 of reunification services to the parent or legal guardian. The court
29 shall continue to permit the parent or legal guardian to visit the
30 child pending the hearing unless it finds that visitation would be
31 detrimental to the child. The court shall make any other appropriate
32 orders to enable the child to maintain relationships with individuals,
33 other than the child's siblings, who are important to the child,
34 consistent with the child's best interests. When the court orders a
35 termination of reunification services to the parent or legal guardian,
36 it shall also order that the child's caregiver receive the child's birth
37 certificate in accordance with Sections 16010.4 and 16010.5.
38 Additionally, when the court orders a termination of reunification
39 services to the parent or legal guardian, it shall order, when

1 appropriate, that a child who is 16 years of age or older receive
2 his or her birth certificate.

3 (i) (1) Whenever a court orders that a hearing pursuant to
4 Section 366.26, including, when, in consultation with the child's
5 tribe, tribal customary adoption is recommended, shall be held, it
6 shall direct the agency supervising the child and the licensed county
7 adoption agency, or the State Department of Social Services when
8 it is acting as an adoption agency in counties that are not served
9 by a county adoption agency, to prepare an assessment that shall
10 include:

11 (A) Current search efforts for an absent parent or parents or
12 legal guardians.

13 (B) A review of the amount of and nature of any contact between
14 the child and his or her parents or legal guardians and other
15 members of his or her extended family since the time of placement.
16 Although the extended family of each child shall be reviewed on
17 a case-by-case basis, "extended family" for the purpose of this
18 subparagraph shall include, but not be limited to, the child's
19 siblings, grandparents, aunts, and uncles.

20 (C) An evaluation of the child's medical, developmental,
21 scholastic, mental, and emotional status.

22 (D) A preliminary assessment of the eligibility and commitment
23 of any identified prospective adoptive parent or legal guardian,
24 including the prospective tribal customary adoptive parent,
25 particularly the caretaker, to include a social history including
26 screening for criminal records and prior referrals for child abuse
27 or neglect, the capability to meet the child's needs, and the
28 understanding of the legal and financial rights and responsibilities
29 of adoption and guardianship. If a proposed guardian is a relative
30 of the minor, the assessment shall also consider, but need not be
31 limited to, all of the factors specified in subdivision (a) of Section
32 361.3 and in Section 361.4.

33 (E) The relationship of the child to any identified prospective
34 adoptive parent or legal guardian, the duration and character of
35 the relationship, the degree of attachment of the child to the
36 prospective relative guardian or adoptive parent, the relative's or
37 adoptive parent's strong commitment to caring permanently for
38 the child, the motivation for seeking adoption or guardianship, a
39 statement from the child concerning placement and the adoption
40 or guardianship, and whether the child, if over 12 years of age,

1 has been consulted about the proposed relative guardianship
2 arrangements, unless the child’s age or physical, emotional, or
3 other condition precludes his or her meaningful response, and if
4 so, a description of the condition.

5 (F) A description of efforts to be made to identify a prospective
6 adoptive parent or legal guardian, including, but not limited to,
7 child-specific recruitment and listing on an adoption exchange
8 within the state or out of the state.

9 (G) An analysis of the likelihood that the child will be adopted
10 if parental rights are terminated.

11 (H) In the case of an Indian child, in addition to subparagraphs
12 (A) to (G), inclusive, an assessment of the likelihood that the child
13 will be adopted, when, in consultation with the child’s tribe, a
14 tribal customary adoption, as defined in Section 366.24, is
15 recommended. If tribal customary adoption is recommended, the
16 assessment shall include an analysis of both of the following:

17 (i) Whether tribal customary adoption would or would not be
18 detrimental to the Indian child and the reasons for reaching that
19 conclusion.

20 (ii) Whether the Indian child cannot or should not be returned
21 to the home of the Indian parent or Indian custodian and the reasons
22 for reaching that conclusion.

23 (2) (A) A relative caregiver’s preference for legal guardianship
24 over adoption, if it is due to circumstances that do not include an
25 unwillingness to accept legal or financial responsibility for the
26 child, shall not constitute the sole basis for recommending removal
27 of the child from the relative caregiver for purposes of adoptive
28 placement.

29 (B) A relative caregiver shall be given information regarding
30 the permanency options of guardianship and adoption, including
31 the long-term benefits and consequences of each option, prior to
32 establishing legal guardianship or pursuing adoption.

33 (j) If, at any hearing held pursuant to Section 366.26, a
34 guardianship is established for the minor with an approved relative
35 caregiver, and juvenile court dependency is subsequently
36 dismissed, the minor shall be eligible for aid under the Kin-GAP
37 Program, as provided for in Article 4.5 (commencing with Section
38 11360) or Article 4.7 (commencing with Section 11385), as
39 applicable, of Chapter 2 of Part 3 of Division 9.

1 (k) As used in this section, “relative” means an adult who is
2 related to the minor by blood, adoption, or affinity within the fifth
3 degree of kinship, including stepparents, stepsiblings, and all
4 relatives whose status is preceded by the words “great,”
5 “great-great,” or “grand,” or the spouse of any of those persons
6 even if the marriage was terminated by death or dissolution.

7 (l) For purposes of this section, evidence of any of the following
8 circumstances may not, in and of itself, be deemed a failure to
9 provide or offer reasonable services:

10 (1) The child has been placed with a foster family that is eligible
11 to adopt a child, or has been placed in a preadoptive home.

12 (2) The case plan includes services to make and finalize a
13 permanent placement for the child if efforts to reunify fail.

14 (3) Services to make and finalize a permanent placement for
15 the child, if efforts to reunify fail, are provided concurrently with
16 services to reunify the family.

17 (m) The implementation and operation of the amendments to
18 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
19 shall be subject to appropriation through the budget process and
20 by phase, as provided in Section 366.35.

21 (n) This section shall remain in effect only until January 1, 2014,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2014, deletes or extends that date.

24 SEC. 189. Section 366.21 of the Welfare and Institutions Code,
25 as amended by Section 4 of Chapter 59 of the Statutes of 2011, is
26 amended to read:

27 366.21. (a) Every hearing conducted by the juvenile court
28 reviewing the status of a dependent child shall be placed on the
29 appearance calendar. The court shall advise all persons present at
30 the hearing of the date of the future hearing and of their right to
31 be present and represented by counsel.

32 (b) Except as provided in Sections 294 and 295, notice of the
33 hearing shall be provided pursuant to Section 293.

34 (c) At least 10 calendar days prior to the hearing, the social
35 worker shall file a supplemental report with the court regarding
36 the services provided or offered to the parent or legal guardian to
37 enable him or her to assume custody and the efforts made to
38 achieve legal permanence for the child if efforts to reunify fail,
39 including, but not limited to, efforts to maintain relationships
40 between a child who is 10 years of age or older and has been in

1 out-of-home placement for six months or longer and individuals
2 who are important to the child, consistent with the child’s best
3 interests; the progress made; and, where relevant, the prognosis
4 for return of the child to the physical custody of his or her parent
5 or legal guardian; and shall make his or her recommendation for
6 disposition. If the child is a member of a sibling group described
7 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
8 361.5, the report and recommendation may also take into account
9 those factors described in subdivision (e) relating to the child’s
10 sibling group. If the recommendation is not to return the child to
11 a parent or legal guardian, the report shall specify why the return
12 of the child would be detrimental to the child. The social worker
13 shall provide the parent or legal guardian, counsel for the child,
14 and any court-appointed child advocate with a copy of the report,
15 including his or her recommendation for disposition, at least 10
16 calendar days prior to the hearing. In the case of a child removed
17 from the physical custody of his or her parent or legal guardian,
18 the social worker shall, at least 10 calendar days prior to the
19 hearing, provide a summary of his or her recommendation for
20 disposition to any foster parents, relative caregivers, and certified
21 foster parents who have been approved for adoption by the State
22 Department of Social Services when it is acting as an adoption
23 agency in counties that are not served by a county adoption agency
24 or by a licensed county adoption agency, community care facility,
25 or foster family agency having the physical custody of the child.
26 The social worker shall include a copy of the Judicial Council
27 Caregiver Information Form (JV-290) with the summary of
28 recommendations to the child’s foster parents, relative caregivers,
29 or foster parents approved for adoption, in the caregiver’s primary
30 language when available, along with information on how to file
31 the form with the court.

32 (d) Prior to any hearing involving a child in the physical custody
33 of a community care facility or a foster family agency that may
34 result in the return of the child to the physical custody of his or
35 her parent or legal guardian, or in adoption or the creation of a
36 legal guardianship, the facility or agency shall file with the court
37 a report, or a Judicial Council Caregiver Information Form
38 (JV-290), containing its recommendation for disposition. Prior to
39 the hearing involving a child in the physical custody of a foster
40 parent, a relative caregiver, or a certified foster parent who has

1 been approved for adoption by the State Department of Social
2 Services when it is acting as an adoption agency or by a licensed
3 adoption agency, the foster parent, relative caregiver, or the
4 certified foster parent who has been approved for adoption by the
5 State Department of Social Services when it is acting as an
6 adoption agency in counties that are not served by a county
7 adoption agency or by a licensed county adoption agency, may
8 file with the court a report containing his or her recommendation
9 for disposition. The court shall consider the report and
10 recommendation filed pursuant to this subdivision prior to
11 determining any disposition.

12 (e) At the review hearing held six months after the initial
13 dispositional hearing, but no later than 12 months after the date
14 the child entered foster care as determined in Section 361.49,
15 whichever occurs earlier, the court shall order the return of the
16 child to the physical custody of his or her parent or legal guardian
17 unless the court finds, by a preponderance of the evidence, that
18 the return of the child to his or her parent or legal guardian would
19 create a substantial risk of detriment to the safety, protection, or
20 physical or emotional well-being of the child. The social worker
21 shall have the burden of establishing that detriment. At the hearing,
22 the court shall consider the criminal history, obtained pursuant to
23 paragraph (1) of subdivision (f) of Section 16504.5, of the parent
24 or legal guardian subsequent to the child's removal to the extent
25 that the criminal record is substantially related to the welfare of
26 the child or the parent's or guardian's ability to exercise custody
27 and control regarding his or her child, provided the parent or legal
28 guardian agreed to submit fingerprint images to obtain criminal
29 history information as part of the case plan. The failure of the
30 parent or legal guardian to participate regularly and make
31 substantive progress in court-ordered treatment programs shall be
32 prima facie evidence that return would be detrimental. In making
33 its determination, the court shall review and consider the social
34 worker's report and recommendations and the report and
35 recommendations of any child advocate appointed pursuant to
36 Section 356.5; and shall consider the efforts or progress, or both,
37 demonstrated by the parent or legal guardian and the extent to
38 which he or she availed himself or herself of services provided,
39 taking into account the particular barriers to an incarcerated or
40 institutionalized parent or legal guardian's access to those

1 court-mandated services and ability to maintain contact with his
2 or her child.

3 Regardless of whether the child is returned to a parent or legal
4 guardian, the court shall specify the factual basis for its conclusion
5 that the return would be detrimental or would not be detrimental.
6 The court also shall make appropriate findings pursuant to
7 subdivision (a) of Section 366; and, where relevant, shall order
8 any additional services reasonably believed to facilitate the return
9 of the child to the custody of his or her parent or legal guardian.
10 The court shall also inform the parent or legal guardian that if the
11 child cannot be returned home by the 12-month permanency
12 hearing, a proceeding pursuant to Section 366.26 may be instituted.
13 This section does not apply in a case where, pursuant to Section
14 361.5, the court has ordered that reunification services shall not
15 be provided.

16 If the child was under three years of age on the date of the initial
17 removal, or is a member of a sibling group described in
18 subparagraph (C) of paragraph (1) of subdivision (a) of Section
19 361.5, and the court finds by clear and convincing evidence that
20 the parent failed to participate regularly and make substantive
21 progress in a court-ordered treatment plan, the court may schedule
22 a hearing pursuant to Section 366.26 within 120 days. If, however,
23 the court finds there is a substantial probability that the child, who
24 was under three years of age on the date of initial removal or is a
25 member of a sibling group described in subparagraph (C) of
26 paragraph (1) of subdivision (a) of Section 361.5, may be returned
27 to his or her parent or legal guardian within six months or that
28 reasonable services have not been provided, the court shall continue
29 the case to the 12-month permanency hearing.

30 For the purpose of placing and maintaining a sibling group
31 together in a permanent home, the court, in making its
32 determination to schedule a hearing pursuant to Section 366.26
33 for some or all members of a sibling group, as described in
34 subparagraph (C) of paragraph (1) of subdivision (a) of Section
35 361.5, shall review and consider the social worker's report and
36 recommendations. Factors the report shall address, and the court
37 shall consider, may include, but need not be limited to, whether
38 the sibling group was removed from parental care as a group, the
39 closeness and strength of the sibling bond, the ages of the siblings,
40 the appropriateness of maintaining the sibling group together, the

1 detriment to the child if sibling ties are not maintained, the
2 likelihood of finding a permanent home for the sibling group,
3 whether the sibling group is currently placed together in a
4 preadoptive home or has a concurrent plan goal of legal
5 permanency in the same home, the wishes of each child whose
6 age and physical and emotional condition permit a meaningful
7 response, and the best interest of each child in the sibling group.
8 The court shall specify the factual basis for its finding that it is in
9 the best interest of each child to schedule a hearing pursuant to
10 Section 366.26 in 120 days for some or all of the members of the
11 sibling group.

12 If the child was removed initially under subdivision (g) of
13 Section 300 and the court finds by clear and convincing evidence
14 that the whereabouts of the parent are still unknown, or the parent
15 has failed to contact and visit the child, the court may schedule a
16 hearing pursuant to Section 366.26 within 120 days. The court
17 shall take into account any particular barriers to a parent's ability
18 to maintain contact with his or her child due to the parent's
19 incarceration or institutionalization. If the court finds by clear and
20 convincing evidence that the parent has been convicted of a felony
21 indicating parental unfitness, the court may schedule a hearing
22 pursuant to Section 366.26 within 120 days.

23 If the child had been placed under court supervision with a
24 previously noncustodial parent pursuant to Section 361.2, the court
25 shall determine whether supervision is still necessary. The court
26 may terminate supervision and transfer permanent custody to that
27 parent, as provided for by paragraph (1) of subdivision (b) of
28 Section 361.2.

29 In all other cases, the court shall direct that any reunification
30 services previously ordered shall continue to be offered to the
31 parent or legal guardian pursuant to the time periods set forth in
32 subdivision (a) of Section 361.5, provided that the court may
33 modify the terms and conditions of those services.

34 If the child is not returned to his or her parent or legal guardian,
35 the court shall determine whether reasonable services that were
36 designed to aid the parent or legal guardian in overcoming the
37 problems that led to the initial removal and the continued custody
38 of the child have been provided or offered to the parent or legal
39 guardian. The court shall order that those services be initiated,
40 continued, or terminated.

1 (f) The permanency hearing shall be held no later than 12
2 months after the date the child entered foster care, as that date is
3 determined pursuant to Section 361.49. At the permanency hearing,
4 the court shall determine the permanent plan for the child, which
5 shall include a determination of whether the child will be returned
6 to the child's home and, if so, when, within the time limits of
7 subdivision (a) of Section 361.5. The court shall order the return
8 of the child to the physical custody of his or her parent or legal
9 guardian unless the court finds, by a preponderance of the evidence,
10 that the return of the child to his or her parent or legal guardian
11 would create a substantial risk of detriment to the safety, protection,
12 or physical or emotional well-being of the child. The social worker
13 shall have the burden of establishing that detriment. At the
14 permanency hearing, the court shall consider the criminal history,
15 obtained pursuant to paragraph (1) of subdivision (f) of Section
16 16504.5, of the parent or legal guardian subsequent to the child's
17 removal to the extent that the criminal record is substantially related
18 to the welfare of the child or the parent or legal guardian's ability
19 to exercise custody and control regarding his or her child, provided
20 that the parent or legal guardian agreed to submit fingerprint images
21 to obtain criminal history information as part of the case plan. The
22 court shall also determine whether reasonable services that were
23 designed to aid the parent or legal guardian to overcome the
24 problems that led to the initial removal and continued custody of
25 the child have been provided or offered to the parent or legal
26 guardian. For each youth 16 years of age and older, the court shall
27 also determine whether services have been made available to assist
28 him or her in making the transition from foster care to independent
29 living. The failure of the parent or legal guardian to participate
30 regularly and make substantive progress in court-ordered treatment
31 programs shall be prima facie evidence that return would be
32 detrimental. In making its determination, the court shall review
33 and consider the social worker's report and recommendations and
34 the report and recommendations of any child advocate appointed
35 pursuant to Section 356.5, shall consider the efforts or progress,
36 or both, demonstrated by the parent or legal guardian and the extent
37 to which he or she availed himself or herself of services provided,
38 taking into account the particular barriers to an incarcerated or
39 institutionalized parent or legal guardian's access to those
40 court-mandated services and ability to maintain contact with his

1 or her child and shall make appropriate findings pursuant to
2 subdivision (a) of Section 366.

3 Regardless of whether the child is returned to his or her parent
4 or legal guardian, the court shall specify the factual basis for its
5 decision. If the child is not returned to a parent or legal guardian,
6 the court shall specify the factual basis for its conclusion that the
7 return would be detrimental. The court also shall make a finding
8 pursuant to subdivision (a) of Section 366. If the child is not
9 returned to his or her parent or legal guardian, the court shall
10 consider, and state for the record, in-state and out-of-state
11 placement options. If the child is placed out of the state, the court
12 shall make a determination whether the out-of-state placement
13 continues to be appropriate and in the best interests of the child.

14 (g) If the time period in which the court-ordered services were
15 provided has met or exceeded the time period set forth in
16 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)
17 of Section 361.5, as appropriate, and a child is not returned to the
18 custody of a parent or legal guardian at the permanency hearing
19 held pursuant to subdivision (f), the court shall do one of the
20 following:

21 (1) Continue the case for up to six months for a permanency
22 review hearing, provided that the hearing shall occur within 18
23 months of the date the child was originally taken from the physical
24 custody of his or her parent or legal guardian. The court shall
25 continue the case only if it finds that there is a substantial
26 probability that the child will be returned to the physical custody
27 of his or her parent or legal guardian and safely maintained in the
28 home within the extended period of time or that reasonable services
29 have not been provided to the parent or legal guardian. For the
30 purposes of this section, in order to find a substantial probability
31 that the child will be returned to the physical custody of his or her
32 parent or legal guardian and safely maintained in the home within
33 the extended period of time, the court shall be required to find all
34 of the following:

35 (A) That the parent or legal guardian has consistently and
36 regularly contacted and visited with the child.

37 (B) That the parent or legal guardian has made significant
38 progress in resolving problems that led to the child's removal from
39 the home.

1 (C) The parent or legal guardian has demonstrated the capacity
2 and ability both to complete the objectives of his or her treatment
3 plan and to provide for the child’s safety, protection, physical and
4 emotional well-being, and special needs.

5 For purposes of this subdivision, the court’s decision to continue
6 the case based on a finding or substantial probability that the child
7 will be returned to the physical custody of his or her parent or legal
8 guardian is a compelling reason for determining that a hearing
9 held pursuant to Section 366.26 is not in the best interests of the
10 child.

11 The court shall inform the parent or legal guardian that if the
12 child cannot be returned home by the next permanency review
13 hearing, a proceeding pursuant to Section 366.26 may be instituted.
14 The court may not order that a hearing pursuant to Section 366.26
15 be held unless there is clear and convincing evidence that
16 reasonable services have been provided or offered to the parent or
17 legal guardian.

18 (2) Order that a hearing be held within 120 days, pursuant to
19 Section 366.26, but only if the court does not continue the case to
20 the permanency planning review hearing and there is clear and
21 convincing evidence that reasonable services have been provided
22 or offered to the parents or legal guardians. On or after January 1,
23 2012, a hearing pursuant to Section 366.26 shall not be ordered if
24 the child is a nonminor dependent.

25 (3) Order that the child remain in long-term foster care, but only
26 if the court finds by clear and convincing evidence, based upon
27 the evidence already presented to it, including a recommendation
28 by the State Department of Social Services when it is acting as an
29 adoption agency in counties that are not served by a county
30 adoption agency or by a licensed county adoption agency, that
31 there is a compelling reason for determining that a hearing held
32 pursuant to Section 366.26 is not in the best interest of the child
33 because the child is not a proper subject for adoption and has no
34 one willing to accept legal guardianship. For purposes of this
35 section, a recommendation by the State Department of Social
36 Services when it is acting as an adoption agency in counties that
37 are not served by a county adoption agency or by a licensed county
38 adoption agency that adoption is not in the best interest of the child
39 shall constitute a compelling reason for the court’s determination.
40 That recommendation shall be based on the present circumstances

1 of the child and shall not preclude a different recommendation at
2 a later date if the child's circumstances change. On and after
3 January 1, 2012, the nonminor dependent's legal status as an adult
4 is in and of itself a compelling reason not to hold a hearing pursuant
5 to Section 366.26. The court may order that a nonminor dependent
6 who otherwise is eligible pursuant to Section 11403 remain in a
7 planned, permanent living arrangement.

8 If the court orders that a child who is 10 years of age or older
9 remain in long-term foster care, the court shall determine whether
10 the agency has made reasonable efforts to maintain the child's
11 relationships with individuals other than the child's siblings who
12 are important to the child, consistent with the child's best interests,
13 and may make any appropriate order to ensure that those
14 relationships are maintained.

15 If the child is not returned to his or her parent or legal guardian,
16 the court shall consider, and state for the record, in-state and
17 out-of-state options for permanent placement. If the child is placed
18 out of the state, the court shall make a determination whether the
19 out-of-state placement continues to be appropriate and in the best
20 interests of the child.

21 (h) In any case in which the court orders that a hearing pursuant
22 to Section 366.26 shall be held, it shall also order the termination
23 of reunification services to the parent or legal guardian. The court
24 shall continue to permit the parent or legal guardian to visit the
25 child pending the hearing unless it finds that visitation would be
26 detrimental to the child. The court shall make any other appropriate
27 orders to enable the child to maintain relationships with individuals,
28 other than the child's siblings, who are important to the child,
29 consistent with the child's best interests. When the court orders a
30 termination of reunification services to the parent or legal guardian,
31 it shall also order that the child's caregiver receive the child's birth
32 certificate in accordance with Sections 16010.4 and 16010.5.
33 Additionally, when the court orders a termination of reunification
34 services to the parent or legal guardian, it shall order, when
35 appropriate, that a child who is 16 years of age or older receive
36 his or her birth certificate.

37 (i) (1) Whenever a court orders that a hearing pursuant to
38 Section 366.26 shall be held, it shall direct the agency supervising
39 the child and the licensed county adoption agency, or the State
40 Department of Social Services when it is acting as an adoption

1 agency in counties that are not served by a county adoption agency,
2 to prepare an assessment that shall include:

3 (A) Current search efforts for an absent parent or parents or
4 legal guardians.

5 (B) A review of the amount of and nature of any contact between
6 the child and his or her parents or legal guardians and other
7 members of his or her extended family since the time of placement.
8 Although the extended family of each child shall be reviewed on
9 a case-by-case basis, “extended family” for the purpose of this
10 subparagraph shall include, but not be limited to, the child’s
11 siblings, grandparents, aunts, and uncles.

12 (C) An evaluation of the child’s medical, developmental,
13 scholastic, mental, and emotional status.

14 (D) A preliminary assessment of the eligibility and commitment
15 of any identified prospective adoptive parent or legal guardian,
16 particularly the caretaker, to include a social history including
17 screening for criminal records and prior referrals for child abuse
18 or neglect, the capability to meet the child’s needs, and the
19 understanding of the legal and financial rights and responsibilities
20 of adoption and guardianship. If a proposed guardian is a relative
21 of the minor, the assessment shall also consider, but need not be
22 limited to, all of the factors specified in subdivision (a) of Section
23 361.3 and in Section 361.4.

24 (E) The relationship of the child to any identified prospective
25 adoptive parent or legal guardian, the duration and character of
26 the relationship, the degree of attachment of the child to the
27 prospective relative guardian or adoptive parent, the relative’s or
28 adoptive parent’s strong commitment to caring permanently for
29 the child, the motivation for seeking adoption or guardianship, a
30 statement from the child concerning placement and the adoption
31 or guardianship, and whether the child, if over 12 years of age,
32 has been consulted about the proposed relative guardianship
33 arrangements, unless the child’s age or physical, emotional, or
34 other condition precludes his or her meaningful response, and if
35 so, a description of the condition.

36 (F) A description of efforts to be made to identify a prospective
37 adoptive parent or legal guardian, including, but not limited to,
38 child-specific recruitment and listing on an adoption exchange
39 within the state or out of the state.

1 (G) An analysis of the likelihood that the child will be adopted
2 if parental rights are terminated.

3 (2) (A) A relative caregiver's preference for legal guardianship
4 over adoption, if it is due to circumstances that do not include an
5 unwillingness to accept legal or financial responsibility for the
6 child, shall not constitute the sole basis for recommending removal
7 of the child from the relative caregiver for purposes of adoptive
8 placement.

9 (B) A relative caregiver shall be given information regarding
10 the permanency options of guardianship and adoption, including
11 the long-term benefits and consequences of each option, prior to
12 establishing legal guardianship or pursuing adoption.

13 (j) If, at any hearing held pursuant to Section 366.26, a
14 guardianship is established for the minor with an approved relative
15 caregiver, and juvenile court dependency is subsequently
16 dismissed, the minor shall be eligible for aid under the Kin-GAP
17 Program, as provided for in Article 4.5 (commencing with Section
18 11360) or Article 4.7 (commencing with Section 11385), as
19 applicable, of Chapter 2 of Part 3 of Division 9.

20 (k) As used in this section, "relative" means an adult who is
21 related to the minor by blood, adoption, or affinity within the fifth
22 degree of kinship, including stepparents, stepsiblings, and all
23 relatives whose status is preceded by the words "great,"
24 "great-great," or "grand," or the spouse of any of those persons
25 even if the marriage was terminated by death or dissolution.

26 (l) For purposes of this section, evidence of any of the following
27 circumstances may not, in and of itself, be deemed a failure to
28 provide or offer reasonable services:

29 (1) The child has been placed with a foster family that is eligible
30 to adopt a child, or has been placed in a preadoptive home.

31 (2) The case plan includes services to make and finalize a
32 permanent placement for the child if efforts to reunify fail.

33 (3) Services to make and finalize a permanent placement for
34 the child, if efforts to reunify fail, are provided concurrently with
35 services to reunify the family.

36 (m) The implementation and operation of the amendments to
37 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
38 shall be subject to appropriation through the budget process and
39 by phase, as provided in Section 366.35.

40 (n) This section shall become operative on January 1, 2014.

1 SEC. 190. Section 391 of the Welfare and Institutions Code is
2 amended to read:

3 391. (a) The dependency court shall not terminate jurisdiction
4 over a nonminor unless a hearing is conducted pursuant to this
5 section.

6 (b) At any hearing for a nonminor at which the court is
7 considering termination of the jurisdiction of the juvenile court,
8 the county welfare department shall do all of the following:

9 (1) Ensure that the dependent nonminor is present in court,
10 unless the nonminor does not wish to appear in court, and elects
11 a telephonic appearance, or document reasonable efforts made by
12 the county welfare department to locate the nonminor when the
13 nonminor is not available.

14 (2) Submit a report describing whether it is in the nonminor's
15 best interests to remain under the court's dependency jurisdiction,
16 which includes a recommended transitional independent living
17 case plan for the nonminor when the report describes continuing
18 dependency jurisdiction as being in the nonminor's best interest.

19 (3) If the county welfare department recommends termination
20 of the court's dependency jurisdiction, submit documentation of
21 the reasonable efforts made by the department to provide the
22 nonminor with the assistance needed to meet or maintain eligibility
23 as a nonminor dependent, as defined in paragraphs (1) to (5),
24 inclusive, of subdivision (b) of Section 11403.

25 (4) If the nonminor has indicated that he or she does not want
26 dependency jurisdiction to continue, the report shall address the
27 manner in which the nonminor was advised of his or her options,
28 including the benefits of remaining in foster care, and of his or her
29 right to reenter foster care and to file a petition pursuant to
30 subdivision (e) of Section 388 to resume dependency jurisdiction
31 prior to attaining 21 years of age.

32 (c) (1) The court shall continue dependency jurisdiction over
33 a nonminor who meets the definition of a nonminor dependent as
34 described in subdivision (v) of Section 11400 unless the court finds
35 either of the following:

36 (A) That the nonminor does not wish to remain subject to
37 dependency jurisdiction.

38 (B) That the nonminor is not participating in a reasonable and
39 appropriate transitional independent living case plan.

1 (2) In making the findings pursuant to paragraph (1), the court
2 must also find that the nonminor has been informed of his or her
3 options including the benefits of remaining in foster care and the
4 right to reenter foster care by filing a petition pursuant to
5 subdivision (e) of Section 388 to resume dependency jurisdiction
6 and by completing a voluntary reentry agreement pursuant to
7 subdivision (z) of Section 11400, and has had an opportunity to
8 confer with his or her counsel if counsel has been appointed
9 pursuant to Section 317.

10 (d) (1) The court may terminate its jurisdiction over a nonminor
11 if the court finds after reasonable and documented efforts the
12 nonminor cannot be located.

13 (2) When terminating dependency jurisdiction the court shall
14 maintain general jurisdiction over the nonminor to allow for the
15 filing of a petition to resume dependency jurisdiction under
16 subdivision (e) of Section 388 until the nonminor attains 21 years
17 of age, although no review proceedings shall be required. A
18 nonminor may petition the court pursuant to subdivision (e) of
19 Section 388 to resume dependency jurisdiction at any time before
20 attaining 21 years of age.

21 (e) The court shall not terminate dependency jurisdiction over
22 a nonminor dependent who has attained 18 years of age until a
23 hearing is conducted pursuant to this section and the department
24 has submitted a report verifying that the following information,
25 documents, and services have been provided to the nonminor, or
26 in the case of a nonminor who, after reasonable efforts by the
27 county welfare department, cannot be located, verifying the efforts
28 made to make the following available to the nonminor:

29 (1) Written information concerning the nonminor's dependency
30 case, including any known information regarding the nonminor's
31 Indian heritage or tribal connections, if applicable, his or her family
32 history and placement history, any photographs of the nonminor
33 or his or her family in the possession of the county welfare
34 department, other than forensic photographs, the whereabouts of
35 any siblings under the jurisdiction of the juvenile court, unless the
36 court determines that sibling contact would jeopardize the safety
37 or welfare of the sibling, directions on how to access the documents
38 the nonminor is entitled to inspect under Section 827, and the date
39 on which the jurisdiction of the juvenile court would be terminated.

40 (2) The following documents:

- 1 (A) Social security card.
- 2 (B) Certified copy of his or her birth certificate.
- 3 (C) Health and education summary, as described in subdivision
- 4 (a) of Section 16010.
- 5 (D) Driver’s license, as described in Section 12500 of the
- 6 Vehicle Code, or identification card, as described in Section 13000
- 7 of the Vehicle Code.
- 8 (E) A letter prepared by the county welfare department that
- 9 includes the following information:
 - 10 (i) The nonminor’s name and date of birth.
 - 11 (ii) The dates during which the nonminor was within the
 - 12 jurisdiction of the juvenile court.
 - 13 (iii) A statement that the nonminor was a foster youth in
 - 14 compliance with state and federal financial aid documentation
 - 15 requirements.
- 16 (F) If applicable, the death certificate of the parent or parents.
- 17 (G) If applicable, proof of the nonminor’s citizenship or legal
- 18 residence.
- 19 (H) An advance healthcare directive form.
- 20 (I) The Judicial Council form that the nonminor would use to
- 21 file a petition pursuant to subdivision (e) of Section 388 to resume
- 22 dependency jurisdiction.
- 23 (J) The written 90-day transition plan prepared pursuant to
- 24 Section 16501.1.
- 25 (3) Assistance in completing an application for Medi-Cal or
- 26 assistance in obtaining other health insurance.
- 27 (4) Referrals to transitional housing, if available, or assistance
- 28 in securing other housing.
- 29 (5) Assistance in obtaining employment or other financial
- 30 support.
- 31 (6) Assistance in applying for admission to college or to a
- 32 vocational training program or other educational institution and
- 33 in obtaining financial aid, where appropriate.
- 34 (7) Assistance in maintaining relationships with individuals
- 35 who are important to a nonminor who has been in out-of-home
- 36 placement for six months or longer from the date the nonminor
- 37 entered foster care, based on the nonminor’s best interests.
- 38 (8) For nonminors between 18 and 21 years of age, assistance
- 39 in accessing the Independent Living Aftercare Program in the
- 40 nonminor’s county of residence, and, upon the nonminor’s request,

1 assistance in completing a voluntary reentry agreement for care
2 and placement pursuant to subdivision (z) of Section 11400 and
3 in filing a petition pursuant to subdivision (e) of Section 388 to
4 resume dependency jurisdiction.

5 (9) Written information notifying the child that current or former
6 dependent children who are or have been in foster care are granted
7 a preference for student assistant or internship positions with state
8 agencies pursuant to Section 18220 of the Government Code. The
9 preference shall be granted to applicants up to 26 years of age.

10 (f) At the hearing closest to and before a dependent minor's
11 18th birthday and every review hearing thereafter for nonminors,
12 the department shall submit a report describing efforts toward
13 completing the items described in paragraph (2) of subdivision
14 (e).

15 (g) The Judicial Council shall develop and implement standards,
16 and develop and adopt appropriate forms necessary to implement
17 this provision.

18 (h) This section shall become operative on January 1, 2012.

19 SEC. 191. Section 712 of the Welfare and Institutions Code is
20 amended to read:

21 712. (a) The evaluation ordered by the court under Section
22 711 shall be made, in accordance with the provisions of Section
23 741 and Division 4.5 (commencing with Section 4500), by either
24 of the following, as applicable:

25 (1) For minors suspected to be developmentally disabled, by
26 the director of a regional center or his or her designee, pursuant
27 to subdivision (f) of Section 709.

28 (2) For all other minors, by an appropriate and licensed mental
29 health professional who meets one or more of the following criteria:

30 (A) The person is licensed to practice medicine in the State of
31 California and is trained and actively engaged in the practice of
32 psychiatry.

33 (B) The person is licensed as a psychologist under Chapter 6.6
34 (commencing with Section 2900) of Division 2 of the Business
35 and Professions Code.

36 (b) The evaluator selected by the court shall personally examine
37 the minor, conduct appropriate psychological or mental health
38 screening, assessment, or testing, according to a uniform protocol
39 developed by the county mental health department, and prepare
40 and submit to the court a written report indicating his or her

1 findings and recommendations to guide the court in determining
2 whether the minor has a serious mental disorder or is seriously
3 emotionally disturbed, as described in Section 5600.3. If the minor
4 is detained, the examination shall occur within three court days of
5 the court's order of referral for evaluation, and the evaluator's
6 report shall be submitted to the court not later than five court days
7 after the evaluator has personally examined the minor, unless the
8 submission date is extended by the court for good cause shown.

9 (c) Based on the written report by the evaluator or the regional
10 center, the court shall determine whether the minor has a serious
11 mental disorder or is seriously emotionally disturbed, as described
12 in Section 5600.3, or has a developmental disability, as defined in
13 Section 4512. If the court determines that the minor has a serious
14 mental disorder, is seriously emotionally disturbed, or has a
15 developmental disability, the case shall proceed as described in
16 Section 713. If the court determines that the minor does not have
17 a serious mental disorder, is not seriously emotionally disturbed,
18 or does not have a developmental disability, the matter shall
19 proceed without the application of Section 713 and in accordance
20 with all other applicable provisions of law.

21 (d) This section shall not be construed to interfere with the legal
22 authority of the juvenile court or of any other public or private
23 agency or individual to refer a minor for mental health evaluation
24 or treatment as provided in Section 370, 635.1, 704, 741, 5150,
25 5694.7, 5699.2, 5867.5, or 6551 of this code, or in Section 4011.6
26 of the Penal Code.

27 SEC. 192. Section 912 of the Welfare and Institutions Code,
28 as added by Section 77 of Chapter 36 of the Statutes of 2011, is
29 amended to read:

30 912. (a) Commencing on and after January 1, 2012, counties
31 from which persons are committed to the Department of
32 Corrections and Rehabilitation, Division of Juvenile Facilities,
33 shall pay to the state an annual rate of one hundred twenty-five
34 thousand dollars (\$125,000) for the time those persons remain in
35 any institution under the direct supervision of the division, or in
36 any institution, boarding home, foster home, or other private or
37 public institution in which they are placed by the division, on
38 parole or otherwise, and cared for and supported at the expense of
39 the division, as provided in this section. This section applies to
40 any person committed to the division by a court, including persons

1 committed to the division prior to January 1, 2012, who, on or
2 after January 1, 2012, remain in or return to the facilities described
3 in this section.

4 (b) The Department of Corrections and Rehabilitation, Division
5 of Juvenile Facilities, shall present to the county, not more
6 frequently than monthly, a claim for the amount due the state under
7 this section, which the county shall process and pay pursuant to
8 Chapter 4 (commencing with Section 29700) of Division 3 of Title
9 3 of the Government Code.

10 SEC. 193. Section 4512 of the Welfare and Institutions Code
11 is amended to read:

12 4512. As used in this division:

13 (a) “Developmental disability” means a disability that originates
14 before an individual attains age 18 years, continues, or can be
15 expected to continue, indefinitely, and constitutes a substantial
16 disability for that individual. As defined by the Director of
17 Developmental Services, in consultation with the Superintendent
18 of Public Instruction, this term shall include mental retardation,
19 cerebral palsy, epilepsy, and autism. This term shall also include
20 disabling conditions found to be closely related to mental
21 retardation or to require treatment similar to that required for
22 individuals with mental retardation, but shall not include other
23 handicapping conditions that are solely physical in nature.

24 (b) “Services and supports for persons with developmental
25 disabilities” means specialized services and supports or special
26 adaptations of generic services and supports directed toward the
27 alleviation of a developmental disability or toward the social,
28 personal, physical, or economic habilitation or rehabilitation of an
29 individual with a developmental disability, or toward the
30 achievement and maintenance of independent, productive, normal
31 lives. The determination of which services and supports are
32 necessary for each consumer shall be made through the individual
33 program plan process. The determination shall be made on the
34 basis of the needs and preferences of the consumer or, when
35 appropriate, the consumer’s family, and shall include consideration
36 of a range of service options proposed by individual program plan
37 participants, the effectiveness of each option in meeting the goals
38 stated in the individual program plan, and the cost-effectiveness
39 of each option. Services and supports listed in the individual
40 program plan may include, but are not limited to, diagnosis,

1 evaluation, treatment, personal care, day care, domiciliary care,
2 special living arrangements, physical, occupational, and speech
3 therapy, training, education, supported and sheltered employment,
4 mental health services, recreation, counseling of the individual
5 with a developmental disability and of his or her family, protective
6 and other social and sociolegal services, information and referral
7 services, follow-along services, adaptive equipment and supplies,
8 advocacy assistance, including self-advocacy training, facilitation
9 and peer advocates, assessment, assistance in locating a home,
10 child care, behavior training and behavior modification programs,
11 camping, community integration services, community support,
12 daily living skills training, emergency and crisis intervention,
13 facilitating circles of support, habilitation, homemaker services,
14 infant stimulation programs, paid roommates, paid neighbors,
15 respite, short-term out-of-home care, social skills training,
16 specialized medical and dental care, supported living arrangements,
17 technical and financial assistance, travel training, training for
18 parents of children with developmental disabilities, training for
19 parents with developmental disabilities, vouchers, and
20 transportation services necessary to ensure delivery of services to
21 persons with developmental disabilities. Nothing in this subdivision
22 is intended to expand or authorize a new or different service or
23 support for any consumer unless that service or support is contained
24 in his or her individual program plan.

25 (c) Notwithstanding subdivisions (a) and (b), for any
26 organization or agency receiving federal financial participation
27 under the federal Developmental Disabilities Assistance and Bill
28 of Rights Act of 2000, as amended, “developmental disability”
29 and “services for persons with developmental disabilities” mean
30 the terms as defined in the federal act to the extent required by
31 federal law.

32 (d) “Consumer” means a person who has a disability that meets
33 the definition of developmental disability set forth in subdivision
34 (a).

35 (e) “Natural supports” means personal associations and
36 relationships typically developed in the community that enhance
37 the quality and security of life for people, including, but not limited
38 to, family relationships, friendships reflecting the diversity of the
39 neighborhood and the community, associations with fellow students
40 or employees in regular classrooms and workplaces, and

1 associations developed through participation in clubs,
2 organizations, and other civic activities.

3 (f) “Circle of support” means a committed group of community
4 members, who may include family members, meeting regularly
5 with an individual with developmental disabilities in order to share
6 experiences, promote autonomy and community involvement, and
7 assist the individual in establishing and maintaining natural
8 supports. A circle of support generally includes a plurality of
9 members who neither provide nor receive services or supports for
10 persons with developmental disabilities and who do not receive
11 payment for participation in the circle of support.

12 (g) “Facilitation” means the use of modified or adapted
13 materials, special instructions, equipment, or personal assistance
14 by an individual, such as assistance with communications, that
15 will enable a consumer to understand and participate to the
16 maximum extent possible in the decisions and choices that effect
17 his or her life.

18 (h) “Family support services” means services and supports that
19 are provided to a child with developmental disabilities or his or
20 her family and that contribute to the ability of the family to reside
21 together.

22 (i) “Voucher” means any authorized alternative form of service
23 delivery in which the consumer or family member is provided with
24 a payment, coupon, chit, or other form of authorization that enables
25 the consumer or family member to choose his or her own service
26 provider.

27 (j) “Planning team” means the individual with developmental
28 disabilities, the parents or legally appointed guardian of a minor
29 consumer or the legally appointed conservator of an adult
30 consumer, the authorized representative, including those appointed
31 pursuant to subdivision (d) of Section 4548 and subdivision (e) of
32 Section 4705, one or more regional center representatives,
33 including the designated regional center service coordinator
34 pursuant to subdivision (b) of Section 4640.7, any individual,
35 including a service provider, invited by the consumer, the parents
36 or legally appointed guardian of a minor consumer or the legally
37 appointed conservator of an adult consumer, or the authorized
38 representative, including those appointed pursuant to subdivision
39 (d) of Section 4548 and subdivision (e) of Section 4705, and
40 including a minor’s, dependent’s, or ward’s court-appointed

1 developmental services decisionmaker appointed pursuant to
2 Section 319, 361, or 726.

3 (k) “Stakeholder organizations” means statewide organizations
4 representing the interests of consumers, family members, service
5 providers, and statewide advocacy organizations.

6 (l) “Substantial disability” means the existence of significant
7 functional limitations in three or more of the following areas of
8 major life activity, as determined by a regional center, and as
9 appropriate to the age of the person:

- 10 (1) Self-care.
- 11 (2) Receptive and expressive language.
- 12 (3) Learning.
- 13 (4) Mobility.
- 14 (5) Self-direction.
- 15 (6) Capacity for independent living.
- 16 (7) Economic self-sufficiency.

17 Any reassessment of substantial disability for purposes of
18 continuing eligibility shall utilize the same criteria under which
19 the individual was originally made eligible.

20 SEC. 194. Section 4514 of the Welfare and Institutions Code
21 is amended to read:

22 4514. All information and records obtained in the course of
23 providing intake, assessment, and services under Division 4.1
24 (commencing with Section 4400), this division, Division 6
25 (commencing with Section 6000), or Division 7 (commencing
26 with Section 7100) to persons with developmental disabilities shall
27 be confidential. Information and records obtained in the course of
28 providing similar services to either voluntary or involuntary
29 recipients prior to 1969 shall also be confidential. Information and
30 records shall be disclosed only in any of the following cases:

31 (a) In communications between qualified professional persons,
32 whether employed by a regional center or state developmental
33 center, or not, in the provision of intake, assessment, and services
34 or appropriate referrals. The consent of the person with a
35 developmental disability, or his or her guardian or conservator,
36 shall be obtained before information or records may be disclosed
37 by regional center or state developmental center personnel to a
38 professional not employed by the regional center or state
39 developmental center, or a program not vendored by a regional
40 center or state developmental center.

1 (b) When the person with a developmental disability, who has
 2 the capacity to give informed consent, designates individuals to
 3 whom information or records may be released, except that nothing
 4 in this chapter shall be construed to compel a physician and
 5 surgeon, psychologist, social worker, marriage and family therapist,
 6 professional clinical counselor, nurse, attorney, or other
 7 professional to reveal information that has been given to him or
 8 her in confidence by a family member of the person unless a valid
 9 release has been executed by that family member.

10 (c) To the extent necessary for a claim, or for a claim or
 11 application to be made on behalf of a person with a developmental
 12 disability for aid, insurance, government benefit, or medical
 13 assistance to which he or she may be entitled.

14 (d) If the person with a developmental disability is a minor,
 15 dependent, ward, or conservatee, and his or her parent, guardian,
 16 conservator, limited conservator with access to confidential records,
 17 or authorized representative, designates, in writing, persons to
 18 whom records or information may be disclosed, except that nothing
 19 in this chapter shall be construed to compel a physician and
 20 surgeon, psychologist, social worker, marriage and family therapist,
 21 professional clinical counselor, nurse, attorney, or other
 22 professional to reveal information that has been given to him or
 23 her in confidence by a family member of the person unless a valid
 24 release has been executed by that family member.

25 (e) For research, provided that the Director of Developmental
 26 Services designates by regulation rules for the conduct of research
 27 and requires the research to be first reviewed by the appropriate
 28 institutional review board or boards. These rules shall include, but
 29 need not be limited to, the requirement that all researchers shall
 30 sign an oath of confidentiality as follows:

31
 32 “ _____
 33 Date

34
 35 As a condition of doing research concerning persons with
 36 developmental disabilities who have received services from _____
 37 (fill in the facility, agency or person), I, _____, agree to obtain the
 38 prior informed consent of persons who have received services to
 39 the maximum degree possible as determined by the appropriate
 40 institutional review board or boards for protection of human

1 subjects reviewing my research, or the person’s parent, guardian,
 2 or conservator, and I further agree not to divulge any information
 3 obtained in the course of the research to unauthorized persons, and
 4 not to publish or otherwise make public any information regarding
 5 persons who have received services so those persons who received
 6 services are identifiable.

7 I recognize that the unauthorized release of confidential
 8 information may make me subject to a civil action under provisions
 9 of the Welfare and Institutions Code.

10
 11 _____”
 12 Signed

- 13
- 14 (f) To the courts, as necessary to the administration of justice.
- 15 (g) To governmental law enforcement agencies as needed for
 16 the protection of federal and state elective constitutional officers
 17 and their families.
- 18 (h) To the Senate Committee on Rules or the Assembly
 19 Committee on Rules for the purposes of legislative investigation
 20 authorized by the committee.
- 21 (i) To the courts and designated parties as part of a regional
 22 center report or assessment in compliance with a statutory or
 23 regulatory requirement, including, but not limited to, Section
 24 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the
 25 Penal Code, Section 6502 of this code, and Section 56557 of Title
 26 17 of the California Code of Regulations.
- 27 (j) To the attorney for the person with a developmental disability
 28 in any and all proceedings upon presentation of a release of
 29 information signed by the person, except that when the person
 30 lacks the capacity to give informed consent, the regional center or
 31 state developmental center director or designee, upon satisfying
 32 himself or herself of the identity of the attorney, and of the fact
 33 that the attorney represents the person, shall release all information
 34 and records relating to the person except that nothing in this article
 35 shall be construed to compel a physician and surgeon, psychologist,
 36 social worker, marriage and family therapist, professional clinical
 37 counselor, nurse, attorney, or other professional to reveal
 38 information that has been given to him or her in confidence by a
 39 family member of the person unless a valid release has been
 40 executed by that family member.

1 (k) Upon written consent by a person with a developmental
2 disability previously or presently receiving services from a regional
3 center or state developmental center, the director of the regional
4 center or state developmental center, or his or her designee, may
5 release any information, except information that has been given
6 in confidence by members of the family of the person with
7 developmental disabilities, requested by a probation officer charged
8 with the evaluation of the person after his or her conviction of a
9 crime if the regional center or state developmental center director
10 or designee determines that the information is relevant to the
11 evaluation. The consent shall only be operative until sentence is
12 passed on the crime of which the person was convicted. The
13 confidential information released pursuant to this subdivision shall
14 be transmitted to the court separately from the probation report
15 and shall not be placed in the probation report. The confidential
16 information shall remain confidential except for purposes of
17 sentencing. After sentencing, the confidential information shall be
18 sealed.

19 (l) Between persons who are trained and qualified to serve on
20 “multidisciplinary personnel” teams pursuant to subdivision (d)
21 of Section 18951. The information and records sought to be
22 disclosed shall be relevant to the prevention, identification,
23 management, or treatment of an abused child and his or her parents
24 pursuant to Chapter 11 (commencing with Section 18950) of Part
25 6 of Division 9.

26 (m) When a person with a developmental disability dies from
27 any cause, natural or otherwise, while hospitalized in a state
28 developmental center, the State Department of Developmental
29 Services, the physician and surgeon in charge of the client, or the
30 professional in charge of the facility or his or her designee, shall
31 release information and records to the coroner. The State
32 Department of Developmental Services, the physician and surgeon
33 in charge of the client, or the professional in charge of the facility
34 or his or her designee, shall not release any notes, summaries,
35 transcripts, tapes, or records of conversations between the resident
36 and health professional personnel of the hospital relating to the
37 personal life of the resident that is not related to the diagnosis and
38 treatment of the resident’s physical condition. Any information
39 released to the coroner pursuant to this section shall remain

1 confidential and shall be sealed and shall not be made part of the
2 public record.

3 (n) To authorized licensing personnel who are employed by, or
4 who are authorized representatives of, the State Department of
5 Health Care Services, and who are licensed or registered health
6 professionals, and to authorized legal staff or special investigators
7 who are peace officers who are employed by, or who are authorized
8 representatives of, the State Department of Social Services, as
9 necessary to the performance of their duties to inspect, license,
10 and investigate health facilities and community care facilities, and
11 to ensure that the standards of care and services provided in these
12 facilities are adequate and appropriate and to ascertain compliance
13 with the rules and regulations to which the facility is subject. The
14 confidential information shall remain confidential except for
15 purposes of inspection, licensing, or investigation pursuant to
16 Chapter 2 (commencing with Section 1250) and Chapter 3
17 (commencing with Section 1500) of Division 2 of the Health and
18 Safety Code, or a criminal, civil, or administrative proceeding in
19 relation thereto. The confidential information may be used by the
20 State Department of Health Care Services or the State Department
21 of Social Services in a criminal, civil, or administrative proceeding.
22 The confidential information shall be available only to the judge
23 or hearing officer and to the parties to the case. Names which are
24 confidential shall be listed in attachments separate to the general
25 pleadings. The confidential information shall be sealed after the
26 conclusion of the criminal, civil, or administrative hearings, and
27 shall not subsequently be released except in accordance with this
28 subdivision. If the confidential information does not result in a
29 criminal, civil, or administrative proceeding, it shall be sealed after
30 the State Department of Health Care Services or the State
31 Department of Social Services decides that no further action will
32 be taken in the matter of suspected licensing violations. Except as
33 otherwise provided in this subdivision, confidential information
34 in the possession of the State Department of Health Care Services
35 or the State Department of Social Services shall not contain the
36 name of the person with a developmental disability.

37 (o) To any board which licenses and certifies professionals in
38 the fields of mental health and developmental disabilities pursuant
39 to state law, when the Director of Developmental Services has
40 reasonable cause to believe that there has occurred a violation of

1 any provision of law subject to the jurisdiction of a board and the
2 records are relevant to the violation. The information shall be
3 sealed after a decision is reached in the matter of the suspected
4 violation, and shall not subsequently be released except in
5 accordance with this subdivision. Confidential information in the
6 possession of the board shall not contain the name of the person
7 with a developmental disability.

8 (p) To governmental law enforcement agencies by the director
9 of a regional center or state developmental center, or his or her
10 designee, when (1) the person with a developmental disability has
11 been reported lost or missing or (2) there is probable cause to
12 believe that a person with a developmental disability has
13 committed, or has been the victim of, murder, manslaughter,
14 mayhem, aggravated mayhem, kidnapping, robbery, carjacking,
15 assault with the intent to commit a felony, arson, extortion, rape,
16 forcible sodomy, forcible oral copulation, assault or battery, or
17 unlawful possession of a weapon, as provided in any provision
18 listed in Section 16590 of the Penal Code.

19 This subdivision shall be limited solely to information directly
20 relating to the factual circumstances of the commission of the
21 enumerated offenses and shall not include any information relating
22 to the mental state of the patient or the circumstances of his or her
23 treatment unless relevant to the crime involved.

24 This subdivision shall not be construed as an exception to, or in
25 any other way affecting, the provisions of Article 7 (commencing
26 with Section 1010) of Chapter 4 of Division 8 of the Evidence
27 Code, or Chapter 11 (commencing with Section 15600) and
28 Chapter 13 (commencing with Section 15750) of Part 3 of Division
29 9 of this code.

30 (q) To the Division of Juvenile Facilities and Department of
31 Corrections and Rehabilitation or any component thereof, as
32 necessary to the administration of justice.

33 (r) To an agency mandated to investigate a report of abuse filed
34 pursuant to either Article 2.5 (commencing with Section 11164)
35 of Chapter 2 of Title 1 of Part 4 of the Penal Code or Section 15630
36 of this code for the purposes of either a mandated or voluntary
37 report or when those agencies request information in the course
38 of conducting their investigation.

39 (s) When a person with developmental disabilities, or the parent,
40 guardian, or conservator of a person with developmental disabilities

1 who lacks capacity to consent, fails to grant or deny a request by
2 a regional center or state developmental center to release
3 information or records relating to the person with developmental
4 disabilities within a reasonable period of time, the director of the
5 regional or developmental center, or his or her designee, may
6 release information or records on behalf of that person provided
7 both of the following conditions are met:

8 (1) Release of the information or records is deemed necessary
9 to protect the person's health, safety, or welfare.

10 (2) The person, or the person's parent, guardian, or conservator,
11 has been advised annually in writing of the policy of the regional
12 center or state developmental center for release of confidential
13 client information or records when the person with developmental
14 disabilities, or the person's parent, guardian, or conservator, fails
15 to respond to a request for release of the information or records
16 within a reasonable period of time. A statement of policy contained
17 in the client's individual program plan shall be deemed to comply
18 with the notice requirement of this paragraph.

19 (t) (1) When an employee is served with a notice of adverse
20 action, as defined in Section 19570 of the Government Code, the
21 following information and records may be released:

22 (A) All information and records that the appointing authority
23 relied upon in issuing the notice of adverse action.

24 (B) All other information and records that are relevant to the
25 adverse action, or that would constitute relevant evidence as
26 defined in Section 210 of the Evidence Code.

27 (C) The information described in subparagraphs (A) and (B)
28 may be released only if both of the following conditions are met:

29 (i) The appointing authority has provided written notice to the
30 consumer and the consumer's legal representative or, if the
31 consumer has no legal representative or if the legal representative
32 is a state agency, to the clients' rights advocate, and the consumer,
33 the consumer's legal representative, or the clients' rights advocate
34 has not objected in writing to the appointing authority within five
35 business days of receipt of the notice, or the appointing authority,
36 upon review of the objection has determined that the circumstances
37 on which the adverse action is based are egregious or threaten the
38 health, safety, or life of the consumer or other consumers and
39 without the information the adverse action could not be taken.

- 1 (ii) The appointing authority, the person against whom the
2 adverse action has been taken, and the person's representative, if
3 any, have entered into a stipulation that does all of the following:
- 4 (I) Prohibits the parties from disclosing or using the information
5 or records for any purpose other than the proceedings for which
6 the information or records were requested or provided.
- 7 (II) Requires the employee and the employee's legal
8 representative to return to the appointing authority all records
9 provided to them under this subdivision, including, but not limited
10 to, all records and documents or copies thereof that are no longer
11 in the possession of the employee or the employee's legal
12 representative because they were from any source containing
13 confidential information protected by this section, and all copies
14 of those records and documents, within 10 days of the date that
15 the adverse action becomes final except for the actual records and
16 documents submitted to the administrative tribunal as a component
17 of an appeal from the adverse action.
- 18 (III) Requires the parties to submit the stipulation to the
19 administrative tribunal with jurisdiction over the adverse action
20 at the earliest possible opportunity.
- 21 (2) For the purposes of this subdivision, the State Personnel
22 Board may, prior to any appeal from adverse action being filed
23 with it, issue a protective order, upon application by the appointing
24 authority, for the limited purpose of prohibiting the parties from
25 disclosing or using information or records for any purpose other
26 than the proceeding for which the information or records were
27 requested or provided, and to require the employee or the
28 employee's legal representative to return to the appointing authority
29 all records provided to them under this subdivision, including, but
30 not limited to, all records and documents from any source
31 containing confidential information protected by this section, and
32 all copies of those records and documents, within 10 days of the
33 date that the adverse action becomes final, except for the actual
34 records and documents that are no longer in the possession of the
35 employee or the employee's legal representatives because they
36 were submitted to the administrative tribunal as a component of
37 an appeal from the adverse action.
- 38 (3) Individual identifiers, including, but not limited to, names,
39 social security numbers, and hospital numbers, that are not

1 necessary for the prosecution or defense of the adverse action,
2 shall not be disclosed.

3 (4) All records, documents, or other materials containing
4 confidential information protected by this section that have been
5 submitted or otherwise disclosed to the administrative agency or
6 other person as a component of an appeal from an adverse action
7 shall, upon proper motion by the appointing authority to the
8 administrative tribunal, be placed under administrative seal and
9 shall not, thereafter, be subject to disclosure to any person or entity
10 except upon the issuance of an order of a court of competent
11 jurisdiction.

12 (5) For purposes of this subdivision, an adverse action becomes
13 final when the employee fails to answer within the time specified
14 in Section 19575 of the Government Code, or, after filing an
15 answer, withdraws the appeal, or, upon exhaustion of the
16 administrative appeal or of the judicial review remedies as
17 otherwise provided by law.

18 (u) To the person appointed as the developmental services
19 decisionmaker for a minor, dependent, or ward pursuant to Section
20 319, 361, or 726.

21 SEC. 195. Section 4640.6 of the Welfare and Institutions Code
22 is amended to read:

23 4640.6. (a) In approving regional center contracts, the
24 department shall ensure that regional center staffing patterns
25 demonstrate that direct service coordination is the highest priority.

26 (b) Contracts between the department and regional centers shall
27 require that regional centers implement an emergency response
28 system that ensures that a regional center staff person will respond
29 to a consumer, or individual acting on behalf of a consumer, within
30 two hours of the time an emergency call is placed. This emergency
31 response system shall be operational 24 hours per day, 365 days
32 per year.

33 (c) Contracts between the department and regional centers shall
34 require regional centers to have service coordinator-to-consumer
35 ratios, as follows:

36 (1) An average service coordinator-to-consumer ratio of 1 to
37 62 for all consumers who have not moved from the developmental
38 centers to the community since April 14, 1993. In no case shall a
39 service coordinator for these consumers have an assigned caseload
40 in excess of 79 consumers for more than 60 days.

1 (2) An average service coordinator-to-consumer ratio of 1 to
2 45 for all consumers who have moved from a developmental center
3 to the community since April 14, 1993. In no case shall a service
4 coordinator for these consumers have an assigned caseload in
5 excess of 59 consumers for more than 60 days.

6 (3) Commencing January 1, 2004, the following
7 coordinator-to-consumer ratios shall apply:

8 (A) All consumers three years of age and younger and for
9 consumers enrolled in the Home and Community-based Services
10 Waiver program for persons with developmental disabilities, an
11 average service coordinator-to-consumer ratio of 1 to 62.

12 (B) All consumers who have moved from a developmental
13 center to the community since April 14, 1993, and have lived
14 continuously in the community for at least 12 months, an average
15 service coordinator-to-consumer ratio of 1 to 62.

16 (C) All consumers who have not moved from the developmental
17 centers to the community since April 14, 1993, and who are not
18 described in subparagraph (A), an average service
19 coordinator-to-consumer ratio of 1 to 66.

20 (4) For purposes of paragraph (3), service coordinators may
21 have a mixed caseload of consumers three years of age and
22 younger, consumers enrolled in the Home and Community-based
23 Services Waiver program for persons with developmental
24 disabilities, and other consumers if the overall average caseload
25 is weighted proportionately to ensure that overall regional center
26 average service coordinator-to-consumer ratios as specified in
27 paragraph (3) are met. For purposes of paragraph (3), in no case
28 shall a service coordinator have an assigned caseload in excess of
29 84 for more than 60 days.

30 (d) For purposes of this section, “service coordinator” means a
31 regional center employee whose primary responsibility includes
32 preparing, implementing, and monitoring consumers’ individual
33 program plans, securing and coordinating consumer services and
34 supports, and providing placement and monitoring activities.

35 (e) In order to ensure that caseload ratios are maintained
36 pursuant to this section, each regional center shall provide service
37 coordinator caseload data to the department, annually for each
38 fiscal year. The data shall be submitted in the format, including
39 the content, prescribed by the department. Within 30 days of receipt
40 of data submitted pursuant to this subdivision, the department shall

1 make a summary of the data available to the public upon request.
2 The department shall verify the accuracy of the data when
3 conducting regional center fiscal audits. Data submitted by regional
4 centers pursuant to this subdivision shall:

5 (1) Only include data on service coordinator positions as defined
6 in subdivision (d). Regional centers shall identify the number of
7 positions that perform service coordinator duties on less than a
8 full-time basis. Staffing ratios reported pursuant to this subdivision
9 shall reflect the appropriate proportionality of these staff to
10 consumers served.

11 (2) Be reported separately for service coordinators whose
12 caseload includes any of the following:

13 (A) Consumers who are three years of age and older and who
14 have not moved from the developmental center to the community
15 since April 14, 1993.

16 (B) Consumers who have moved from a developmental center
17 to the community since April 14, 1993.

18 (C) Consumers who are younger than three years of age.

19 (D) Consumers enrolled in the Home and Community-based
20 Services Waiver program.

21 (3) Not include positions that are vacant for more than 60 days
22 or new positions established within 60 days of the reporting month
23 that are still vacant.

24 (4) For purposes of calculating caseload ratios for consumers
25 enrolled in the Home and Community-based Services Waiver
26 program, vacancies shall not be included in the calculations.

27 (f) The department shall provide technical assistance and require
28 a plan of correction for any regional center that, for two consecutive
29 reporting periods, fails to maintain service coordinator caseload
30 ratios required by this section or otherwise demonstrates an
31 inability to maintain appropriate staffing patterns pursuant to this
32 section. Plans of correction shall be developed following input
33 from the local area board, local organizations representing
34 consumers, family members, regional center employees, including
35 recognized labor organizations, and service providers, and other
36 interested parties.

37 (g) Contracts between the department and regional center shall
38 require the regional center to have, or contract for, all of the
39 following areas:

- 1 (1) Criminal justice expertise to assist the regional center in
2 providing services and support to consumers involved in the
3 criminal justice system as a victim, defendant, inmate, or parolee.
- 4 (2) Special education expertise to assist the regional center in
5 providing advocacy and support to families seeking appropriate
6 educational services from a school district.
- 7 (3) Family support expertise to assist the regional center in
8 maximizing the effectiveness of support and services provided to
9 families.
- 10 (4) Housing expertise to assist the regional center in accessing
11 affordable housing for consumers in independent or supportive
12 living arrangements.
- 13 (5) Community integration expertise to assist consumers and
14 families in accessing integrated services and supports and improved
15 opportunities to participate in community life.
- 16 (6) Quality assurance expertise, to assist the regional center to
17 provide the necessary coordination and cooperation with the area
18 board in conducting quality-of-life assessments and coordinating
19 the regional center quality assurance efforts.
- 20 (7) Each regional center shall employ at least one consumer
21 advocate who is a person with developmental disabilities.
- 22 (8) Other staffing arrangements related to the delivery of
23 services that the department determines are necessary to ensure
24 maximum cost-effectiveness and to ensure that the service needs
25 of consumers and families are met.
- 26 (h) Any regional center proposing a staffing arrangement that
27 substantially deviates from the requirements of this section shall
28 request a waiver from the department. Prior to granting a waiver,
29 the department shall require a detailed staffing proposal, including,
30 but not limited to, how the proposed staffing arrangement will
31 benefit consumers and families served, and shall demonstrate clear
32 and convincing support for the proposed staffing arrangement from
33 constituencies served and impacted, that include, but are not limited
34 to, consumers, families, providers, advocates, and recognized labor
35 organizations. In addition, the regional center shall submit to the
36 department any written opposition to the proposal from
37 organizations or individuals, including, but not limited to,
38 consumers, families, providers, and advocates, including
39 recognized labor organizations. The department may grant waivers
40 to regional centers that sufficiently demonstrate that the proposed

1 staffing arrangement is in the best interest of consumers and
2 families served, complies with the requirements of this chapter,
3 and does not violate any contractual requirements. A waiver shall
4 be approved by the department for up to 12 months, at which time
5 a regional center may submit a new request pursuant to this
6 subdivision.

7 (i) From February 1, 2009, to June 30, 2010, inclusive, the
8 following shall not apply:

9 (1) The service coordinator-to-consumer ratio requirements of
10 paragraph (1), and subparagraph (C) of paragraph (3), of
11 subdivision (c).

12 (2) The requirements of subdivision (e). The regional centers
13 shall, instead, maintain sufficient service coordinator caseload data
14 to document compliance with the service coordinator-to-consumer
15 ratio requirements in effect pursuant to this section.

16 (3) The requirements of paragraphs (1) to (6), inclusive, of
17 subdivision (g).

18 (j) From July 1, 2010, to June 30, 2012, inclusive, the following
19 shall not apply:

20 (1) The service coordinator-to-consumer ratio requirements of
21 paragraph (1), and subparagraph (C) of paragraph (3), of
22 subdivision (c).

23 (2) The requirements of paragraphs (1) to (6), inclusive, of
24 subdivision (g).

25 (k) (1) Any contract between the department and a regional
26 center entered into on and after January 1, 2003, shall require that
27 all employment contracts entered into with regional center staff
28 or contractors be available to the public for review, upon request.
29 For purposes of this subdivision, an employment contract or portion
30 thereof may not be deemed confidential nor unavailable for public
31 review.

32 (2) Notwithstanding paragraph (1), the social security number
33 of the contracting party may not be disclosed.

34 (3) The term of the employment contract between the regional
35 center and an employee or contractor shall not exceed the term of
36 the state's contract with the regional center.

37 SEC. 196. Section 4641.5 of the Welfare and Institutions Code
38 is amended to read:

39 4641.5. (a) Effective July 1, 2011, regional centers shall begin
40 transitioning all vendors of all regional center services to electronic

1 billing for services purchased through a regional center. All vendors
2 and contracted providers shall submit all billings electronically
3 for services provided on or after July 1, 2012, with the exception
4 of the following:

5 (1) A vendor or provider whose services are paid for by
6 vouchers, as that term is defined in subdivision (i) of Section 4512.

7 (2) A vendor or provider who demonstrates that submitting
8 billings electronically for services presents a substantial financial
9 hardship for the provider.

10 (b) For purposes of this section, “electronic billing” is defined
11 as the Regional Center e-Billing System Web application provided
12 by the department.

13 SEC. 197. Section 4646.5 of the Welfare and Institutions Code
14 is amended to read:

15 4646.5. (a) The planning process for the individual program
16 plan described in Section 4646 shall include all of the following:

17 (1) Gathering information and conducting assessments to
18 determine the life goals, capabilities and strengths, preferences,
19 barriers, and concerns or problems of the person with
20 developmental disabilities. For children with developmental
21 disabilities, this process should include a review of the strengths,
22 preferences, and needs of the child and the family unit as a whole.
23 Assessments shall be conducted by qualified individuals and
24 performed in natural environments whenever possible. Information
25 shall be taken from the consumer, his or her parents and other
26 family members, his or her friends, advocates, authorized
27 representative, if applicable, providers of services and supports,
28 and other agencies. The assessment process shall reflect awareness
29 of, and sensitivity to, the lifestyle and cultural background of the
30 consumer and the family.

31 (2) A statement of goals, based on the needs, preferences, and
32 life choices of the individual with developmental disabilities, and
33 a statement of specific, time-limited objectives for implementing
34 the person’s goals and addressing his or her needs. These objectives
35 shall be stated in terms that allow measurement of progress or
36 monitoring of service delivery. These goals and objectives should
37 maximize opportunities for the consumer to develop relationships,
38 be part of community life in the areas of community participation,
39 housing, work, school, and leisure, increase control over his or her

1 life, acquire increasingly positive roles in community life, and
2 develop competencies to help accomplish these goals.

3 (3) When developing individual program plans for children,
4 regional centers shall be guided by the principles, process, and
5 services and support parameters set forth in Section 4685.

6 (4) A schedule of the type and amount of services and supports
7 to be purchased by the regional center or obtained from generic
8 agencies or other resources in order to achieve the individual
9 program plan goals and objectives, and identification of the
10 provider or providers of service responsible for attaining each
11 objective, including, but not limited to, vendors, contracted
12 providers, generic service agencies, and natural supports. The
13 individual program plan shall specify the approximate scheduled
14 start date for services and supports and shall contain timelines for
15 actions necessary to begin services and supports, including generic
16 services.

17 (5) When agreed to by the consumer, the parents, legally
18 appointed guardian, or authorized representative of a minor
19 consumer, or the legally appointed conservator of an adult
20 consumer or the authorized representative, including those
21 appointed pursuant to subdivision (d) of Section 4548, subdivision
22 (b) of Section 4701.6, and subdivision (e) of Section 4705, a review
23 of the general health status of the adult or child, including medical,
24 dental, and mental health needs, shall be conducted. This review
25 shall include a discussion of current medications, any observed
26 side effects, and the date of last review of the medication. Service
27 providers shall cooperate with the planning team to provide any
28 information necessary to complete the health status review. If any
29 concerns are noted during the review, referrals shall be made to
30 regional center clinicians or to the consumer's physician, as
31 appropriate. Documentation of health status and referrals shall be
32 made in the consumer's record by the service coordinator.

33 (6) (A) The development of a transportation access plan for a
34 consumer when all of the following conditions are met:

35 (i) The regional center is purchasing private, specialized
36 transportation services or services from a residential, day, or other
37 provider, excluding vouchered service providers, to transport the
38 consumer to and from day or work services.

1 (ii) The planning team has determined that a consumer's
2 community integration and participation could be safe and
3 enhanced through the use of public transportation services.

4 (iii) The planning team has determined that generic
5 transportation services are available and accessible.

6 (B) To maximize independence and community integration and
7 participation, the transportation access plan shall identify the
8 services and supports necessary to assist the consumer in accessing
9 public transportation and shall comply with Section 4648.35. These
10 services and supports may include, but are not limited to, mobility
11 training services and the use of transportation aides. Regional
12 centers are encouraged to coordinate with local public
13 transportation agencies.

14 (7) A schedule of regular periodic review and reevaluation to
15 ascertain that planned services have been provided, that objectives
16 have been fulfilled within the times specified, and that consumers
17 and families are satisfied with the individual program plan and its
18 implementation.

19 (b) For all active cases, individual program plans shall be
20 reviewed and modified by the planning team, through the process
21 described in Section 4646, as necessary, in response to the person's
22 achievement or changing needs, and no less often than once every
23 three years. If the consumer or, where appropriate, the consumer's
24 parents, legal guardian, authorized representative, or conservator
25 requests an individual program plan review, the individual program
26 shall be reviewed within 30 days after the request is submitted.

27 (c) (1) The department, with the participation of representatives
28 of a statewide consumer organization, the Association of Regional
29 Center Agencies, an organized labor organization representing
30 service coordination staff, and the Organization of Area Boards
31 shall prepare training material and a standard format and
32 instructions for the preparation of individual program plans, which
33 embodies an approach centered on the person and family.

34 (2) Each regional center shall use the training materials and
35 format prepared by the department pursuant to paragraph (1).

36 (3) The department shall biennially review a random sample of
37 individual program plans at each regional center to ensure that
38 these plans are being developed and modified in compliance with
39 Section 4646 and this section.

1 SEC. 198. Section 4659.13 of the Welfare and Institutions
2 Code is amended to read:

3 4659.13. (a) If a consumer or child under 36 months of age
4 who is eligible for the California Early Intervention Program
5 pursuant to Title 14 (commencing with Section 95000) of the
6 Government Code, the department, or a regional center brings an
7 action or claim against a third party or carrier, the consumer, child,
8 regional center, or department, within 30 days of filing the action,
9 shall provide the other persons or entities specified in this
10 subdivision with written notice by personal service or registered
11 mail of the action or claim, and of the name of the court or state
12 or local agency in which the action or claim is brought. Proof of
13 the notice shall be filed in the action or claim. If an action or claim
14 is brought by the department, the regional center, the child, or the
15 consumer, any of the other persons or entities described in this
16 subdivision, at any time before trial on the facts, may become a
17 party to, or shall consolidate their action or claim with, another
18 action or claim if brought independently.

19 (b) If an action or claim is brought by the department or the
20 regional center pursuant to subdivision (a) of Section 4659.11,
21 written notice to the child, consumer, guardian, conservator,
22 personal representative, estate, or survivor given pursuant to this
23 section shall advise him or her of his or her right to intervene in
24 the proceeding, his or her right to obtain a private attorney of his
25 or her choice, and the department's right to recover the reasonable
26 value of the services provided.

27 SEC. 199. Section 4659.23 of the Welfare and Institutions
28 Code is amended to read:

29 4659.23. In order to assess overlapping or duplicate health
30 coverage, every health insurer, self-insured plan, group health
31 plan, as defined in Section 607(1) of the federal Employee
32 Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et
33 seq.), service benefit plan, managed care organization, including
34 a health care service plan as defined in subdivision (f) of Section
35 1345 of the Health and Safety Code, licensed pursuant to the
36 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
37 (commencing with Section 1340) of Division 2 of the Health and
38 Safety Code), pharmacy benefit manager, or other party that is,
39 by statute, contract, or agreement, legally responsible for payment
40 of a claim for a health care item or service shall maintain a

1 centralized file of the subscribers', policyholders', or enrollees'
 2 names, mailing addresses, and social security numbers or dates of
 3 birth, and where available, for all other covered persons, the names
 4 and social security numbers or dates of birth. This information
 5 shall be made available to the department or a regional center upon
 6 reasonable request. Notwithstanding Section 20230 of the
 7 Government Code, the Board of Administration of the Public
 8 Employees' Retirement System and affiliated systems or contract
 9 agencies shall permit data matches with the state department to
 10 identify consumers with third-party health coverage or insurance.

11 SEC. 200. Section 4688.21 of the Welfare and Institutions
 12 Code is amended to read:

13 4688.21. (a) The Legislature places a high priority on
 14 opportunities for adults with developmental disabilities to choose
 15 and customize day services to meet their individualized needs;
 16 have opportunities to further the development or maintenance of
 17 employment and volunteer activities; direct their services; pursue
 18 postsecondary education; and increase their ability to lead
 19 integrated and inclusive lives. To further these goals, a consumer
 20 may choose a tailored day service or vouchered community-based
 21 training service, in lieu of any other regional center vendored day
 22 program, look-alike day program, supported employment program,
 23 or work activity program.

24 (b) (1) A tailored day service shall do both of the following:

25 (A) Include an individualized service design, as determined
 26 through the individual program plan (IPP) and approved by the
 27 regional center, that maximizes the consumer's individualized
 28 choices and needs. This service design may include, but may not
 29 be limited to, the following:

30 (i) Fewer days or hours than in the program's approved day
 31 program, look-alike day program, supported employment program,
 32 or work activity program design.

33 (ii) Flexibility in the duration and intensity of services to meet
 34 the consumer's individualized needs.

35 (B) Encourage opportunities to further the development or
 36 maintenance of employment, volunteer activities, or pursuit of
 37 postsecondary education; maximize consumer direction of the
 38 service; and increase the consumer's ability to lead an integrated
 39 and inclusive life.

1 (2) The type and amount of tailored day service shall be
2 determined through the IPP process, pursuant to Section 4646.
3 The IPP shall contain, but not be limited to, the following:

4 (A) A detailed description of the consumer's individualized
5 choices and needs and how these choices and needs will be met.

6 (B) The type and amount of services and staffing needed to
7 meet the consumer's individualized choices and needs, and unique
8 health and safety and other needs.

9 (3) The staffing requirements set forth in Section 55756 of Title
10 17 of the California Code of Regulations and subdivision (r) of
11 Section 4851 of this code shall not apply to a tailored day service.

12 (4) For currently vendored programs wishing to offer a tailored
13 day service option, the regional center shall vendor a tailored day
14 service option upon negotiating a rate and maximum units of
15 service design that includes, but is not limited to, the following:

16 (A) A daily or hourly rate and maximum units of service design
17 that does not exceed the equivalent cost of four days per week of
18 the vendor's current rate, if the vendor has a daily day program
19 rate.

20 (B) A rate and maximum units of service design that does not
21 exceed the equivalent cost of four-fifths of the hours of the vendor's
22 current rate, if the vendor has an hourly rate.

23 (5) The regional center shall ensure that the vendor is capable
24 of complying with, and will comply with, the consumer's IPP,
25 individual choice, and health and safety needs.

26 (6) For new programs wishing to offer a tailored day service
27 option, the regional center shall vendor a tailored day service option
28 upon negotiating a rate and maximum units of service design. The
29 rate paid to the new vendor shall not exceed four-fifths of the
30 temporary payment rate or the median rate, whichever is applicable.

31 (7) Effective July 1, 2011, and prior to the time of development,
32 review, or modification of a consumer's IPP, regional centers shall
33 provide information about tailored day service to eligible adult
34 consumers. A consumer may request information about tailored
35 day services from the regional center at any time and may request
36 an IPP meeting to secure those services.

37 (c) (1) A vouchered community-based training service is
38 defined as a consumer-directed service that assists the consumer
39 in the development of skills required for community integrated
40 employment or participation in volunteer activities, or both, and

1 the assistance necessary for the consumer to secure employment
2 or volunteer positions or pursue secondary education.

3 (2) Implementation of vouchered community-based training
4 service is contingent upon the approval of the federal Centers for
5 Medicare and Medicaid Services.

6 (3) Vouchered community-based training service shall be
7 provided in natural environments in the community, separate from
8 the consumer's residence.

9 (4) A consumer, parent, or conservator vendored as a vouchered
10 community-based training service shall utilize the services of a
11 financial management services (FMS) entity. The regional center
12 shall provide information about available financial management
13 services and shall assist the consumer in selecting a FMS vendor
14 to act as coemployer.

15 (5) A parent or conservator shall not be the direct support worker
16 employed by the vouchered community-based training service
17 vendor.

18 (6) If the direct support worker is required to transport the
19 consumer, the vouchered community-based training service vendor
20 shall verify that the direct support worker can transport the
21 consumer safely and has a valid California driver's license and
22 proof of insurance.

23 (7) The rate for vouchered community-based training service
24 shall not exceed thirteen dollars and forty-seven cents (\$13.47)
25 per hour. The rate includes employer-related taxes and all
26 transportation needed to implement the service, except as described
27 in paragraph (8). The rate does not include the cost of the FMS.

28 (8) A consumer vendored as a vouchered community-based
29 training service shall also be eligible for a regional center-funded
30 bus pass, if appropriate and needed.

31 (9) Vouchered community-based training service shall be limited
32 to a maximum of 150 hours per quarter. The services to be provided
33 and the service hours shall be documented in the consumer's IPP.

34 (10) A direct support worker of vouchered community-based
35 training service shall be an adult who possesses the skill, training,
36 and experience necessary to provide services in accordance with
37 the IPP.

38 (11) Effective July 1, 2011, and prior to the time of development,
39 review, or modification of a consumer's IPP, regional centers shall
40 provide information about vouchered community-based training

1 service to eligible adult consumers. A consumer may request
2 information about vouchered community-based training service
3 from the regional center at any time and may request an IPP
4 meeting to secure those services.

5 (12) The type and amount of vouchered community-based
6 training service shall be determined through the IPP process
7 pursuant to Section 4646. The IPP shall contain, but not be limited
8 to, the following:

9 (A) A detailed description of the consumer's individualized
10 choices and needs and how these choices and needs will be met.

11 (B) The type and amount of services and staffing needed to
12 meet the consumer's individualized choices and unique health and
13 safety and other needs.

14 (d) The department may adopt emergency regulations for
15 tailored day service or vouchered community-based training
16 service. The adoption, amendment, repeal, or readoption of a
17 regulation authorized by this subdivision is deemed to be necessary
18 for the immediate preservation of the public peace, health and
19 safety, or general welfare, for purposes of Sections 11346.1 and
20 11349.6 of the Government Code, and the department is hereby
21 exempted from the requirement that it describe specific facts
22 showing the need for immediate action. A certificate of compliance
23 for these implementing regulations shall be filed within 24 months
24 following the adoption of the first emergency regulations filed
25 pursuant to this subdivision.

26 SEC. 201. Section 4689 of the Welfare and Institutions Code
27 is amended to read:

28 4689. Consistent with state and federal law, the Legislature
29 places a high priority on providing opportunities for adults with
30 developmental disabilities, regardless of the degree of disability,
31 to live in homes that they own or lease with support available as
32 often and for as long as it is needed, when that is the preferred
33 objective in the individual program plan. In order to provide
34 opportunities for adults to live in their own homes, the following
35 procedures shall be adopted:

36 (a) The department and regional centers shall ensure that
37 supported living arrangements adhere to the following principles:

38 (1) Consumers shall be supported in living arrangements which
39 are typical of those in which persons without disabilities reside.

- 1 (2) The services or supports that a consumer receives shall
2 change as his or her needs change without the consumer having
3 to move elsewhere.
- 4 (3) The consumer’s preference shall guide decisions concerning
5 where and with whom he or she lives.
- 6 (4) Consumers shall have control over the environment within
7 their own home.
- 8 (5) The purpose of furnishing services and supports to a
9 consumer shall be to assist that individual to exercise choice in his
10 or her life while building critical and durable relationships with
11 other individuals.
- 12 (6) The services or supports shall be flexible and tailored to a
13 consumer’s needs and preferences.
- 14 (7) Services and supports are most effective when furnished
15 where a person lives and within the context of his or her day-to-day
16 activities.
- 17 (8) Consumers shall not be excluded from supported living
18 arrangements based solely on the nature and severity of their
19 disabilities.
- 20 (b) Regional centers may contract with agencies or individuals
21 to assist consumers in securing their own homes and to provide
22 consumers with the supports needed to live in their own homes.
- 23 (c) The range of supported living services and supports available
24 include, but are not limited to, assessment of consumer needs;
25 assistance in finding, modifying, and maintaining a home;
26 facilitating circles of support to encourage the development of
27 unpaid and natural supports in the community; advocacy and
28 self-advocacy facilitation; development of employment goals;
29 social, behavioral, and daily living skills training and support;
30 development and provision of 24-hour emergency response
31 systems; securing and maintaining adaptive equipment and
32 supplies; recruiting, training, and hiring individuals to provide
33 personal care and other assistance, including in-home supportive
34 services workers, paid neighbors, and paid roommates; providing
35 respite and emergency relief for personal care attendants; and
36 facilitating community participation. Assessment of consumer
37 needs may begin before 18 years of age to enable the consumer to
38 move to his or her own home when he or she reaches 18 years of
39 age.

1 (d) Regional centers shall provide information and education
2 to consumers and their families about supported living principles
3 and services.

4 (e) Regional centers shall monitor and ensure the quality of
5 services and supports provided to individuals living in homes that
6 they own or lease. Monitoring shall take into account all of the
7 following:

8 (1) Adherence to the principles set forth in this section.

9 (2) Whether the services and supports outlined in the consumer's
10 individual program plan are congruent with the choices and needs
11 of the individual.

12 (3) Whether services and supports described in the consumer's
13 individual program plan are being delivered.

14 (4) Whether services and supports are having the desired effects.

15 (5) Whether the consumer is satisfied with the services and
16 supports.

17 (f) The planning team, established pursuant to subdivision (j)
18 of Section 4512, for a consumer receiving supported living services
19 shall confirm that all appropriate and available sources of natural
20 and generic supports have been utilized to the fullest extent possible
21 for that consumer.

22 (g) Regional centers shall utilize the same supported living
23 provider for consumers who reside in the same domicile, provided
24 that each individual consumer's particular needs can still be met
25 pursuant to his or her individual program plans.

26 (h) Rent, mortgage, and lease payments of a supported living
27 home and household expenses shall be the responsibility of the
28 consumer and any roommate who resides with the consumer.

29 (i) A regional center shall not make rent, mortgage, or lease
30 payments on a supported living home, or pay for household
31 expenses of consumers receiving supported living services, except
32 under the following circumstances:

33 (1) If all of the following conditions are met, a regional center
34 may make rent, mortgage, or lease payments as follows:

35 (A) The regional center executive director verifies in writing
36 that making the rent, mortgage, or lease payments or paying for
37 household expenses is required to meet the specific care needs
38 unique to the individual consumer as set forth in an addendum to
39 the consumer's individual program plan, and is required when a
40 consumer's demonstrated medical, behavioral, or psychiatric

1 condition presents a health and safety risk to himself or herself,
2 or another.

3 (B) During the time period that a regional center is making rent,
4 mortgage, or lease payments, or paying for household expenses,
5 the supported living services vendor shall assist the consumer in
6 accessing all sources of generic and natural supports consistent
7 with the needs of the consumer.

8 (C) The regional center shall not make rent, mortgage, or lease
9 payments on a supported living home or pay for household
10 expenses for more than six months, unless the regional center finds
11 that it is necessary to meet the individual consumer's particular
12 needs pursuant to the consumer's individual program plan. The
13 regional center shall review a finding of necessity on a quarterly
14 basis and the regional center executive director shall annually
15 verify in an addendum to the consumer's individual program plan
16 that the requirements set forth in subparagraph (A) continue to be
17 met.

18 (2) A regional center that has been contributing to rent,
19 mortgage, or lease payments or paying for household expenses
20 prior to July 1, 2009, shall at the time of development, review, or
21 modification of a consumer's individual program plan determine
22 if the conditions in paragraph (1) are met. If the planning team
23 determines that these contributions are no longer appropriate under
24 this section, a reasonable time for transition, not to exceed six
25 months, shall be permitted.

26 (j) All paid roommates and live-in support staff in supported
27 living arrangements in which regional centers have made rent,
28 mortgage, or lease payments, or have paid for household expenses
29 pursuant to subdivision (i) shall pay their share of the rent,
30 mortgage, or lease payments or household expenses for the
31 supported living home, subject to the requirements of Industrial
32 Welfare Commission Order No. 15-2001 and the Housing Choice
33 Voucher Program, as set forth in Section 1437f of Title 42 of the
34 United States Code.

35 (k) Regional centers shall ensure that the supported living
36 services vendors' administrative costs are necessary and reasonable,
37 given the particular services that they are providing and the number
38 of consumers to whom the vendor provides services.
39 Administrative costs shall be limited to allowable costs for

1 community-based day programs, as defined in Section 57434 of
2 Title 17 of the California Code of Regulations, or its successor.

3 (l) Regional centers shall ensure that the most cost-effective of
4 the rate methodologies is utilized to determine the negotiated rate
5 for vendors of supported living services, consistent with Section
6 4689.8 and Title 17 of the California Code of Regulations.

7 (m) For purposes of this section, “household expenses” means
8 general living expenses and includes, but is not limited to, utilities
9 paid and food consumed within the home.

10 (n) A supported living services provider shall provide assistance
11 to a consumer who is a Medi-Cal beneficiary in applying for
12 in-home supportive services, as set forth in Section 12300, within
13 five days of the consumer’s moving into a supported living services
14 arrangement.

15 (o) For consumers receiving supported living services who share
16 a household with one or more adults receiving supported living
17 services, efficiencies in the provision of service may be achieved
18 if some tasks can be shared, meaning the tasks can be provided at
19 the same time while still ensuring that each person’s individual
20 needs are met. These tasks shall only be shared to the extent they
21 are permitted under the Labor Code and related regulations,
22 including, but not limited to, Industrial Welfare Commission Wage
23 Order No. 15. The planning team, as defined in subdivision (j) of
24 Section 4512, at the time of development, review, or modification
25 of a consumer’s individual program plan (IPP), for housemates
26 currently in a supported living arrangement or planning to move
27 together into a supported living arrangement, or for consumers
28 who live with a housemate not receiving supported living services
29 who is responsible for the task, shall consider, with input from the
30 service provider, whether any tasks, such as meal preparation and
31 cleanup, menu planning, laundry, shopping, general household
32 tasks, or errands can appropriately be shared. If tasks can be
33 appropriately shared, the regional center shall purchase the prorated
34 share of the activity. Upon a determination of a reduction in
35 services pursuant to this section, the regional center shall inform
36 the consumer of the reason for the determination, and shall provide
37 a written notice of fair hearing rights pursuant to Section 4701.

38 (p) To ensure that consumers in supported living arrangements
39 receive the appropriate amount and type of supports, an
40 independent assessment shall be required for consumers currently

1 receiving, or initially entering, supported living who have supported
2 living services costs, or have an initial recommendation for service
3 costs, that exceeds 125 percent of the annual statewide average
4 cost of supported living services, as published by the department
5 commencing June 30, 2011. Notwithstanding any other provision
6 of law, commencing July 1, 2011, regional centers shall identify
7 consumers currently receiving supported living services, pursuant
8 to this section, whose annual supported living service costs exceed
9 125 percent of the annual statewide average cost of supported
10 living services. The regional center shall also identify consumers
11 who have an initial recommendation for supported living service
12 costs that exceeds 125 percent of the annual statewide average
13 cost of supported living services. For those consumers identified
14 pursuant to this subdivision, the regional center shall arrange for
15 an independent assessment to be completed prior to the next
16 scheduled IPP for consumers currently in a supported living
17 arrangement and within 30 days of identification of consumers
18 with an initial recommendation for services. The independent
19 assessment shall be completed by an impartial entity or individual
20 other than the supported living services agency providing, or
21 planning to provide, the service and shall be used during IPP
22 meetings to assist the team to determine whether the services
23 provided or recommended are necessary and sufficient and that
24 the most cost-effective methods of service are utilized. Decisions
25 about supported living shall be made by the IPP team. The
26 independent assessment process shall adhere to all of the following:
27 (1) Supported living service providers shall conduct
28 comprehensive assessments for the purpose of getting to know the
29 consumer they will be supporting and developing a support plan
30 congruent with the choices and needs of the individual and
31 consistent with the principles of supported living set forth in this
32 section and in Subchapter 19 (commencing with Section 58600)
33 of Chapter 3 of Division 2 of Title 17 of the California Code of
34 Regulations. The independent assessment required by this
35 paragraph is not intended to take the place of or repeat the service
36 provider's comprehensive assessment. The purpose of the
37 independent assessment is to provide an additional look at whether
38 the supported living services being provided, or being proposed
39 for a person initially entering supported living, are necessary,
40 sufficient, or cost effective to meet the person's choices and needs,

1 as determined by the comprehensive assessment and the planning
2 team. The independent needs assessment may include, but is not
3 limited to, use of natural and generic support, technology that
4 provides support otherwise necessary through direct staffing hours,
5 shared housing, support alternatives, learning methods, lifting and
6 transferring, bathroom, grooming, meals, communication,
7 transportation, mobility, emergency procedures, medication
8 management, household responsibilities, personal needs,
9 interpersonal relationships, and behavioral, medical, and overnight
10 supports.

11 (2) A consumer shall not be excluded from supported living
12 services based on an independent assessment.

13 (3) The entity or individual conducting independent assessments
14 shall not be an employee of a regional center or the consumer's
15 service provider. Current supported living providers may conduct
16 independent assessments for consumers being supported, or about
17 to be supported, by other providers. However a provider who
18 conducts an independent assessment may not provide direct
19 services to a consumer it has assessed for a period of one year.
20 Each regional center shall publicly identify the entities and
21 individuals it will use to conduct independent assessments.
22 Regional centers shall ensure there are sufficient independent
23 assessors so that assessments can be provided when required
24 without undue delay.

25 (4) Initial entry into supported living shall not be delayed for
26 more than 30 days following the determination to request an
27 independent assessment due to the need for an independent
28 assessment pursuant to this section. If the independent assessment
29 cannot be conducted within that time period, the individual may
30 move into supported living with the amount of supports
31 recommended by the service provider's comprehensive assessment
32 and an additional IPP to consider the results of the independent
33 assessment shall be conducted when that assessment becomes
34 available, if necessary. For individuals currently in a supported
35 living arrangement, supports shall continue at the same level while
36 the independent assessment is being conducted.

37 (5) Independent assessors shall meet all of the following
38 qualifications:

39 (A) Have a demonstrated understanding of the foundation of
40 supported living as a service that assists an individual to live in

1 his or her own home with supports as needed to be part of their
2 community and of the principles and operational requirements of
3 supported living set forth in this section and in Subchapter 19
4 (commencing with Section 58600) of Chapter 3 of Division 2 of
5 Title 17 of the California Code of Regulations.

6 (B) Have a demonstrated understanding of the IPP process and
7 the legal rights of people with developmental disabilities in
8 California.

9 (C) Have experience with the provision of supported living
10 services in California.

11 (6) The department shall establish a rate of payment for an
12 independent assessment.

13 (7) The planning team, as defined in subdivision (j) of Section
14 4512, shall consider the independent assessment along with the
15 provider's assessment, if available, and any other relevant
16 information in determining whether there should be any adjustment
17 to the amount or type of supports currently being received by
18 individuals in supported living arrangement or recommended for
19 individuals initially entering supported living arrangement. Any
20 decisions to reduce supports shall not be applied retroactively.

21 (8) A consumer shall be reassessed as described in this
22 subdivision every three years in conjunction with the consumer's
23 IPP review to determine whether all services are necessary and
24 sufficient and to ensure that the most cost-effective methods of
25 service are being utilized.

26 (9) Individuals who are moving to a supported living
27 arrangement or have moved to a supported living arrangement
28 from a developmental center or state-operated community facility
29 shall not be required to have an additional assessment during the
30 first 12 months following placement.

31 (10) Upon a determination of a reduction in services pursuant
32 to this section, the regional center shall inform the consumer of
33 the reason for the determination, and shall provide a written notice
34 of fair hearing rights pursuant to Section 4701.

35 (11) Nothing in this section precludes the completion of an
36 independent assessment for other purposes.

37 SEC. 202. Section 5720 of the Welfare and Institutions Code,
38 as added by Section 4 of Chapter 651 of the Statutes of 2011, is
39 amended to read:

1 5720. (a) Notwithstanding any other provision of law, the
2 director, in the 1993–94 fiscal year and fiscal years thereafter,
3 subject to the approval of the Director of Health Care Services,
4 shall establish the amount of reimbursement for services provided
5 by county mental health programs to Medi-Cal eligible individuals.
6 For purposes of federal reimbursement to counties that have
7 certified to the state that certified public expenditures have been
8 incurred, the reimbursement amounts shall be consistent with
9 federal Medicaid requirements for calculating federal upper
10 payment limits, as specified in the approved Medicaid state plan
11 and waivers.

12 (b) If the reimbursement methodology utilizes federal upper
13 payment limits and the total cost of services exceeds the state
14 maximum rates in effect for the 2011–12 fiscal year, a county may
15 use certified public expenditures to claim the costs of services that
16 exceed the state maximum rates, up to the federal upper payment
17 limits. If a county chooses to claim costs that exceed the state
18 maximum rates with certified public expenditures, the county shall
19 use only local funds, and not state funds, to claim the portion of
20 the costs over the state maximum rates. As a condition of receiving
21 reimbursement up to the federal upper payment limits, a county
22 shall enter into and maintain an agreement with the department
23 implementing this subdivision.

24 (c) Notwithstanding subdivisions (a) and (b), in the event that
25 a health facility has entered into a negotiated rate agreement
26 pursuant to Article 2.6 (commencing with Section 14081) of
27 Chapter 7 of Part 3 of Division 9, the facility’s rates shall be
28 governed by that agreement.

29 (d) This section shall become operative on July 1, 2012.

30 SEC. 203. Section 8103 of the Welfare and Institutions Code
31 is amended to read:

32 8103. (a) (1) No person who after October 1, 1955, has been
33 adjudicated by a court of any state to be a danger to others as a
34 result of a mental disorder or mental illness, or who has been
35 adjudicated to be a mentally disordered sex offender, shall purchase
36 or receive, or attempt to purchase or receive, or have in his or her
37 possession, custody, or control any firearm or any other deadly
38 weapon unless there has been issued to the person a certificate by
39 the court of adjudication upon release from treatment or at a later
40 date stating that the person may possess a firearm or any other

1 deadly weapon without endangering others, and the person has
2 not, subsequent to the issuance of the certificate, again been
3 adjudicated by a court to be a danger to others as a result of a
4 mental disorder or mental illness.

5 (2) The court shall immediately notify the Department of Justice
6 of the court order finding the individual to be a person described
7 in paragraph (1). The court shall also notify the Department of
8 Justice of any certificate issued as described in paragraph (1).

9 (b) (1) No person who has been found, pursuant to Section
10 1026 of the Penal Code or the law of any other state or the United
11 States, not guilty by reason of insanity of murder, mayhem, a
12 violation of Section 207, 209, or 209.5 of the Penal Code in which
13 the victim suffers intentionally inflicted great bodily injury,
14 carjacking or robbery in which the victim suffers great bodily
15 injury, a violation of Section 451 or 452 of the Penal Code
16 involving a trailer coach, as defined in Section 635 of the Vehicle
17 Code, or any dwelling house, a violation of paragraph (1) or (2)
18 of subdivision (a) of Section 262 or paragraph (2) or (3) of
19 subdivision (a) of Section 261 of the Penal Code, a violation of
20 Section 459 of the Penal Code in the first degree, assault with
21 intent to commit murder, a violation of Section 220 of the Penal
22 Code in which the victim suffers great bodily injury, a violation
23 of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the
24 Penal Code, or of a felony involving death, great bodily injury, or
25 an act which poses a serious threat of bodily harm to another
26 person, or a violation of the law of any other state or the United
27 States that includes all the elements of any of the above felonies
28 as defined under California law, shall purchase or receive, or
29 attempt to purchase or receive, or have in his or her possession or
30 under his or her custody or control any firearm or any other deadly
31 weapon.

32 (2) The court shall immediately notify the Department of Justice
33 of the court order finding the person to be a person described in
34 paragraph (1).

35 (c) (1) No person who has been found, pursuant to Section 1026
36 of the Penal Code or the law of any other state or the United States,
37 not guilty by reason of insanity of any crime other than those
38 described in subdivision (b) shall purchase or receive, or attempt
39 to purchase or receive, or shall have in his or her possession,
40 custody, or control any firearm or any other deadly weapon unless

1 the court of commitment has found the person to have recovered
2 sanity, pursuant to Section 1026.2 of the Penal Code or the law of
3 any other state or the United States.

4 (2) The court shall immediately notify the Department of Justice
5 of the court order finding the person to be a person described in
6 paragraph (1). The court shall also notify the Department of Justice
7 when it finds that the person has recovered his or her sanity.

8 (d) (1) No person found by a court to be mentally incompetent
9 to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code
10 or the law of any other state or the United States, shall purchase
11 or receive, or attempt to purchase or receive, or shall have in his
12 or her possession, custody, or control, any firearm or any other
13 deadly weapon, unless there has been a finding with respect to the
14 person of restoration to competence to stand trial by the committing
15 court, pursuant to Section 1372 of the Penal Code or the law of
16 any other state or the United States.

17 (2) The court shall immediately notify the Department of Justice
18 of the court order finding the person to be mentally incompetent
19 as described in paragraph (1). The court shall also notify the
20 Department of Justice when it finds that the person has recovered
21 his or her competence.

22 (e) (1) No person who has been placed under conservatorship
23 by a court, pursuant to Section 5350 or the law of any other state
24 or the United States, because the person is gravely disabled as a
25 result of a mental disorder or impairment by chronic alcoholism,
26 shall purchase or receive, or attempt to purchase or receive, or
27 shall have in his or her possession, custody, or control, any firearm
28 or any other deadly weapon while under the conservatorship if, at
29 the time the conservatorship was ordered or thereafter, the court
30 which imposed the conservatorship found that possession of a
31 firearm or any other deadly weapon by the person would present
32 a danger to the safety of the person or to others. Upon placing any
33 person under conservatorship, and prohibiting firearm or any other
34 deadly weapon possession by the person, the court shall notify the
35 person of this prohibition.

36 (2) The court shall immediately notify the Department of Justice
37 of the court order placing the person under conservatorship and
38 prohibiting firearm or any other deadly weapon possession by the
39 person as described in paragraph (1). The notice shall include the
40 date the conservatorship was imposed and the date the

1 conservatorship is to be terminated. If the conservatorship is
2 subsequently terminated before the date listed in the notice to the
3 Department of Justice or the court subsequently finds that
4 possession of a firearm or any other deadly weapon by the person
5 would no longer present a danger to the safety of the person or
6 others, the court shall immediately notify the Department of Justice.

7 (3) All information provided to the Department of Justice
8 pursuant to paragraph (2) shall be kept confidential, separate, and
9 apart from all other records maintained by the Department of
10 Justice, and shall be used only to determine eligibility to purchase
11 or possess firearms or other deadly weapons. Any person who
12 knowingly furnishes that information for any other purpose is
13 guilty of a misdemeanor. All the information concerning any person
14 shall be destroyed upon receipt by the Department of Justice of
15 notice of the termination of conservatorship as to that person
16 pursuant to paragraph (2).

17 (f) (1) No person who has been (A) taken into custody as
18 provided in Section 5150 because that person is a danger to himself,
19 herself, or to others, (B) assessed within the meaning of Section
20 5151, and (C) admitted to a designated facility within the meaning
21 of Sections 5151 and 5152 because that person is a danger to
22 himself, herself, or others, shall own, possess, control, receive, or
23 purchase, or attempt to own, possess, control, receive, or purchase
24 any firearm for a period of five years after the person is released
25 from the facility. A person described in the preceding sentence,
26 however, may own, possess, control, receive, or purchase, or
27 attempt to own, possess, control, receive, or purchase any firearm
28 if the superior court has, pursuant to paragraph (5), found that the
29 people of the State of California have not met their burden pursuant
30 to paragraph (6).

31 (2) (A) For each person subject to this subdivision, the facility
32 shall immediately, on the date of admission, submit a report to the
33 Department of Justice, on a form prescribed by the Department of
34 Justice, containing information that includes, but is not limited to,
35 the identity of the person and the legal grounds upon which the
36 person was admitted to the facility.

37 Any report submitted pursuant to this paragraph shall be
38 confidential, except for purposes of the court proceedings described
39 in this subdivision and for determining the eligibility of the person
40 to own, possess, control, receive, or purchase a firearm.

1 (B) Commencing July 1, 2012, facilities shall submit reports
2 pursuant to this paragraph exclusively by electronic means, in a
3 manner prescribed by the Department of Justice.

4 (3) Prior to, or concurrent with, the discharge, the facility shall
5 inform a person subject to this subdivision that he or she is
6 prohibited from owning, possessing, controlling, receiving, or
7 purchasing any firearm for a period of five years. Simultaneously,
8 the facility shall inform the person that he or she may request a
9 hearing from a court, as provided in this subdivision, for an order
10 permitting the person to own, possess, control, receive, or purchase
11 a firearm. The facility shall provide the person with a form for a
12 request for a hearing. The Department of Justice shall prescribe
13 the form. Where the person requests a hearing at the time of
14 discharge, the facility shall forward the form to the superior court
15 unless the person states that he or she will submit the form to the
16 superior court.

17 (4) The Department of Justice shall provide the form upon
18 request to any person described in paragraph (1). The Department
19 of Justice shall also provide the form to the superior court in each
20 county. A person described in paragraph (1) may make a single
21 request for a hearing at any time during the five-year period. The
22 request for hearing shall be made on the form prescribed by the
23 department or in a document that includes equivalent language.

24 (5) Any person who is subject to paragraph (1) who has
25 requested a hearing from the superior court of his or her county
26 of residence for an order that he or she may own, possess, control,
27 receive, or purchase firearms shall be given a hearing. The clerk
28 of the court shall set a hearing date and notify the person, the
29 Department of Justice, and the district attorney. The people of the
30 State of California shall be the plaintiff in the proceeding and shall
31 be represented by the district attorney. Upon motion of the district
32 attorney, or on its own motion, the superior court may transfer the
33 hearing to the county in which the person resided at the time of
34 his or her detention, the county in which the person was detained,
35 or the county in which the person was evaluated or treated. Within
36 seven days after the request for a hearing, the Department of Justice
37 shall file copies of the reports described in this section with the
38 superior court. The reports shall be disclosed upon request to the
39 person and to the district attorney. The court shall set the hearing
40 within 30 days of receipt of the request for a hearing. Upon

1 showing good cause, the district attorney shall be entitled to a
2 continuance not to exceed 14 days after the district attorney was
3 notified of the hearing date by the clerk of the court. If additional
4 continuances are granted, the total length of time for continuances
5 shall not exceed 60 days. The district attorney may notify the
6 county mental health director of the hearing who shall provide
7 information about the detention of the person that may be relevant
8 to the court and shall file that information with the superior court.
9 That information shall be disclosed to the person and to the district
10 attorney. The court, upon motion of the person subject to paragraph
11 (1) establishing that confidential information is likely to be
12 discussed during the hearing that would cause harm to the person,
13 shall conduct the hearing in camera with only the relevant parties
14 present, unless the court finds that the public interest would be
15 better served by conducting the hearing in public. Notwithstanding
16 any other law, declarations, police reports, including criminal
17 history information, and any other material and relevant evidence
18 that is not excluded under Section 352 of the Evidence Code shall
19 be admissible at the hearing under this section.

20 (6) The people shall bear the burden of showing by a
21 preponderance of the evidence that the person would not be likely
22 to use firearms in a safe and lawful manner.

23 (7) If the court finds at the hearing set forth in paragraph (5)
24 that the people have not met their burden as set forth in paragraph
25 (6), the court shall order that the person shall not be subject to the
26 five-year prohibition in this section on the ownership, control,
27 receipt, possession, or purchase of firearms. A copy of the order
28 shall be submitted to the Department of Justice. Upon receipt of
29 the order, the Department of Justice shall delete any reference to
30 the prohibition against firearms from the person's state mental
31 health firearms prohibition system information.

32 (8) Where the district attorney declines or fails to go forward
33 in the hearing, the court shall order that the person shall not be
34 subject to the five-year prohibition required by this subdivision
35 on the ownership, control, receipt, possession, or purchase of
36 firearms. A copy of the order shall be submitted to the Department
37 of Justice. Upon receipt of the order, the Department of Justice
38 shall, within 15 days, delete any reference to the prohibition against
39 firearms from the person's state mental health firearms prohibition
40 system information.

1 (9) Nothing in this subdivision shall prohibit the use of reports
2 filed pursuant to this section to determine the eligibility of persons
3 to own, possess, control, receive, or purchase a firearm if the person
4 is the subject of a criminal investigation, a part of which involves
5 the ownership, possession, control, receipt, or purchase of a
6 firearm.

7 (g) (1) No person who has been certified for intensive treatment
8 under Section 5250, 5260, or 5270.15 shall own, possess, control,
9 receive, or purchase, or attempt to own, possess, control, receive,
10 or purchase, any firearm for a period of five years.

11 Any person who meets the criteria contained in subdivision (e)
12 or (f) who is released from intensive treatment shall nevertheless,
13 if applicable, remain subject to the prohibition contained in
14 subdivision (e) or (f).

15 (2) (A) For each person certified for intensive treatment under
16 paragraph (1), the facility shall immediately submit a report to the
17 Department of Justice, on a form prescribed by the department,
18 containing information regarding the person, including, but not
19 limited to, the legal identity of the person and the legal grounds
20 upon which the person was certified. Any report submitted pursuant
21 to this paragraph shall only be used for the purposes specified in
22 paragraph (2) of subdivision (f).

23 (B) Commencing July 1, 2012, facilities shall submit reports
24 pursuant to this paragraph exclusively by electronic means, in a
25 manner prescribed by the Department of Justice.

26 (3) Prior to, or concurrent with, the discharge of each person
27 certified for intensive treatment under paragraph (1), the facility
28 shall inform the person of that information specified in paragraph
29 (3) of subdivision (f).

30 (4) Any person who is subject to paragraph (1) may petition the
31 superior court of his or her county of residence for an order that
32 he or she may own, possess, control, receive, or purchase firearms.
33 At the time the petition is filed, the clerk of the court shall set a
34 hearing date and notify the person, the Department of Justice, and
35 the district attorney. The people of the State of California shall be
36 the respondent in the proceeding and shall be represented by the
37 district attorney. Upon motion of the district attorney, or on its
38 own motion, the superior court may transfer the petition to the
39 county in which the person resided at the time of his or her
40 detention, the county in which the person was detained, or the

1 county in which the person was evaluated or treated. Within seven
2 days after receiving notice of the petition, the Department of Justice
3 shall file copies of the reports described in this section with the
4 superior court. The reports shall be disclosed upon request to the
5 person and to the district attorney. The district attorney shall be
6 entitled to a continuance of the hearing to a date of not less than
7 14 days after the district attorney was notified of the hearing date
8 by the clerk of the court. The district attorney may notify the county
9 mental health director of the petition, and the county mental health
10 director shall provide information about the detention of the person
11 that may be relevant to the court and shall file that information
12 with the superior court. That information shall be disclosed to the
13 person and to the district attorney. The court, upon motion of the
14 person subject to paragraph (1) establishing that confidential
15 information is likely to be discussed during the hearing that would
16 cause harm to the person, shall conduct the hearing in camera with
17 only the relevant parties present, unless the court finds that the
18 public interest would be better served by conducting the hearing
19 in public. Notwithstanding any other provision of law, any
20 declaration, police reports, including criminal history information,
21 and any other material and relevant evidence that is not excluded
22 under Section 352 of the Evidence Code, shall be admissible at
23 the hearing under this section. If the court finds by a preponderance
24 of the evidence that the person would be likely to use firearms in
25 a safe and lawful manner, the court may order that the person may
26 own, control, receive, possess, or purchase firearms. A copy of
27 the order shall be submitted to the Department of Justice. Upon
28 receipt of the order, the Department of Justice shall delete any
29 reference to the prohibition against firearms from the person's
30 state mental health firearms prohibition system information.

31 (h) For all persons identified in subdivisions (f) and (g), facilities
32 shall report to the Department of Justice as specified in those
33 subdivisions, except facilities shall not report persons under
34 subdivision (g) if the same persons previously have been reported
35 under subdivision (f).

36 Additionally, all facilities shall report to the Department of
37 Justice upon the discharge of persons from whom reports have
38 been submitted pursuant to subdivision (f) or (g). However, a report
39 shall not be filed for persons who are discharged within 31 days
40 after the date of admission.

1 (i) Every person who owns or possesses or has under his or her
2 custody or control, or purchases or receives, or attempts to purchase
3 or receive, any firearm or any other deadly weapon in violation of
4 this section shall be punished by imprisonment pursuant to
5 subdivision (h) of Section 1170 of the Penal Code or in a county
6 jail for not more than one year.

7 (j) “Deadly weapon,” as used in this section, has the meaning
8 prescribed by Section 8100.

9 SEC. 204. Section 10980 of the Welfare and Institutions Code
10 is amended to read:

11 10980. (a) Any person who, willfully and knowingly, with the
12 intent to deceive, makes a false statement or representation or
13 knowingly fails to disclose a material fact in order to obtain aid
14 under the provisions of this division or who, knowing he or she is
15 not entitled thereto, attempts to obtain aid or to continue to receive
16 aid to which he or she is not entitled, or to receive a larger amount
17 than that to which he or she is legally entitled, is guilty of a
18 misdemeanor, punishable by imprisonment in a county jail for a
19 period of not more than six months, by a fine of not more than five
20 hundred dollars (\$500), or by both imprisonment and fine.

21 (b) Any person who knowingly makes more than one application
22 for aid under the provisions of this division with the intent of
23 establishing multiple entitlements for any person for the same
24 period or who makes an application for that aid for a fictitious or
25 nonexistent person or by claiming a false identity for any person
26 is guilty of a felony, punishable by imprisonment pursuant to
27 subdivision (h) of Section 1170 of the Penal Code for a period of
28 16 months, two years, or three years, by a fine of not more than
29 five thousand dollars (\$5,000), or by both that imprisonment and
30 fine; or by imprisonment in a county jail for a period of not more
31 than one year, or by a fine of not more than one thousand dollars
32 (\$1,000), or by both imprisonment and fine.

33 (c) Whenever any person has, willfully and knowingly, with
34 the intent to deceive, by means of false statement or representation,
35 or by failing to disclose a material fact, or by impersonation or
36 other fraudulent device, obtained or retained aid under the
37 provisions of this division for himself or herself or for a child not
38 in fact entitled thereto, the person obtaining this aid shall be
39 punished as follows:

1 (1) If the total amount of the aid obtained or retained is nine
2 hundred fifty dollars (\$950) or less, by imprisonment in a county
3 jail for a period of not more than six months, by a fine of not more
4 than five hundred dollars (\$500), or by both imprisonment and
5 fine.

6 (2) If the total amount of the aid obtained or retained is more
7 than nine hundred fifty dollars (\$950), by imprisonment pursuant
8 to subdivision (h) of Section 1170 of the Penal Code for a period
9 of 16 months, two years, or three years, by a fine of not more than
10 five thousand dollars (\$5,000), or by both that imprisonment and
11 fine; or by imprisonment in a county jail for a period of not more
12 than one year, by a fine of not more than one thousand dollars
13 (\$1,000), or by both imprisonment and fine.

14 (d) Any person who knowingly uses, transfers, acquires, or
15 possesses blank authorizations to participate in the federal
16 Supplemental Nutrition Assistance Program in any manner not
17 authorized by Chapter 10 (commencing with Section 18900) of
18 Part 6 with the intent to defraud is guilty of a felony, punishable
19 by imprisonment pursuant to subdivision (h) of Section 1170 of
20 the Penal Code for a period of 16 months, two years, or three years,
21 by a fine of not more than five thousand dollars (\$5,000), or by
22 both that imprisonment and fine.

23 (e) Any person who counterfeits or alters or knowingly uses,
24 transfers, acquires, or possesses counterfeited or altered
25 authorizations to participate in the federal Supplemental Nutrition
26 Assistance Program or to receive CalFresh benefits or electronically
27 transferred benefits in any manner not authorized by the federal
28 Food Stamp Act of 1964 (P.L. 88-525 and all amendments thereto)
29 or the federal Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011
30 et seq.) or the federal regulations pursuant to the act is guilty of
31 forgery.

32 (f) Any person who fraudulently appropriates CalFresh benefits,
33 electronically transferred benefits, or authorizations to participate
34 in the federal Supplemental Nutrition Assistance Program with
35 which he or she has been entrusted pursuant to his or her duties as
36 a public employee is guilty of embezzlement of public funds.

37 (g) Any person who knowingly uses, transfers, sells, purchases,
38 or possesses CalFresh benefits, electronically transferred benefits,
39 or authorizations to participate in the federal Supplemental
40 Nutrition Assistance Program in any manner not authorized by

1 Chapter 10 (commencing with Section 18900), of Part 6, or by the
2 federal Food Stamp Act of 1977 (P.L. 95-113 and all amendments
3 thereto) or the federal Food and Nutrition Act of 2008 (7 U.S.C.
4 Sec. 2011 et seq.) (1) is guilty of a misdemeanor if the face value
5 of the food stamp benefits or the authorizations to participate is
6 nine hundred fifty dollars (\$950) or less, and shall be punished by
7 imprisonment in a county jail for a period of not more than six
8 months, by a fine of not more than five hundred dollars (\$500), or
9 by both imprisonment and fine, or (2) is guilty of a felony if the
10 face value of the CalFresh benefits or the authorizations to
11 participate exceeds nine hundred fifty dollars (\$950), and shall be
12 punished by imprisonment pursuant to subdivision (h) of Section
13 1170 of the Penal Code for a period of 16 months, two years, or
14 three years, by a fine of not more than five thousand dollars
15 (\$5,000), or by both that imprisonment and fine, or by
16 imprisonment in a county jail for a period of not more than one
17 year, or by a fine of not more than one thousand dollars (\$1,000),
18 or by both imprisonment and fine.

19 (h) (1) If the violation of subdivision (f) or (g) is committed by
20 means of an electronic transfer of benefits, in addition and
21 consecutive to the penalties for the violation, or attempted
22 violation, of those subdivisions, the court shall impose the
23 following punishment:

24 (A) If the electronic transfer of benefits exceeds fifty thousand
25 dollars (\$50,000), an additional term pursuant to subdivision (h)
26 of Section 1170 of the Penal Code of one year.

27 (B) If the electronic transfer of benefits exceeds one hundred
28 fifty thousand dollars (\$150,000), an additional term pursuant to
29 subdivision (h) of Section 1170 of the Penal Code of two years.

30 (C) If the electronic transfer of benefits exceeds one million
31 dollars (\$1,000,000), an additional term pursuant to subdivision
32 (h) of Section 1170 of the Penal Code of three years.

33 (D) If the electronic transfer of benefits exceeds two million
34 five hundred thousand dollars (\$2,500,000), an additional term of
35 four years.

36 (2) In any accusatory pleading involving multiple charges of
37 violations of subdivision (f) or (g), or both, committed by means
38 of an electronic transfer of benefits, the additional terms provided
39 in paragraph (1) may be imposed if the aggregate losses to the

1 victims from all violations exceed the amounts specified in this
2 paragraph and arise from a common scheme or plan.

3 (i) A person who is punished by an additional term of
4 imprisonment under another provision of law for a violation of
5 subdivision (f) or (g) shall not receive an additional term of
6 imprisonment under subdivision (h).

7 SEC. 205. Section 11451.5 of the Welfare and Institutions
8 Code, as added by Section 20 of Chapter 501 of the Statutes of
9 2011, is amended to read:

10 11451.5. (a) Except as provided by subdivision (f) of Section
11 11322.6, the following income, determined for the semiannual
12 period pursuant to Sections 11265.2 and 11265.3, shall be exempt
13 from the calculation of the income of the family for purposes of
14 subdivision (a) of Section 11450:

15 (1) If disability-based unearned income does not exceed two
16 hundred twenty-five dollars (\$225), both of the following amounts:

17 (A) All disability-based unearned income, plus any amount of
18 not otherwise exempt earned income not in excess of the lesser of
19 the following:

20 (i) One hundred twelve dollars (\$112).

21 (ii) The amount of the difference between the amount of
22 disability-based unearned income and two hundred twenty-five
23 dollars (\$225).

24 (B) Fifty percent of all not otherwise exempt earned income in
25 excess of the amount applied to meet the differential applied in
26 subparagraph (A).

27 (2) If disability-based unearned income exceeds two hundred
28 twenty-five dollars (\$225), both of the following amounts:

29 (A) All of the first two hundred twenty-five dollars (\$225) in
30 disability-based unearned income.

31 (B) Fifty percent of all earned income.

32 (b) For purposes of this section:

33 (1) Earned income means gross income received as wages,
34 salary, employer-provided sick leave benefits, commissions, or
35 profits from activities such as a business enterprise or farming in
36 which the recipient is engaged as a self-employed individual or as
37 an employee.

38 (2) Disability-based unearned income means state disability
39 insurance benefits, private disability insurance benefits, temporary

1 workers' compensation benefits, and social security disability
2 benefits.

3 (3) Unearned income means any income not described in
4 paragraph (1) or (2).

5 (c) (1) This section shall become operative on April 1, 2013.
6 A county shall implement the semiannual reporting requirements
7 in accordance with the act that added this section no later than
8 October 1, 2013.

9 (2) Upon implementation described in paragraph (1), each
10 county shall provide a certificate to the director certifying that
11 semiannual reporting has been implemented in the county.

12 (3) Upon filing the certificate described in paragraph (2), a
13 county shall comply with the semiannual reporting provisions of
14 this section.

15 SEC. 206. Section 11461 of the Welfare and Institutions Code
16 is amended to read:

17 11461. (a) For children or, on and after January 1, 2012,
18 nonminor dependents placed in a licensed or approved family
19 home with a capacity of six or fewer, or in an approved home of
20 a relative or nonrelated legal guardian, or the approved home of a
21 nonrelative extended family member as described in Section 362.7,
22 or, on and after January 1, 2012, a supervised independent living
23 setting, as defined in subdivision (w) of Section 11400, the per
24 child per month basic rates in the following schedule shall be in
25 effect for the period July 1, 1989, to December 31, 1989, inclusive:

Age	Basic rate
28 0-4.....	\$ 294
29 5-8.....	319
30 9-11.....	340
31 12-14.....	378
32 15-20.....	412

33
34 (b) (1) Any county that, as of October 1, 1989, has in effect a
35 basic rate that is at the levels set forth in the schedule in subdivision
36 (a), shall continue to receive state participation, as specified in
37 subdivision (c) of Section 15200, at these levels.

38 (2) Any county that, as of October 1, 1989, has in effect a basic
39 rate that exceeds a level set forth in the schedule in subdivision

1 (a), shall continue to receive the same level of state participation
2 as it received on October 1, 1989.

3 (c) The amounts in the schedule of basic rates in subdivision
4 (a) shall be adjusted as follows:

5 (1) Effective January 1, 1990, the amounts in the schedule of
6 basic rates in subdivision (a) shall be increased by 12 percent.

7 (2) Effective May 1, 1990, any county that did not increase the
8 basic rate by 12 percent on January 1, 1990, shall do both of the
9 following:

10 (A) Increase the basic rate in effect December 31, 1989, for
11 which state participation is received by 12 percent.

12 (B) Increase the basic rate, as adjusted pursuant to subparagraph
13 (A), by an additional 5 percent.

14 (3) (A) Except as provided in subparagraph (B), effective July
15 1, 1990, for the 1990–91 fiscal year, the amounts in the schedule
16 of basic rates in subdivision (a) shall be increased by an additional
17 5 percent.

18 (B) The rate increase required by subparagraph (A) shall not be
19 applied to rates increased May 1, 1990, pursuant to paragraph (2).

20 (4) Effective July 1, 1998, the amounts in the schedule of basic
21 rates in subdivision (a) shall be increased by 6 percent.
22 Notwithstanding any other provision of law, the 6-percent increase
23 provided for in this paragraph shall, retroactive to July 1, 1998,
24 apply to every county, including any county to which paragraph
25 (2) of subdivision (b) applies, and shall apply to foster care for
26 every age group.

27 (5) Notwithstanding any other provision of law, any increase
28 that takes effect after July 1, 1998, shall apply to every county,
29 including any county to which paragraph (2) of subdivision (b)
30 applies, and shall apply to foster care for every age group.

31 (6) The increase in the basic foster family home rate shall apply
32 only to children placed in a licensed foster family home receiving
33 the basic rate or in an approved home of a relative or nonrelative
34 extended family member, as described in Section 362.7, a
35 supervised independent living setting, as defined in subdivision
36 (w) of Section 11400, or a nonrelated legal guardian receiving the
37 basic rate. The increased rate shall not be used to compute the
38 monthly amount that may be paid to licensed foster family agencies
39 for the placement of children in certified foster homes.

1 (d) (1) (A) Beginning with the 1991–92 fiscal year, the
2 schedule of basic rates in subdivision (a) shall be adjusted by the
3 percentage changes in the California Necessities Index, computed
4 pursuant to the methodology described in Section 11453, subject
5 to the availability of funds.

6 (B) In addition to the adjustment in subparagraph (A) effective
7 January 1, 2000, the schedule of basic rates in subdivision (a) shall
8 be increased by 2.36 percent rounded to the nearest dollar.

9 (C) Effective January 1, 2008, the schedule of basic rates in
10 subdivision (a), as adjusted pursuant to subparagraph (B), shall be
11 increased by 5 percent, rounded to the nearest dollar. The increased
12 rate shall not be used to compute the monthly amount that may be
13 paid to licensed foster family agencies for the placement of children
14 in certified foster family homes, and shall not be used to recompute
15 the foster care maintenance payment that would have been paid
16 based on the age-related, state-approved foster family home care
17 rate and any applicable specialized care increment, for any adoption
18 assistance agreement entered into prior to October 1, 1992, or in
19 any subsequent reassessment for adoption assistance agreements
20 executed before January 1, 2008.

21 (2) (A) Any county that, as of the 1991–92 fiscal year, receives
22 state participation for a basic rate that exceeds the amount set forth
23 in the schedule of basic rates in subdivision (a) shall receive an
24 increase each year in state participation for that basic rate of
25 one-half of the percentage adjustments specified in paragraph (1)
26 until the difference between the county’s adjusted state
27 participation level for its basic rate and the adjusted schedule of
28 basic rates is eliminated.

29 (B) Notwithstanding subparagraph (A), all counties for the
30 1999–2000 fiscal year and the 2007–08 fiscal year shall receive
31 an increase in state participation for the basic rate of the entire
32 percentage adjustment described in paragraph (1).

33 (3) If a county has, after receiving the adjustments specified in
34 paragraph (2), a state participation level for a basic rate that is
35 below the amount set forth in the adjusted schedule of basic rates
36 for that fiscal year, the state participation level for that rate shall
37 be further increased to the amount specified in the adjusted
38 schedule of basic rates.

39 (e) (1) As used in this section, “specialized care increment”
40 means an approved amount paid with state participation on behalf

1 of an AFDC-FC child requiring specialized care to a home listed
2 in subdivision (a) in addition to the basic rate. Notwithstanding
3 subdivision (a), the specialized care increment shall not be paid
4 to a nonminor dependent placed in a supervised independent living
5 setting as defined in subdivision (w) of Section 11400. On the
6 effective date of this section, the department shall continue and
7 maintain the current ratesetting system for specialized care.

8 (2) Any county that, as of the effective date of this section, has
9 in effect specialized care increments that have been approved by
10 the department, shall continue to receive state participation for
11 those payments.

12 (3) Any county that, as of the effective date of this section, has
13 in effect specialized care increments that exceed the amounts that
14 have been approved by the department, shall continue to receive
15 the same level of state participation as it received on the effective
16 date of this section.

17 (4) (A) Except for subparagraph (B), beginning January 1,
18 1990, specialized care increments shall be adjusted in accordance
19 with the methodology for the schedule of basic rates described in
20 subdivisions (c) and (d). No county shall receive state participation
21 for any increases in a specialized care increment which exceeds
22 the adjustments made in accordance with this methodology.

23 (B) Notwithstanding subdivision (e) of Section 11460, for the
24 1993–94 fiscal year, an amount equal to 5 percent of the State
25 Treasury appropriation for family homes shall be added to the total
26 augmentation for the AFDC-FC program in order to provide
27 incentives and assistance to counties in the area of specialized
28 care. This appropriation shall be used, but not limited to,
29 encouraging counties to implement or expand specialized care
30 payment systems, to recruit and train foster parents for the
31 placement of children with specialized care needs, and to develop
32 county systems to encourage the placement of children in family
33 homes. It is the intent of the Legislature that in the use of these
34 funds, federal financial participation shall be claimed whenever
35 possible.

36 (C) (i) Notwithstanding subparagraph (A), the specialized care
37 increment shall not receive a cost-of-living adjustment in the
38 2011–12 or 2012–13 fiscal years.

39 (ii) Notwithstanding clause (i), a county may choose to apply
40 a cost-of-living adjustment to its specialized care increment during

1 the 2011–12 or 2012–13 fiscal years. To the extent that a county
2 chooses to apply a cost-of-living adjustment during that time, the
3 state shall not participate in the costs of that adjustment.

4 (iii) To the extent that federal financial participation is available
5 for a cost-of-living adjustment made by a county pursuant to clause
6 (ii), it is the intent of the Legislature that the federal funding shall
7 be utilized.

8 (f) (1) As used in this section, “clothing allowance” means the
9 amount paid with state participation in addition to the basic rate
10 for the provision of additional clothing for an AFDC-FC child,
11 including, but not limited to, an initial supply of clothing and
12 school or other uniforms.

13 (2) Any county that, as of the effective date of this section, has
14 in effect clothing allowances shall continue to receive the same
15 level as it received on the effective date of this section.

16 (3) (A) Commencing in the 2007–08 fiscal year, for children
17 whose foster care payment is the responsibility of Colusa, Plumas,
18 and Tehama Counties, the amount of the clothing allowance may
19 be up to two hundred seventy-four dollars (\$274) per child per
20 year.

21 (B) Each county listed in subparagraph (A) that elects to receive
22 the clothing allowance shall submit a Clothing Allowance Program
23 Notification to the department within 60 days after the effective
24 date of the act that adds this paragraph.

25 (C) The Clothing Allowance Program Notification shall identify
26 the specific amounts to be paid and the disbursement schedule for
27 these clothing allowance payments.

28 (4) (A) Beginning January 1, 1990, except as provided in
29 paragraph (5), clothing allowances shall be adjusted annually in
30 accordance with the methodology for the schedule of basic rates
31 described in subdivisions (c) and (d). No county shall be
32 reimbursed for any increases in clothing allowances which exceed
33 the adjustments made in accordance with this methodology.

34 (B) (i) Notwithstanding subparagraph (A), the clothing
35 allowance shall not receive any cost-of-living adjustment in the
36 2011–12 or 2012–13 fiscal years.

37 (ii) Notwithstanding paragraph (1), a county may choose to
38 apply a cost-of-living adjustment to its clothing allowance during
39 the 2011–12 or 2012–13 fiscal years. To the extent that a county

1 chooses to apply a cost-of-living adjustment during that time, the
2 state shall not participate in the costs of that adjustment.

3 (iii) To the extent that federal financial participation is available
4 for a cost-of-living adjustment made by a county pursuant to
5 paragraph (2), it is the intent of the Legislature that the federal
6 funding shall be utilized.

7 (5) (A) For the 2000–01 fiscal year and each fiscal year
8 thereafter, without a county share of cost, notwithstanding
9 subdivision (c) of Section 15200, each child shall be entitled to
10 receive a supplemental clothing allowance of one hundred dollars
11 (\$100) per year subject to the availability of funds. The clothing
12 allowance shall be used to supplement, and not supplant, the
13 clothing allowance specified in paragraph (1).

14 (B) Notwithstanding subparagraph (A), the state shall no longer
15 participate in the supplemental clothing allowance commencing
16 with the 2011–12 fiscal year.

17 (g) (1) Notwithstanding subdivisions (a) to (d), inclusive, for
18 a child, or on and after January 1, 2012, a nonminor dependent,
19 placed in a licensed or approved family home with a capacity of
20 six or less, or placed in an approved home of a relative or the
21 approved home of a nonrelative extended family member as
22 described in Section 362.7, or placed on and after January 1, 2012,
23 in a supervised independent living setting, as defined in subdivision
24 (w) of Section 11400, the per child per month basic rate in the
25 following schedule shall be in effect for the period commencing
26 July 1, 2011, or the date specified in the final order, for which the
27 time to appeal has passed, issued by a court of competent
28 jurisdiction in California State Foster Parent Association v. William
29 Lightbourne, et al. (U.S. Dist. Ct. C 07-08056 WHA), whichever
30 is earlier, through June 30, 2012:

31	Age	Basic rate
32	0–4.....	\$ 609
33	5–8.....	\$ 660
34	9–11.....	\$ 695
35	12–14.....	\$ 727
36	15–20.....	\$ 761
37		
38		

39 (2) Commencing July 1, 2011, the basic rate set forth in this
40 subdivision shall be annually adjusted on July 1 by the annual

1 percentage change in the California Necessities Index applicable
2 to the calendar year within which each July 1 occurs.

3 (3) Subdivisions (e) and (f) shall apply to payments made
4 pursuant to this subdivision.

5 SEC. 207. Section 11463 of the Welfare and Institutions Code
6 is amended to read:

7 11463. (a) (1) The department, with the advice, assistance,
8 and cooperation of the counties and foster care providers, shall
9 develop, implement, and maintain a ratesetting system for foster
10 family agencies.

11 (2) No county shall be reimbursed for any percentage increases
12 in payments, made on behalf of AFDC-FC funded children who
13 are placed with foster family agencies, that exceed the percentage
14 cost-of-living increase provided in any fiscal year beginning on
15 January 1, 1990, as specified in subdivision (c) of Section 11461.

16 (b) The department shall develop regulations specifying the
17 purposes, types, and services of foster family agencies, including
18 the use of those agencies for the provision of emergency shelter
19 care. A distinction, for ratesetting purposes, shall be drawn between
20 foster family agencies that provide treatment of children in foster
21 families and those that provide nontreatment services.

22 (c) The department shall develop and maintain regulations
23 specifying the procedure for the appeal of department decisions
24 about the setting of an agency's rate.

25 (d) On and after July 1, 1998, the schedule of rates, and the
26 components used in the rate calculations specified in the
27 department's regulations, for foster family agencies shall be
28 increased by 6 percent, rounded to the nearest dollar. The resultant
29 amounts shall constitute the new schedule of rates for foster family
30 agencies.

31 (e) (1) On and after July 1, 1999, the schedule of rates and the
32 components used in the rate calculations specified in the
33 department's regulations for foster family agencies shall be
34 adjusted by an amount equal to the California Necessities Index
35 computed pursuant to Section 11453, rounded to the nearest dollar,
36 subject to the availability of funds. The resultant amounts shall
37 constitute the new schedule of rates for foster family agencies,
38 subject to further adjustment pursuant to paragraph (2).

39 (2) In addition to the adjustment specified in paragraph (1),
40 commencing January 1, 2000, the schedule of rates and the

1 components used in the rate calculations specified in the
2 department's regulations for foster family agencies shall be
3 increased by 2.36 percent, rounded to the nearest dollar. The
4 resultant amounts shall constitute the new schedule of rates for
5 foster family agencies.

6 (f) For the 1999–2000 fiscal year, foster family agency rates
7 that are not determined by the schedule of rates set forth in the
8 department's regulations shall be increased by the same percentage
9 as provided in subdivision (e).

10 (g) For the 2000–01 fiscal year and each fiscal year thereafter,
11 without a county share of cost, notwithstanding subdivision (c) of
12 Section 15200, the foster family agency rate shall be supplemented
13 by one hundred dollars (\$100) for clothing per year per child in
14 care, subject to the availability of funds. The supplemental payment
15 shall be used to supplement, and shall not be used to supplant, any
16 clothing allowance paid in addition to the foster family agency
17 rate.

18 (h) In addition to the adjustment made pursuant to subdivision
19 (e), the component for social work activities in the rate calculation
20 specified in the department's regulations for foster family agencies
21 shall be increased by 10 percent, effective January 1, 2001. This
22 additional funding shall be used by foster family agencies solely
23 to supplement staffing, salaries, wages, and benefit levels of staff
24 performing social work activities. The schedule of rates shall be
25 recomputed using the adjusted amount for social work activities.
26 The resultant amounts shall constitute the new schedule of rates
27 for foster family agencies. The department may require a foster
28 family agency receiving this additional funding to certify that the
29 funding was utilized in accordance with the provisions of this
30 section.

31 (i) The increased rate provided by subparagraph (C) of paragraph
32 (1) of subdivision (d) of Section 11461 shall not be used to compute
33 the monthly amount that may be paid to licensed foster family
34 agencies for the placement of children in certified foster homes.

35 (j) The total foster family agency rate by age group in effect as
36 of January 1, 2008, paid to licensed foster family agencies for the
37 placement of children in certified foster family homes, shall be
38 reduced by 10 percent, effective October 1, 2009. The foster family
39 agency shall have flexibility in applying the reduction; however,
40 no more than 10 percent shall be deducted from the child base and

1 increment, as defined in departmental regulations. When the rate
2 is restored to at least the rate in effect on September 1, 2009, the
3 director shall issue the declaration described in Section 1506.3 of
4 the Health and Safety Code.

5 (k) Effective October 1, 2009, the total foster family agency
6 rate by age group, in effect for those agency rates that are not
7 determined by the schedule of rates set forth in the department's
8 regulations, shall be reduced by the same percentage and in the
9 same manner as provided for in subdivision (j).

10 (l) (1) The department shall determine, consistent with the
11 requirements of this section and other relevant requirements under
12 law, the rate category for each foster family agency on a biennial
13 basis. Submission of the biennial rate application shall be according
14 to a schedule determined by the department.

15 (2) The department shall adopt regulations to implement this
16 subdivision. The adoption, amendment, repeal, or readoption of a
17 regulation authorized by this subdivision is deemed to be necessary
18 for the immediate preservation of the public peace, health and
19 safety, or general welfare, for purposes of Sections 11346.1 and
20 11349.6 of the Government Code, and the department is hereby
21 exempted from the requirement to describe specific facts showing
22 the need for immediate action.

23 SEC. 208. Section 12301.03 of the Welfare and Institutions
24 Code is amended to read:

25 12301.03. (a) (1) The Legislature finds and declares as
26 follows:

27 (A) Authorized hours under the In-Home Supportive Services
28 program were reduced in the 1992–93 fiscal year, and included a
29 supplemental assessment process that was intended to ensure that
30 recipients remained safely in their homes.

31 (B) The reduction in authorized hours as provided for in Chapter
32 8 of the Statutes of 2011 includes a supplemental assessment
33 process that is similarly intended to ensure that recipients remain
34 safely in their homes.

35 (2) Notwithstanding any other provision of law, if the
36 Department of Finance determines that a reduction in authorized
37 hours of service is necessary, pursuant to subdivision (d) of Section
38 14132.957, the State Department of Social Services shall
39 implement a reduction in authorized hours of service to each
40 in-home supportive services recipient as specified in this section,

1 which shall be applied to the recipient's hours as authorized
2 pursuant to his or her most recent assessment.

3 (3) The reduction required by this section shall not preclude
4 any reassessment to which a recipient would otherwise be entitled.
5 However, hours authorized pursuant to a reassessment shall be
6 subject to the reduction required by this section.

7 (4) For those recipients who have a documented unmet need,
8 excluding protective supervision, because of the limitations
9 contained in Section 12303.4, this reduction shall be applied first
10 to the unmet need before being applied to the authorized hours. If
11 the recipient believes he or she will be at serious risk of
12 out-of-home placement as a consequence of the reduction, the
13 recipient may apply for a restoration of the reduction of authorized
14 service hours, pursuant to Section 12301.05.

15 (5) A recipient of services under this article may direct the
16 manner in which the reduction of hours is applied to the recipient's
17 previously authorized services.

18 (6) The reduction in service hours made pursuant to paragraph
19 (2) shall not apply to in-home supportive services recipients who
20 also receive services under Section 9560, subdivision (t) of Section
21 14132, and Section 14132.99.

22 (b) The department shall work with the counties to develop a
23 process to allow for counties to preapprove IHSS Care Supplements
24 described in Section 12301.05, to the extent that the process is
25 permissible under federal law. The preapproval process shall be
26 subject to the following conditions:

27 (1) The preapproval process shall rely on the criteria for
28 assessing IHSS Care Supplement applications, developed pursuant
29 to Section 12301.05.

30 (2) Preapproval shall be granted only to individuals who would
31 otherwise be granted a full restoration of their hours pursuant to
32 Section 12301.05.

33 (3) With respect to existing recipients as of the effective date
34 of this section, all efforts shall be made to ensure that counties
35 complete the process on or before a specific date, as determined
36 by the department, in consultation with counties in order to allow
37 for the production, printing, and mailing of notices to be issued to
38 remaining recipients who are not granted preapproval and who
39 thereby are subject to the reduction pursuant to this section.

1 (4) The department shall work with counties to determine how
2 to apply a preapproval process with respect to new applicants to
3 the IHSS program who apply after the effective date of this section.

4 (c) The notice of action informing each recipient who is not
5 preapproved for an IHSS Care Supplement pursuant to subdivision
6 (b) shall be mailed at least 15 days prior to the reduction going
7 into effect. The notice of action shall be understandable to the
8 recipient and translated into all languages spoken by a substantial
9 number of the public served by the In-Home Supportive Services
10 program, in accordance with Section 7295.2 of the Government
11 Code. The notice shall not contain any recipient financial or
12 confidential identifying information other than the recipient's
13 name, address, and Case Management Information and Payroll
14 System (CMIPS) client identification number, and shall include,
15 but not be limited to, all of the following information:

16 (1) The aggregate number of authorized hours before the
17 reduction pursuant to paragraph (2) of subdivision (a) and the
18 aggregate number of authorized hours after the reduction.

19 (2) That the recipient may direct the manner in which the
20 reduction of authorized hours is applied to the recipient's
21 previously authorized services.

22 (3) How all or part of the reduction may be restored, as set forth
23 in Section 12301.05, if the recipient believes he or she will be at
24 serious risk of out-of-home placement as a consequence of the
25 reduction.

26 (d) The department shall inform providers of any reduction to
27 recipient hours through a statement on provider timesheets, after
28 consultation with counties.

29 (e) The IHSS Care Supplement application process described
30 in Section 12301.05 shall be completed before a request for a state
31 hearing is submitted. If the IHSS Care Supplement application is
32 filed within 15 days of the notice of action required by subdivision
33 (c), or before the effective date of the reduction, the recipient shall
34 be eligible for aid paid pending. A revised notice of action shall
35 be issued by the county following evaluation of the IHSS Care
36 Supplement application.

37 (f) (1) Notwithstanding the rulemaking provisions of the
38 Administrative Procedure Act (Chapter 3.5 (commencing with
39 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
40 Code), the department may implement and administer this section

1 through all-county letters or similar instruction from the department
2 until regulations are adopted. The department shall adopt
3 emergency regulations implementing this section no later than
4 October 1, 2013. The department may readopt any emergency
5 regulation authorized by this section that is the same as or
6 substantially equivalent to an emergency regulation previously
7 adopted under this section.

8 (2) The initial adoption of emergency regulations implementing
9 this section and the one readoption of emergency regulations
10 authorized by this subdivision shall be deemed an emergency and
11 necessary for the immediate preservation of the public peace,
12 health, safety, or general welfare. Initial emergency regulations
13 and the one readoption of emergency regulations authorized by
14 this section shall be exempt from review by the Office of
15 Administrative Law. The initial emergency regulations and the
16 one readoption of emergency regulations authorized by this section
17 shall be submitted to the Office of Administrative Law for filing
18 with the Secretary of State and each shall remain in effect for no
19 more than 180 days, by which time final regulations may be
20 adopted.

21 (g) If the Director of Health Care Services determines that
22 federal approval is necessary to implement this section, Section
23 12301.05, or both, these sections shall be implemented only after
24 any state plan amendments required pursuant to Section 14132.95
25 are approved.

26 (h) This section shall become operative on the first day of the
27 first month following 90 days after the effective date of Chapter
28 8 of the Statutes of 2011, or October 1, 2012, whichever is later.

29 SEC. 209. Section 12301.07 of the Welfare and Institutions
30 Code is amended to read:

31 12301.07. (a) (1) Notwithstanding any other provision of law,
32 if subdivision (b) of Section 3.94 of the Budget Act of 2011 is
33 operative, the department shall implement a 20-percent reduction
34 in authorized hours of service to each in-home supportive services
35 recipient as specified in this section, effective January 1, 2012,
36 which shall be applied to the recipient's hours as authorized
37 pursuant to his or her most recent assessment.

38 (2) The reduction required by this section shall not preclude
39 any reassessment to which a recipient would otherwise be entitled.

1 However, hours authorized pursuant to a reassessment shall be
2 subject to the reduction required by this section.

3 (3) For those recipients who have a documented unmet need,
4 excluding protective supervision, because of the limitations
5 contained in Section 12303.4, this reduction shall be applied first
6 to the unmet need before being applied to the authorized hours. If
7 the recipient believes he or she will be at serious risk of
8 out-of-home placement as a consequence of the reduction, the
9 recipient may apply for a restoration of the reduction of authorized
10 service hours, pursuant to subdivision (f).

11 (4) A recipient of services under this article may direct the
12 manner in which the reduction of hours is applied to the recipient's
13 previously authorized services.

14 (5) The reduction in service hours made pursuant to paragraph
15 (1) shall not apply to in-home supportive services recipients who
16 also receive services under Section 9560, subdivision (t) of Section
17 14132, and Section 14132.99.

18 (b) The department shall work with the counties to develop a
19 process to allow for counties to preapprove IHSS Care Supplements
20 described in subdivision (f), to the extent that the process is
21 permissible under federal law. The preapproval process shall be
22 subject to the following conditions:

23 (1) The preapproval process shall rely on the criteria for
24 assessing IHSS Care Supplement applications, developed pursuant
25 to subdivision (f).

26 (2) Preapproval shall be granted only to individuals who would
27 otherwise be granted a full restoration of their hours pursuant to
28 subdivision (f).

29 (3) With respect to existing recipients as of the effective date
30 of this section, all efforts shall be made to ensure that counties
31 complete the process on or before a specific date, as determined
32 by the department, in consultation with counties in order to allow
33 for the production, printing, and mailing of notices to be issued to
34 remaining recipients who are not granted preapproval and who
35 thereby are subject to the reduction pursuant to this section.

36 (4) The department shall work with counties to determine how
37 to apply a preapproval process with respect to new applicants to
38 the IHSS program who apply after the effective date of this section.

39 (c) The notice of action informing each recipient who is not
40 preapproved for an IHSS Care Supplement pursuant to subdivision

1 (b) shall be mailed at least 15 days prior to the reduction going
2 into effect. The notice of action shall be understandable to the
3 recipient and translated into all languages spoken by a substantial
4 number of the public served by the In-Home Supportive Services
5 program, in accordance with Section 7295.2 of the Government
6 Code. The notice shall not contain any recipient financial or
7 confidential identifying information other than the recipient's
8 name, address, and Case Management Information and Payroll
9 System (CMIPS) client identification number, and shall include,
10 but not be limited to, all of the following information:

11 (1) The aggregate number of authorized hours before the
12 reduction pursuant to paragraph (1) of subdivision (a) and the
13 aggregate number of authorized hours after the reduction.

14 (2) That the recipient may direct the manner in which the
15 reduction of authorized hours is applied to the recipient's
16 previously authorized services.

17 (3) How all or part of the reduction may be restored, as set forth
18 in subdivision (f), if the recipient believes he or she will be at
19 serious risk of out-of-home placement as a consequence of the
20 reduction.

21 (d) The department shall inform providers of any reduction to
22 recipient hours through a statement on provider timesheets, after
23 consultation with counties.

24 (e) The IHSS Care Supplement application process described
25 in subdivision (f) shall be completed before a request for a state
26 hearing is submitted. If the IHSS Care Supplement application is
27 filed within 15 days of the notice of action required by subdivision
28 (c), or before the effective date of the reduction, the recipient shall
29 be eligible for aid paid pending. A revised notice of action shall
30 be issued by the county following evaluation of the IHSS Care
31 Supplement application.

32 (f) (1) Any aged, blind, or disabled individual who is eligible
33 for services under this article who receives a notice of action
34 indicating that his or her services will be reduced under subdivision
35 (a) but who believes he or she is at serious risk of out-of-home
36 placement unless all or part of the reduction is restored may submit
37 an IHSS Care Supplement application. When a recipient submits
38 an IHSS Care Supplement application within 15 days of receiving
39 the reduction notice or prior to the implementation of the reduction,
40 the recipient's in-home supportive services shall continue at the

1 level authorized by the most recent assessment, prior to any
2 reduction, until the county finds that the recipient does or does not
3 require restoration of any hours through the IHSS Care Supplement.
4 If the recipient disagrees with the county's determination
5 concerning the need for the IHSS Care Supplement, the recipient
6 may request a hearing on that determination.

7 (2) The department shall develop an assessment tool, in
8 consultation with stakeholders, to be used by the counties to
9 determine if a recipient is at serious risk of out-of-home placement
10 as a consequence of the reduction of services pursuant to this
11 section. The assessment tool shall be developed utilizing standard
12 of care criteria for relevant out-of-home placements that serve
13 individuals who are aged, blind, or who have disabilities and who
14 would qualify for IHSS if living at home, including, but not limited
15 to, criteria set forth in Chapter 7.0 of the Manual of Criteria for
16 Medi-Cal Authorization published by the State Department of
17 Health Care Services, as amended April 15, 2004, and the IHSS
18 uniform assessment guidelines.

19 (3) Counties shall give a high priority to prompt screening of
20 persons specified in this section to determine their need for an
21 IHSS Care Supplement.

22 (g) (1) Notwithstanding the rulemaking provisions of the
23 Administrative Procedure Act (Chapter 3.5 (commencing with
24 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
25 Code), the department may implement and administer this section
26 through all-county letters or similar instruction from the department
27 until regulations are adopted. The department shall adopt
28 emergency regulations implementing this section no later than
29 March 1, 2013. The department may readopt any emergency
30 regulation authorized by this section that is the same as or
31 substantially equivalent to an emergency regulation previously
32 adopted under this section.

33 (2) The initial adoption of emergency regulations implementing
34 this section and one readoption of emergency regulations
35 authorized by this subdivision shall be deemed an emergency and
36 necessary for the immediate preservation of the public peace,
37 health, safety, or general welfare. Initial emergency regulations
38 and the one readoption of emergency regulations authorized by
39 this section shall be exempt from review by the Office of
40 Administrative Law. The initial emergency regulations and the

1 one readoption of emergency regulations authorized by this section
2 shall be submitted to the Office of Administrative Law for filing
3 with the Secretary of State and each shall remain in effect for no
4 more than 180 days, by which time final regulations may be
5 adopted.

6 (h) If the Director of Health Care Services determines that
7 federal approval is necessary to implement this section, this section
8 shall be implemented only after any state plan amendments
9 required pursuant to Section 14132.95 are approved.

10 SEC. 210. Section 12305.87 of the Welfare and Institutions
11 Code is amended to read:

12 12305.87. (a) (1) Commencing 90 days following the effective
13 date of the act that adds this section, a person specified in paragraph
14 (2) shall be subject to the criminal conviction exclusions provided
15 for in this section, in addition to the exclusions required under
16 Section 12305.81.

17 (2) This section shall apply to a person who satisfies either of
18 the following conditions:

19 (A) He or she is a new applicant to provide services under this
20 article.

21 (B) He or she is an applicant to provide services under this
22 article whose application has been denied on the basis of a
23 conviction and for whom an appeal of that denial is pending.

24 (b) Subject to subdivisions (c), (d), and (e), an applicant subject
25 to this section shall not be eligible to provide or receive payment
26 for providing supportive services for 10 years following a
27 conviction for, or incarceration following a conviction for, any of
28 the following:

29 (1) A violent or serious felony, as specified in subdivision (c)
30 of Section 667.5 of the Penal Code and subdivision (c) of Section
31 1192.7 of the Penal Code.

32 (2) A felony offense for which a person is required to register
33 under subdivision (c) of Section 290 of the Penal Code. For
34 purposes of this paragraph, the 10-year time period specified in
35 this section shall commence with the date of conviction for, or
36 incarceration following a conviction for, the underlying offense,
37 and not the date of registration.

38 (3) A felony offense described in paragraph (2) of subdivision
39 (c) or paragraph (2) of subdivision (g) of Section 10980.

1 (c) Notwithstanding subdivision (b), an application shall not be
2 denied under this section if the applicant has obtained a certificate
3 of rehabilitation under Chapter 3.5 (commencing with Section
4 4852.01) of Title 6 of Part 3 of the Penal Code or if the information
5 or accusation against him or her has been dismissed pursuant to
6 Section 1203.4 of the Penal Code.

7 (d) (1) Notwithstanding subdivision (b), a recipient of services
8 under this article who wishes to employ a provider applicant who
9 has been convicted of an offense specified in subdivision (b) may
10 submit to the county an individual waiver of the exclusion provided
11 for in this section. This paragraph shall not be construed to allow
12 a recipient to submit an individual waiver with respect to a
13 conviction or convictions for offenses specified in Section
14 12305.81.

15 (2) The county shall notify a recipient who wishes to hire a
16 person who is applying to be a provider and who has been
17 convicted of an offense subject to exclusion under this section of
18 that applicant's relevant criminal offense convictions that are
19 covered by subdivision (b). The notice shall include both of the
20 following:

21 (A) A summary explanation of the exclusions created by
22 subdivision (b), as well as the applicable waiver process described
23 in this subdivision and the process for an applicant to seek a general
24 exception, as described in subdivision (e). This summary
25 explanation shall be developed by the department for use by all
26 counties.

27 (B) An individual waiver form, which shall also be developed
28 by the department and used by all counties. The waiver form shall
29 include both of the following:

30 (i) A space for the county to include a reference to any Penal
31 Code sections and corresponding offense names or descriptions
32 that describe the relevant conviction or convictions that are covered
33 by subdivision (b) and that the provider applicant has in his or her
34 background.

35 (ii) A statement that the service recipient, or his or her authorized
36 representative, if applicable, is aware of the applicant's conviction
37 or convictions and agrees to waive application of this section and
38 employ the applicant as a provider of services under this article.

39 (3) To ensure that the initial summary explanation referenced
40 in this subdivision is comprehensible for recipients and provider

1 applicants, the department shall consult with representatives of
2 county welfare departments and advocates for, or representatives
3 of, recipients and providers in developing the summary explanation
4 and offense descriptions.

5 (4) The individual waiver form shall be signed by the recipient,
6 or by the recipient's authorized representative, if applicable, and
7 returned to the county welfare department by mail or in person.
8 Except for a parent, guardian, or person having legal custody of a
9 minor recipient, a conservator of an adult recipient, or a spouse or
10 registered domestic partner of a recipient, a provider applicant
11 shall not sign his or her own individual waiver form as the
12 recipient's authorized representative. The county shall retain the
13 waiver form and a copy of the provider applicant's criminal offense
14 record information search response until the date that the
15 convictions that are the subject of the waiver request are no longer
16 within the 10-year period specified in subdivision (b).

17 (5) An individual waiver submitted pursuant to this subdivision
18 shall entitle a recipient to hire a provider applicant who otherwise
19 meets all applicable enrollment requirements for the In-Home
20 Supportive Services program. A provider hired pursuant to an
21 individual waiver may be employed only by the recipient who
22 requested that waiver, and the waiver shall only be valid with
23 respect to convictions that are specified in that waiver. A new
24 waiver shall be required if the provider is subsequently convicted
25 of an offense to which this section otherwise would apply. A
26 provider who wishes to be listed on a provider registry or to provide
27 supportive services to a recipient who has not requested an
28 individual waiver shall be required to apply for a general exception,
29 as provided for in subdivision (e).

30 (6) Nothing in this section shall preclude a provider who is
31 eligible to receive payment for services provided pursuant to an
32 individual waiver under this subdivision from being eligible to
33 receive payment for services provided to one or more additional
34 recipients who obtain waivers pursuant to this same subdivision.

35 (7) The state and a county shall be immune from any liability
36 resulting from granting an individual waiver under this subdivision.

37 (e) (1) Notwithstanding subdivision (b), an applicant who has
38 been convicted of an offense identified in subdivision (b) may seek
39 from the department a general exception to the exclusion provided
40 for in this section.

1 (2) Upon receipt of a general exception request, the department
2 shall request a copy of the applicant's criminal offender record
3 information search response from the applicable county welfare
4 department. Notwithstanding any other provision of law, the county
5 shall provide a copy of the criminal offender record information
6 search response, as provided to the county by the Department of
7 Justice, to the department. The county shall provide this
8 information in a manner that protects the confidentiality and
9 privacy of the criminal offender record information search
10 response. The state or federal criminal history record information
11 search response shall not be modified or altered from its form or
12 content as provided by the Department of Justice.

13 (3) The department shall consider the following factors when
14 determining whether to grant a general exception under this
15 subdivision:

16 (A) The nature and seriousness of the conduct or crime under
17 consideration and its relationship to employment duties and
18 responsibilities.

19 (B) The person's activities since conviction, including, but not
20 limited to, employment or participation in therapy, education, or
21 community service, that would indicate changed behavior.

22 (C) The number of convictions and the time that has elapsed
23 since the conviction or convictions.

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

27 (E) Any evidence of rehabilitation, including character
28 references, submitted by the person, or by others on the person's
29 behalf.

30 (F) Employment history and current or former employer
31 recommendations. Additional consideration shall be given to
32 employer recommendations provided by a person who has received
33 or has indicated a desire to receive supportive or personal care
34 services from the applicant, including, but not limited to, those
35 services, specified in Section 12300.

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

38 (H) The granting by the Governor of a full and unconditional
39 pardon.

1 (f) If the department makes a determination to deny an
2 application to provide services pursuant to a request for a general
3 exception, the department shall notify the applicant of this
4 determination by either personal service or registered mail. The
5 notice shall include the following information:

6 (1) A statement of the department’s reasons for the denial that
7 evaluates evidence of rehabilitation submitted by the applicant, if
8 any, and that specifically addresses any evidence submitted relating
9 to the factors in paragraph (3) of subdivision (e).

10 (2) A copy of the applicant’s criminal offender record
11 information search response, even if the applicant already has
12 received a copy pursuant to Section 12301.6 or 12305.86. The
13 department shall provide this information in a manner that protects
14 the confidentiality and privacy of the criminal offender record
15 information search response.

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

19 (B) The department shall retain a copy of each individual’s
20 criminal offender record information search response until the date
21 that the convictions that are the subject of the exception are no
22 longer within the 10-year period specified in subdivision (b), and
23 shall record the date the copy of the response was provided to the
24 individual and the department.

25 (C) The criminal offender record information search response
26 shall not be made available by the department to any individual
27 other than the provider applicant.

28 (g) (1) Upon written notification that the department has
29 determined that a request for exception shall be denied, the
30 applicant may request an administrative hearing by submitting a
31 written request to the department within 15 business days of receipt
32 of the written notification. Upon receipt of a written request, the
33 department shall hold an administrative hearing consistent with
34 the procedures specified in Section 100171 of the Health and Safety
35 Code, except where those procedures are inconsistent with this
36 section.

37 (2) A hearing under this subdivision shall be conducted by a
38 hearing officer or administrative law judge designated by the
39 director. A written decision shall be sent by certified mail to the
40 applicant.

1 (h) The department shall revise the provider enrollment form
2 developed pursuant to Section 12305.81 to include both of the
3 following:

4 (1) The text of subdivision (c) of Section 290 of the Penal Code,
5 subdivision (c) of Section 667.5 of the Penal Code, subdivision
6 (c) of Section 1192.7 of the Penal Code, and paragraph (2) of
7 subdivisions (c) and (g) of Section 10980 of this code.

8 (2) A statement that the provider understands that if he or she
9 has been convicted, or incarcerated following conviction for, any
10 of the crimes specified in the provisions identified in ~~paragraph~~
11 *subdivision* (b) in the last 10 years, and has not received a
12 certificate of rehabilitation or had the information or accusation
13 dismissed, as provided in subdivision (c), he or she shall only be
14 authorized to receive payment for providing in-home supportive
15 services under an individual waiver or general exception as
16 described in this section, and upon meeting all other applicable
17 criteria for enrollment as a provider in the program.

18 (i) (1) Notwithstanding the rulemaking provisions of the
19 Administrative Procedure Act (Chapter 3.5 (commencing with
20 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
21 Code), the department may implement and administer this section
22 through all-county letters or similar instructions from the
23 department until regulations are adopted. The department shall
24 adopt emergency regulations implementing these provisions no
25 later than July 1, 2011. The department may readopt any emergency
26 regulation authorized by this section that is the same as or
27 substantially equivalent to an emergency regulation previously
28 adopted under this section.

29 (2) The initial adoption of emergency regulations pursuant to
30 this section and one readoption of emergency regulations shall be
31 deemed an emergency and necessary for the immediate
32 preservation of the public peace, health, safety, or general welfare.
33 Initial emergency regulations and the one readoption of emergency
34 regulations authorized by this section shall be exempt from review
35 by the Office of Administrative Law. The initial emergency
36 regulations and the one readoption of emergency regulations
37 authorized by this section shall be submitted to the Office of
38 Administrative Law for filing with the Secretary of State and each
39 shall remain in effect for no more than 180 days, by which time
40 final regulations may be adopted.

1 (j) In developing the individual waiver form and all-county
2 letters or information notices or similar instructions, the department
3 shall consult with stakeholders, including, but not limited to,
4 representatives of the county welfare departments, and
5 representatives of consumers and providers. The consultation shall
6 include at least one in-person meeting prior to the finalization of
7 the individual waiver form and all-county letters or information
8 notices or similar instructions.

9 SEC. 211. Section 14053.8 of the Welfare and Institutions
10 Code is amended to read:

11 14053.8. (a) Notwithstanding any other provision of law, the
12 department shall develop a process to allow counties to receive
13 any available federal financial participation for acute inpatient
14 hospital services and inpatient psychiatric services provided to
15 juvenile inmates who are admitted as inpatients in a medical
16 institution off the grounds of the correctional facility, and who,
17 but for their institutional status as inmates, are otherwise eligible
18 for Medi-Cal benefits pursuant to this chapter. This process shall
19 be coordinated, to the extent possible, with the processes and
20 procedures established pursuant to Section 14053.7 of this code
21 and Section 5072 of the Penal Code. This subdivision shall not be
22 construed to alter or abrogate any obligation of the state pursuant
23 to an administrative action or a court order that is final and no
24 longer subject to appeal to fund and reimburse counties for any
25 medical services provided to a juvenile inmate.

26 (b) A juvenile inmate who is an inpatient in a medical institution
27 off the grounds of the correctional facility shall not be denied
28 eligibility for Medi-Cal benefits under this section because of his
29 or her institutional status as an inmate of a public institution.

30 (c) The department shall consult with counties in the
31 development of the process pursuant to this section.

32 (d) This section shall not be construed to limit the department's
33 authority to suspend or terminate Medi-Cal eligibility pursuant to
34 Section 14011.10, except during such times that the juvenile inmate
35 is receiving acute inpatient hospital services or inpatient psychiatric
36 services pursuant to subdivision (b).

37 (e) This section shall be implemented only if and to the extent
38 that existing levels of federal financial participation are not
39 otherwise jeopardized. To the extent that the department determines

1 that existing levels of federal financial participation are jeopardized,
2 this section shall no longer be implemented.

3 (f) The department shall seek any federal approvals necessary
4 to implement the process developed pursuant to this section. This
5 section shall be implemented only if and to the extent that any
6 necessary federal approvals have been obtained, and only to the
7 extent that federal financial participation is available.

8 (g) Notwithstanding any other provision of law, as part of the
9 process developed pursuant to this section, the department may
10 exempt juvenile inmates from enrollment into new or existing
11 managed care health plans.

12 (h) The process developed pursuant to this section shall be
13 implemented in only those counties that elect to provide the
14 nonfederal share of the state's administrative costs associated with
15 implementation of this section and the nonfederal share of
16 expenditures for acute inpatient hospital services and inpatient
17 psychiatric services provided to eligible juvenile inmates described
18 in subdivision (a).

19 (i) The federal financial participation received pursuant to the
20 process implemented under this section shall be paid to the
21 participating counties for services rendered to the juvenile inmates.
22 If a federal audit disallowance and interest results from claims
23 made under the process created pursuant to this section, the
24 department shall recoup from the county that received the
25 disallowed funds the amount of the disallowance and any
26 applicable interest.

27 (j) (1) If there is a final judicial determination made by any
28 state or federal court that is not appealed, or by a court of appellate
29 jurisdiction that is not further appealed, in any action by any party,
30 or a final determination by the administrator of the federal Centers
31 for Medicare and Medicaid Services (CMS), that disallows, defers,
32 or alters the implementation of this section or, to the extent
33 applicable, Section 14053.7 of this code or Section 5072 of the
34 Penal Code, including the rate methodology or payment process
35 established by the department that limits or affects the department's
36 authority to select the facilities used to provide acute inpatient
37 hospital services and inpatient psychiatric services to juvenile
38 inmates, then any provision of this section that is inconsistent with
39 the final judicial or CMS determination shall have no force or
40 effect.

1 (2) In addition, the department may, at its discretion, cease to
2 implement any other part of this section that is implicated by the
3 final judicial or CMS determination.

4 (k) For the purposes of Medi-Cal eligibility pursuant to this
5 section, “juvenile inmate” means an individual under 21 years of
6 age who is involuntarily residing in a public institution, including
7 state and local institutions.

8 (l) Notwithstanding Chapter 3.5 (commencing with Section
9 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
10 the department may, without taking any further regulatory action,
11 implement this section by means of all-county letters or similar
12 instructions.

13 SEC. 212. Section 14053.9 of the Welfare and Institutions
14 Code is amended to read:

15 14053.9. (a) Notwithstanding any other provision of law, the
16 department shall develop a process to allow the Department of
17 Corrections and Rehabilitation, Division of Juvenile Facilities, or
18 any successor, to receive any available federal financial
19 participation for acute inpatient hospital services and inpatient
20 psychiatric services provided to any juvenile inmates in the
21 Division of Juvenile Facilities who are admitted as inpatients in a
22 medical institution off the grounds of the correctional facility, and
23 who, but for their institutional status as juvenile inmates, are
24 otherwise eligible for Medi-Cal benefits pursuant to this chapter.
25 This process shall be coordinated, to the extent possible, with the
26 processes and procedures established pursuant to Section 14053.7
27 of this code and Section 5072 of the Penal Code.

28 (b) Any juvenile inmate in the Division of Juvenile Facilities
29 who is an inpatient in a medical institution off the grounds of the
30 correctional facility shall not be denied eligibility for Medi-Cal
31 benefits under this section because of his or her institutional status
32 as an inmate in the Division of Juvenile Facilities.

33 (c) The department shall consult with the Division of Juvenile
34 Facilities in the development of the process pursuant to this section.

35 (d) The department shall seek any federal approvals necessary
36 to implement the process developed pursuant to this section. This
37 section shall be implemented only if and to the extent that any
38 necessary federal approvals have been obtained, and only to the
39 extent that federal financial participation is available.

1 (e) Notwithstanding any other provision of law, as part of the
2 process developed pursuant to this section, the department may
3 exempt any juvenile inmate in a facility operated by the Division
4 of Juvenile Facilities from enrollment into new or existing managed
5 care health plans.

6 (f) The process developed pursuant to this section shall be
7 implemented only to the extent that the Division of Juvenile
8 Facilities agrees voluntarily to provide the nonfederal share of any
9 costs to the department associated with the administration of this
10 section and the nonfederal share of expenditures for acute inpatient
11 hospital services and inpatient psychiatric services provided off
12 the grounds of the correctional facility to any juvenile inmate of
13 the Division of Juvenile Facilities who is eligible for Medi-Cal
14 benefits pursuant to this section.

15 (g) The federal financial participation received pursuant to this
16 section shall be paid to the Department of Corrections and
17 Rehabilitation for services rendered to any juvenile inmate in the
18 Division of Juvenile Facilities.

19 (h) Reimbursement pursuant to this section shall be limited to
20 only those services for which federal financial participation is
21 available.

22 (i) (1) If there is a final judicial determination made by any
23 state or federal court that is not appealed, or by a court of appellate
24 jurisdiction that is not further appealed, in any action by any party,
25 or a final determination by the administrator of the federal Centers
26 for Medicare and Medicaid Services (CMS), that disallows, defers,
27 or alters the implementation of this section or, to the extent
28 applicable, Section 14053.7 of this code or Section 5072 of the
29 Penal Code, including the rate methodology or payment process
30 established by the department that limits or affects the department's
31 authority to select the facilities used to provide acute inpatient
32 hospital services and inpatient psychiatric services to juvenile
33 inmates in the Division of Juvenile Facilities, then any provision
34 of this section that is inconsistent with the final judicial or CMS
35 determination shall have no force or effect.

36 (2) In addition, the department may, at its discretion, cease to
37 implement any other part of this section that is implicated by the
38 final judicial or CMS determination.

39 (j) For the purposes of Medi-Cal eligibility pursuant to this
40 section, "juvenile inmate" means an individual under 21 years of

1 age who is involuntarily residing in a public institution, including
2 state and local institutions.

3 (k) Notwithstanding Chapter 3.5 (commencing with Section
4 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
5 the department may, without taking any further regulatory action,
6 implement this section by means of all-county letters or similar
7 instructions.

8 SEC. 213. Section 14105.09 of the Welfare and Institutions
9 Code is amended to read:

10 14105.09. Notwithstanding any other provision of law, if
11 subdivision (b) of Section 3.94 of the Budget Act of 2011 is
12 operative, effective on or after January 1, 2012, the payment
13 reductions in Sections 14105.07, 14105.192, 14126.033, 14131.05,
14 and 14131.07 shall apply to managed care health plans that contract
15 with the department pursuant to Chapter 8.75 (commencing with
16 Section 14591) and to contracts with the Senior Care Action
17 Network and AIDS Healthcare Foundation, to the extent that the
18 services are provided through any of these contracts, payments
19 shall be reduced by the actuarial equivalent amount of the payment
20 reductions pursuant to contract amendments or change orders
21 effective on July 1, 2011, or thereafter.

22 SEC. 214. Section 14105.193 of the Welfare and Institutions
23 Code is amended to read:

24 14105.193. (a) (1) Notwithstanding paragraph (7) of
25 subdivision (j) of Section 14105.192 and any other law, beginning
26 June 1, 2011, reimbursement rates for freestanding pediatric
27 subacute care units, as defined in Section 51215.8 of Title 22 of
28 the California Code of Regulations, shall be the applicable rate for
29 the 2008–09 rate year, reduced by 5.75 percent, plus the projected
30 cost of complying with new state or federal mandates.

31 (2) The department shall recalculate and publish the rates
32 specified in paragraph (1) for any of the following reasons:

33 (A) If the federal Centers for Medicare and Medicaid Services
34 (CMS) does not approve exemption changes to the facilities subject
35 to the skilled nursing facility quality assurance fee pursuant to
36 paragraph (4) of subdivision (c) of Section 1324.20 of the Health
37 and Safety Code.

38 (B) If CMS does not approve any proposed modification to the
39 methodology for calculation of the skilled nursing quality assurance

1 fee pursuant to Article 7.6 (commencing with Section 1324.20) of
2 Chapter 2 of Division 2 of the Health and Safety Code.

3 (C) To ensure that the state does not incur any additional General
4 Fund expenses for reimbursement to pediatric subacute care units
5 for dates of service on and after June 1, 2011.

6 (D) If the difference in the projected skilled nursing quality
7 assurance fee collections for the 2011–12 rate year, pursuant to
8 Article 7.6 (commencing with Section 1324.20) of Chapter 2 of
9 Division 2 of the Health and Safety Code, would result in any
10 additional General Fund expense to pay for the 2011–12 rate year
11 reimbursement rate.

12 (b) The reductions described in this section shall apply only to
13 payments for services when the General Fund share of the payment
14 is paid with funds directly appropriated to the department in the
15 annual Budget Act and shall not apply to payments for services
16 paid with funds appropriated to other departments or agencies.

17 (c) Notwithstanding Chapter 3.5 (commencing with Section
18 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
19 the department may implement and administer this section by
20 means of provider bulletins, or similar instructions, without taking
21 regulatory action.

22 (d) The payment reductions and adjustments provided for in
23 this section shall be implemented only if the director determines
24 that the payments that result from the application of this section
25 will comply with applicable federal Medicaid requirements and
26 that federal financial participation will be available.

27 (1) In determining whether federal financial participation is
28 available, the director shall determine whether the payments
29 comply with applicable federal Medicaid requirements, including
30 those set forth in Section 1396a(a)(30)(A) of Title 42 of the United
31 States Code.

32 (2) To the extent that the director determines that the payments
33 do not comply with the federal Medicaid requirements or that
34 federal financial participation is not available with respect to any
35 payment that is reduced pursuant to this section, the director retains
36 the discretion not to implement the particular payment reduction
37 or adjustment and may adjust the payment as necessary to comply
38 with federal Medicaid requirements.

39 (e) The department shall seek any necessary federal approvals
40 for the implementation of this section.

1 (f) This section shall not be implemented until federal approval
2 is obtained. When federal approval is obtained, the payments
3 resulting from the application of this section shall be implemented
4 retroactively to June 1, 2011, or on any other date or dates as may
5 be applicable.

6 SEC. 215. Section 14132.957 of the Welfare and Institutions
7 Code is amended to read:

8 14132.957. (a) (1) It is the intent of the Legislature to adopt
9 measures that will assist individuals who are living in the
10 community to remain within their home environment and avoid
11 unnecessary emergency room usage and hospital and nursing
12 facility admissions due to those individuals' not taking medications
13 as prescribed.

14 (2) The Legislature finds and declares that certain seniors,
15 persons with disabilities, and other Medi-Cal recipients are at high
16 risk of not taking medications as prescribed and that measures to
17 assist them in taking prescribed medications will advance the
18 state's objectives to save lives, reduce health care costs, and assist
19 individuals to continue living independently in their homes.

20 (3) The Legislature has determined that the achievement of
21 these objectives will result in a net annual savings of one hundred
22 forty million dollars (\$140,000,000) to the General Fund, after
23 fully offsetting costs for implementing and administrating the pilot
24 project.

25 (4) The Legislature therefore authorizes the establishment of
26 the Home and Community Based Medication Dispensing Machine
27 Pilot Project for utilization of an automated medication dispensing
28 machine with associated monitoring and telephonic reporting
29 services to assist Medi-Cal recipients with taking prescribed
30 medications. All Medi-Cal recipients who participate in the pilot
31 project shall do so voluntarily and shall be selected using criteria
32 that demonstrates their susceptibility to not taking their medications
33 as prescribed without monitoring or assistance.

34 (b) On and after the effective date of this section, the department,
35 in consultation with the State Department of Social Services, shall
36 begin implementation of the pilot project described in subdivision
37 (a) and shall do all of the following:

38 (1) Establish criteria to identify at-risk Medi-Cal recipients who
39 demonstrate susceptibility to not taking medications as prescribed.
40 These criteria shall be based on Medi-Cal, In-Home Supportive

1 Services program, and Medicare data and may include factors such
2 as age, disability, multiple prescribed medications, and experience
3 with or a high risk of experience with, numerous emergency
4 department visits or hospital or nursing facility admissions within
5 a specified time period as a result of not taking medications as
6 prescribed.

7 (2) Identify an at-risk portion of Medi-Cal recipients of a
8 sufficient number to achieve the intended savings. Recipients
9 identified for this pilot project shall be limited to individuals who
10 obtain Medi-Cal benefits through fee for service, who are not
11 required to be enrolled on a mandatory basis in a Medi-Cal
12 managed care health plan, and who are able to manage the
13 medication dispensing machine independently or with the
14 assistance of a family member or care provider and have a home
15 environment capable of supporting the machine and associated
16 telephonic reporting service that includes an active telephone line.

17 (3) To the extent necessary, the department shall do all of the
18 following:

19 (A) Select and procure the automated medication dispensing
20 machines, including costs for installation in a participant's home,
21 as well as monitoring and repair services associated with operation
22 of the machines.

23 (B) Provide an in-home, automated medication dispensing
24 machine with telephonic reporting service for monitoring and
25 assisting with taking medication, including installation,
26 maintenance, alerts, training, and supplies at no cost to the
27 recipient.

28 (4) Seek federal funding from the federal Centers for Medicare
29 and Medicaid Services Innovation Center for the cost of the pilot
30 project and other expenses, and to receive Medicare shared savings
31 realized from the pilot project.

32 (5) Assess the potential for federal financial participation for
33 these machines and any other expenses associated with this pilot
34 project as well as receipt of federal reimbursement for savings
35 accrued to the Medicare program. If the department determines
36 that federal financial participation is available under Title XI or
37 XIX of the federal Social Security Act, the department shall seek
38 a waiver or other federal approval, or submit a Medicaid State Plan
39 amendment to implement the pilot project.

1 (c) (1) The department shall provide quarterly reports, beginning
2 October 1, 2011, to the Department of Finance and the appropriate
3 fiscal and policy committees of the Legislature, describing the
4 number of recipients participating in the pilot project, the number
5 of medication dispensing machines in use, costs of implementing
6 and administering the pilot project, and any available data regarding
7 medical and pharmacy utilization.

8 (2) The department shall also conduct an evaluation of the pilot
9 project, including effects on service utilization, spending,
10 outcomes, projected savings to the Medi-Cal program and the
11 federal Medicare program, recommendations for improving the
12 pilot project and maximizing savings to the state, and identification
13 of other means of General Fund savings related to improving
14 quality and cost-effectiveness of care, and shall report the
15 evaluation to the appropriate policy and fiscal committees of the
16 Legislature by December 31, 2013.

17 (3) (A) If the Department of Finance determines that the
18 quarterly reports do not demonstrate the ability of the pilot project
19 to achieve at least the estimated net annual savings of one hundred
20 forty million dollars (\$140,000,000) to the General Fund, after
21 fully offsetting implementation and administrative costs, the
22 Director of Finance shall notify the Chairperson of the Senate
23 Committee on Budget and Fiscal Review and the Chairperson of
24 the Assembly Committee on Budget of this determination, in
25 writing, by April 10, 2012. Within 10 days following this
26 notification, the Department of Finance shall convene a meeting
27 with legislative staff to review the estimates related to its
28 determination.

29 (B) Subsequent to the meeting pursuant to subparagraph (A),
30 the Department of Finance shall request that the Legislature enact
31 legislation on or before July 1, 2012, to either modify the pilot
32 project, if necessary, or provide alternative options to achieve the
33 balance of the net annual savings of one hundred forty million
34 dollars (\$140,000,000) to the General Fund, after fully offsetting
35 implementation and administrative costs, or both.

36 (d) (1) Notwithstanding any other provision of law, if the
37 Department of Finance determines after July 1, 2012, that the
38 actions pursuant to subdivisions (b) and (c) will fail to achieve the
39 net annual savings of one hundred forty million dollars
40 (\$140,000,000) to the General Fund, after fully offsetting

1 implementation and administrative costs, the Department of
2 Finance shall notify the State Department of Social Services and
3 the department, and the State Department of Social Services, in
4 consultation with the department, shall implement a reduction in
5 authorized hours for in-home supportive services recipients
6 beginning October 1, 2012, in accordance with Section 12301.03,
7 to achieve a net annual savings of one hundred forty million dollars
8 (\$140,000,000) to the General Fund, after fully offsetting
9 implementation and administrative costs of the pilot project and
10 after taking into account any savings achieved pursuant to
11 subdivisions (b) and (c).

12 (2) No earlier than 30 days after submission of the evaluation
13 required by paragraph (2) of subdivision (c), the Department of
14 Finance may adjust the amount of the reduction to meet net annual
15 savings of one hundred forty million dollars (\$140,000,000) to the
16 General Fund after fully offsetting implementation and
17 administrative costs and after taking into account any savings
18 achieved pursuant to subdivisions (b) and (c). The calculations
19 shall be based on updated data contained in the evaluation.

20 (e) For the purpose of implementing this section, the director
21 may enter into exclusive or nonexclusive contracts on a bid or
22 negotiated basis, or utilize existing provider enrollment or payment
23 mechanisms. Any contract, contract amendment, or change order
24 entered into for the purpose of implementing this section shall be
25 exempt from Chapter 5.6 (commencing with Section 11545) of
26 Part 1 of Division 3 of Title 2 of the Government Code, the Public
27 Contract Code, and any associated policies, procedures, or
28 regulations under these provisions, and shall be exempt from
29 review or approval by any division of the Department of General
30 Services and the California Technology Agency.

31 (f) Notwithstanding Chapter 3.5 (commencing with Section
32 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
33 the department may implement this section through all-county
34 letters, provider bulletins, or similar instructions, without taking
35 regulatory action.

36 (g) (1) Notwithstanding paragraph (2) of subdivision (c), the
37 department may terminate operation of the pilot project if and to
38 the extent that any of the following events occurs:

39 (A) Funding to implement and administer the pilot project is
40 not appropriated in the 2012–13 fiscal year or annually thereafter.

1 (B) The Director of Finance notifies the Legislature that the
2 pilot project is not projected to achieve a net annual savings or
3 results in an overall increased cost.

4 (C) The pilot project conflicts with one or more provisions of
5 state or federal law necessary to implement the pilot project.

6 (D) The department is unable to obtain from the Medicare
7 program the data necessary to implement this pilot project, and
8 the high-risk Medi-Cal only population is insufficient to conduct
9 the pilot project.

10 (E) The department receives substantiated reports of adverse
11 clinical outcomes indicating that continuing the pilot project poses
12 unacceptable health risks to participants.

13 (2) Termination of the pilot project pursuant to paragraph (1)
14 does not provide the department or the State Department of Social
15 Services with authority to implement a reduction in authorized
16 hours pursuant to Section 12301.03. Any reduction in authorized
17 hours pursuant to Section 12301.03 shall comply with the
18 requirements of subdivision (d).

19 (3) The department shall notify the appropriate fiscal and policy
20 committees of the Legislature 30 days prior to terminating the pilot
21 project.

22 SEC. 216. Section 14165 of the Welfare and Institutions Code
23 is amended to read:

24 14165. (a) There is hereby created in the Governor's office
25 the California Medical Assistance Commission, for the purpose
26 of contracting with health care delivery systems for the provision
27 of health care services to recipients under the California Medical
28 Assistance program.

29 (b) Notwithstanding any other provision of law, the commission
30 created pursuant to subdivision (a) shall continue through June 30,
31 2012, after which, it shall be dissolved and the term of any
32 commissioner serving at that time shall end.

33 (1) Upon dissolution of the commission, all powers, duties, and
34 responsibilities of the commission shall be transferred to the
35 Director of Health Care Services. These powers, duties, and
36 responsibilities shall include, but are not limited to, those exercised
37 in the operation of the selective provider contracting program
38 pursuant to Article 2.6 (commencing with Section 14081).

39 (2) On or before July 1, 2012, the position of executive director
40 described in Section 14165.5 and all other staff positions serving

1 the commission shall be transferred to the State Department of
2 Health Care Services. The State Department of Health Care
3 Services shall consult with the commission, the Department of
4 Finance, and the Department of Personnel Administration to
5 develop a staff transition plan that will be included in the 2012–13
6 Governor’s Budget. The transition plan shall outline the transition
7 of staff positions serving the commission to the State Department
8 of Health Care Services.

9 (3) Upon a determination by the Director of Health Care
10 Services that a payment system based on diagnosis-related groups
11 as described in Section 14105.28 that is sufficient to replace the
12 contract-based payment system described in subdivision (a) has
13 been developed and implemented, the powers, duties, and
14 responsibilities conferred on the commission and transferred to
15 the Director of Health Care Services shall no longer be exercised.

16 (4) Protections afforded to the negotiations and contracts of the
17 commission by the California Public Records Act (Chapter 3.5
18 commencing with Section 6250) of Division 7 of Title 1 of the
19 Government Code) shall be applicable to the negotiations and
20 contracts conducted or entered into pursuant to this section by the
21 State Department of Health Care Services.

22 (c) Notwithstanding the rulemaking provisions of Chapter 3.5
23 commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code, or any other provision of law, the State
25 Department of Health Care Services may implement and administer
26 this section by means of provider bulletins or other similar
27 instructions, without taking regulatory action. The authority to
28 implement this section as set forth in this subdivision shall include
29 the authority to give notice by provider bulletin or other similar
30 instruction of a determination made pursuant to paragraph (3) of
31 subdivision (b) and to modify or supersede existing regulations in
32 Title 22 of the California Code of Regulations that conflict with
33 implementation of this section.

34 SEC. 217. Section 14165.56 of the Welfare and Institutions
35 Code is amended to read:

36 14165.56. (a) The department shall establish, implement, and
37 maintain the Nondesignated Public Hospital Intergovernmental
38 Transfer Program to provide supplemental payments to
39 nondesignated public hospitals in a manner that maximizes federal
40 financial participation in the resulting supplemental payments. The

1 department shall develop and implement the program subject to
2 receiving all federal approvals.

3 (b) Upon receiving federal approval, the department shall fully
4 implement this section beginning with the 2010–11 fiscal year.
5 The department shall perform all acts necessary to secure the
6 maximum level of federal financial participation for payments
7 resulting from the Nondesignated Public Hospital IGT Pool. The
8 department shall make every effort to implement this section for
9 the 2010–11 fiscal year so that all allocations will be determined,
10 all intergovernmental transfers will be received by the state, and
11 federal financial participation will be drawn in order for the
12 department to make payments due to each nondesignated public
13 hospital prior to July 1, 2011.

14 (c) By August 1 of each fiscal year, beginning with the 2011–12
15 fiscal year and every year thereafter, the department shall provide
16 an estimate of the Non-State Government Owned Hospital
17 (Inpatient) UPL associated with the inpatient fee-for-service
18 payments to nondesignated public hospitals in order to establish
19 both the UPL and the available room under the UPL. The
20 department may make supplemental inpatient fee-for-service
21 payments to nondesignated public hospitals using some or all of
22 the shortfall level below the UPL. The amount identified by the
23 department as available for those payments shall be multiplied by
24 100 percent minus the annual federal medical assistance percentage,
25 as defined in Part 433 of Title 42 of the Code of Federal
26 Regulations and shall be the amount available in the Nondesignated
27 Public Hospital Intergovernmental Transfer Pool. The payments
28 made pursuant to this article may be funded using public entity
29 intergovernmental transfers and associated federal financial
30 participation.

31 (d) Once the department has estimated the UPL and the potential
32 supplemental payment relating to nondesignated public hospitals,
33 the department shall use the IGT allocation formula described in
34 Section 14165.57 to determine the estimated IGT allocation for
35 each nondesignated public hospital from the Nondesignated Public
36 Hospital IGT Pool using the most recent data publicly available
37 from the federal Centers for Medicare and Medicaid Services
38 (CMS), and the federal Health Resources and Services
39 Administration (HRSA).

1 SEC. 218. Section 14165.57 of the Welfare and Institutions
2 Code is amended to read:

3 14165.57. (a) The IGT allocation formula shall use data from
4 each nondesignated public hospital's latest Hospital Annual
5 Financial Disclosure Report on file with OSHPD as of March 1
6 of each prior fiscal year and shall be as follows:

7 (1) The Nondesignated Public Hospital IGT Pool shall be
8 allocated into two allocations: the Contract Hospitals allocation
9 and the Non-Contract Hospitals allocation. This allocation shall
10 be made to each group, respectively, based upon the ratio of
11 Medi-Cal fee-for-service acute patient days listed in the latest
12 OSHPD Annual Financial Disclosure Report for Contract Hospitals
13 and Non-Contract Hospitals to the total Medi-Cal fee-for-service
14 acute patient days provided by all Contract Hospitals and
15 Non-Contract Hospitals. Medi-Cal fee-for-service acute patient
16 days for converted hospitals and new hospitals will not be included
17 in this allocation.

18 (2) The department shall determine if a nondesignated public
19 hospital provides services in either a federally recognized Health
20 Professional Shortage Area or to a federally recognized Medically
21 Underserved Area or Population. The department shall also
22 determine if the nondesignated public hospital is federally
23 recognized as either a Critical Access Hospital or a Sole
24 Community Provider. If any of these conditions apply, the hospital
25 shall score one point. Otherwise, the hospital shall score zero
26 points.

27 (3) The department shall calculate for each nondesignated public
28 hospital the charity care charges as a percentage of the hospital's
29 total gross revenue. If the charity care charges are greater than or
30 equal to 3 percent of the total gross revenue, the hospital shall
31 score three points. If the charity care charges are less than 3
32 percent, but more than or equal to 1 percent, of the total gross
33 revenue, the hospital shall score two points. If the charity care
34 charges are less than 1 percent, but greater than 0 percent, of the
35 total gross revenue, the hospital shall score one point. If charity
36 care charges are less than or equal to 0 percent, of the total gross
37 revenue, the hospital shall score zero points.

38 (4) The department shall calculate for each nondesignated public
39 hospital the bad debt charges as a percentage of the hospital's other
40 payer's gross revenue, as disclosed in the Hospital Annual

1 Financial Disclosure Report. If the bad debt charges are greater
2 than or equal to 40 percent of the other gross revenue, the hospital
3 shall score two points. If the bad debt charges are less than 40
4 percent, but greater than 0 percent, of the other gross revenue, the
5 hospital shall score one point. If the bad debt charges are less than
6 or equal to 0 percent, of the other gross revenue, the hospital shall
7 score zero points.

8 (5) The department shall calculate for each nondesignated public
9 hospital the Medi-Cal charges as a percentage of the hospital's
10 total gross revenue. If the Medi-Cal charges are greater than or
11 equal to 25 percent of the total gross revenue, the hospital shall
12 score three points. If the Medi-Cal charges are less than 25 percent,
13 but more than or equal to 12 percent, of the total gross revenue,
14 the hospital shall score two points. If the Medi-Cal charges are
15 less than 12 percent, but greater than 0 percent, of the total gross
16 revenue, the hospital shall score one point. If the Medi-Cal charges
17 are less than or equal to 0 percent of total gross revenue, the
18 hospital shall score zero points.

19 (6) The sum of each nondesignated public hospital's points
20 accumulated pursuant to paragraphs (2) to (5), inclusive, shall
21 constitute the hospital's IGT Formula Score. The IGT Formula
22 Score for a new hospital or a converted hospital shall be equal to
23 zero.

24 (7) The Contract Hospital allocation shall be allocated among
25 Contract Hospitals and the Non-Contract Hospital allocation shall
26 be allocated among Non-Contract Hospitals to determine
27 preliminary allocations in accordance with the following:

28 (A) Each Contract Hospital that has an IGT Formula Score of
29 between seven and nine, inclusive, shall be allocated three times
30 the amount of the Contract Hospital allocation that is allocated to
31 each Contract Hospital that has a score of one to three, inclusive.

32 (B) Each Contract Hospital that has an IGT Formula Score of
33 between four and six, inclusive, shall be allocated two times the
34 amount of the Contract Hospital allocation that is allocated to each
35 Contract Hospital that has an IGT Formula Score of one to three,
36 inclusive.

37 (C) Each Non-Contract Hospital that has an IGT Formula Score
38 of between seven and nine, inclusive, shall be allocated three times
39 the amount of the Non-Contract Hospital allocation that is allocated

1 to each Non-Contract Hospital that has an IGT Formula Score of
2 one to three, inclusive.

3 (D) Each Non-Contract Hospital that has an IGT Formula Score
4 of between four and six, inclusive, shall be allocated two times
5 the amount of the Non-Contract Hospital allocation that is allocated
6 to each Non-Contract Hospital that has an IGT Formula Score of
7 one to three, inclusive.

8 (E) No amount shall be allocated to a nondesignated public
9 hospital with an IGT Formula Score of zero points.

10 (8) The sum of the preliminary allocation determined under
11 paragraph (7) for all hospitals within each IGT Formula Group
12 shall be reallocated among the hospitals within each IGT Formula
13 Group based on the ratio of each hospital's staffed acute beds listed
14 in the latest OSHPD Annual Financial Disclosure Report, to the
15 total staffed acute beds of all hospitals in the IGT Formula Group.

16 (b) By no later than September 1 of the 2011–12 fiscal year or
17 as soon thereafter as federal approvals are obtained, and by no
18 later than September 1 of each fiscal year thereafter, the department
19 shall provide each nondesignated public hospital with an estimated
20 IGT allocation notice that includes the calculations and data sources
21 used to calculate the estimated IGT allocation, as described in this
22 section.

23 (c) Each nondesignated public hospital shall have 30 days from
24 receipt of the estimated IGT allocation notice from the department
25 to review the department's hospital-specific estimated IGT
26 allocation and to notify the department of any data or calculation
27 errors. If the hospital does not respond within 30 days, the
28 information will be deemed accurate. No later than November 30
29 of each fiscal year, the department shall incorporate all appropriate
30 corrections or data updates for all of the nondesignated public
31 hospitals and then recalculate the IGT allocations using the IGT
32 allocation formula to obtain a final IGT allocation for each
33 nondesignated public hospital.

34 (d) Beginning with the 2011–12 fiscal year, on or before
35 December 1 or as soon thereafter as federal approvals are obtained,
36 and by no later than December 1 of each fiscal year thereafter, the
37 department shall send each nondesignated public hospital a notice
38 of eligibility indicating the final IGT allocation for the
39 nondesignated public hospital. The nondesignated public hospital
40 shall have 20 business days after receipt of the notice to either

1 accept or decline the offer. If a nondesignated public hospital
2 accepts the offer, the nondesignated public hospital may enter into
3 an IGT agreement with the department. If the department receives
4 no response, the offer will be considered declined.

5 (e) Before the later of December 31 of the 2011–12 fiscal year,
6 the date upon which all federal approvals are obtained, and by no
7 later than January 15 of each state fiscal year thereafter, the
8 department shall document all nondesignated public hospital IGT
9 allocation offers that are either accepted or declined. After the
10 department has recorded all IGT allocations as being either
11 accepted or declined, any remaining unsubscribed IGT allocations
12 will be allocated to all the other participating nondesignated public
13 hospitals on a pro rata basis based on the final IGT allocations
14 calculated pursuant to subdivision (b) during January of each fiscal
15 year. The department shall inform each nondesignated public
16 hospital participating in the program of the revised final IGT
17 allocation assigned to that hospital by January 30. At that time,
18 the department shall give each nondesignated public hospital
19 participant five days to accept or decline participation in the
20 program.

21 (f) The state may accept all public funds in the amount of the
22 final IGT allocation from a transferring entity pursuant to this
23 section, provided that any funds from a transferring entity must
24 be permitted by law to be used for these purposes. The transferring
25 entity shall certify to the department that the funds it proposes to
26 transfer satisfy the requirements of this subdivision, and are in
27 compliance with all federal rules and regulations.

28 (g) The state shall deposit the funds received from the
29 transferring entities pursuant to this article into the Medi-Cal
30 Inpatient Payment Adjustment Fund established in accordance
31 with Section 14163.

32 (h) Nondesignated public hospitals participating in the program
33 shall inform the public entity funding the IGT to transfer the
34 appropriate IGT allocation, by February 5 of each fiscal year, to
35 the state according to the time schedule specified in the written
36 agreement specified in subdivision (d). By March 31 of each fiscal
37 year, the department shall make the supplemental payment to the
38 nondesignated public hospital including the associated federal
39 financial participation. The deadlines set forth in this subdivision

1 shall be implemented beginning with the 2011–12 fiscal year or
2 as soon thereafter as federal approvals are obtained.

3 (i) The department shall establish written policies and procedures
4 for transferring entity intergovernmental transfers and payments
5 made to nondesignated public hospitals pursuant to this section.
6 The department shall effectively communicate these policies and
7 procedures to nondesignated public hospitals and the public entities
8 that will be funding the IGTs in order to facilitate a smooth process
9 using local public entity moneys for purposes of drawing down
10 federal financial participation for supplemental payments to
11 nondesignated public hospitals.

12 (j) The state shall retain 9 percent of each IGT amount to
13 reimburse the department, or transfer to the General Fund, for the
14 administrative costs of operating the Nondesignated Public Hospital
15 Intergovernmental Transfer Program and for the benefit of
16 Medi-Cal children’s health care programs.

17 (k) Participation in the intergovernmental transfers under this
18 article is voluntary on the part of the transferring entities for the
19 purpose of all applicable federal laws.

20 (l) (1) The department shall report annually to the Legislature
21 on the Nondesignated Public Hospital Intergovernmental Transfer
22 Program. This report shall include, but not be limited to, the amount
23 of funds available within the UPL, the total amount of IGT
24 allocation funds transferred by public entities, the total amount of
25 federal financial participation received by nondesignated public
26 hospitals, and information on the effectiveness of the IGT
27 allocation formula to distribute available federal matching funds
28 among participating nondesignated public hospitals.

29 (2) The requirement for submitting a report to the Legislature
30 on the Nondesignated Public Hospital Intergovernmental Transfer
31 Program imposed under paragraph (1) is inoperative four years
32 after the date the first report is due.

33 (3) A report to be submitted pursuant to paragraph (1) shall be
34 submitted in compliance with Section 9795 of the Government
35 Code.

36 (m) Notwithstanding Chapter 3.5 (commencing with Section
37 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
38 the department shall implement this article by means of policy
39 letters or similar instructions, without taking further regulatory
40 action.

1 SEC. 219. Section 14166.12 of the Welfare and Institutions
2 Code is amended to read:

3 14166.12. (a) The California Medical Assistance Commission
4 shall negotiate payment amounts, in accordance with the selective
5 provider contracting program established pursuant to Article 2.6
6 (commencing with Section 14081), from the Private Hospital
7 Supplemental Fund established pursuant to subdivision (b) for
8 distribution to private hospitals that satisfy the criteria of Section
9 14085.6, 14085.7, 14085.8, or 14085.9.

10 (b) The Private Hospital Supplemental Fund is hereby
11 established in the State Treasury. For purposes of this section,
12 “fund” means the Private Hospital Supplemental Fund.

13 (c) Notwithstanding Section 13340 of the Government Code,
14 the fund shall be continuously appropriated to the department for
15 the purposes specified in this section.

16 (d) Except as otherwise limited by this section, the fund shall
17 consist of all of the following:

18 (1) One hundred eighteen million four hundred thousand dollars
19 (\$118,400,000), which shall be transferred annually from General
20 Fund amounts appropriated in the annual Budget Act for the
21 Medi-Cal program, except as follows:

22 (A) For the 2008–09 fiscal year, this amount shall be reduced
23 by thirteen million six hundred thousand dollars (\$13,600,000)
24 and by an amount equal to one-half of the difference between
25 eighteen million three hundred thousand dollars (\$18,300,000)
26 and the amount of any reduction in the additional payments for
27 distressed hospitals calculated pursuant to subparagraph (B) of
28 paragraph (3) of subdivision (b) of Section 14166.20.

29 (B) For the 2012–13 fiscal year, this amount shall be reduced
30 by seventeen million five hundred thousand dollars (\$17,500,000).

31 (C) For the 2013–14 fiscal year, this amount shall be reduced
32 by eight million seven hundred fifty thousand dollars (\$8,750,000).

33 (2) Any additional moneys appropriated to the fund.

34 (3) All stabilization funding transferred to the fund pursuant to
35 paragraph (2) of subdivision (a) of Section 14166.14.

36 (4) Any moneys that any county, other political subdivision of
37 the state, or other governmental entity in the state may elect to
38 transfer to the department for deposit into the fund, as permitted
39 under Section 433.51 of Title 42 of the Code of Federal Regulations
40 or any other applicable federal Medicaid laws.

1 (5) All private moneys donated by private individuals or entities
2 to the department for deposit in the fund as permitted under
3 applicable federal Medicaid laws.

4 (6) Any interest that accrues on amounts in the fund.

5 (e) Any public agency transferring moneys to the fund may, for
6 that purpose, utilize any revenues, grants, or allocations received
7 from the state for health care programs or purposes, unless
8 otherwise prohibited by law. A public agency may also utilize its
9 general funds or any other public moneys or revenues for purposes
10 of transfers to the fund, unless otherwise prohibited by law.

11 (f) The department may accept or not accept moneys offered to
12 the department for deposit in the fund. If the department accepts
13 moneys pursuant to this section, the department shall obtain federal
14 financial participation to the full extent permitted by law. With
15 respect to funds transferred or donated from private individuals or
16 entities, the department shall accept only those funds that are
17 certified by the transferring or donating entity that qualify for
18 federal financial participation under the terms of the Medicaid
19 Voluntary Contribution and Provider-Specific Tax Amendments
20 of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code
21 of Federal Regulations, as applicable. The department may return
22 any funds transferred or donated in error.

23 (g) Moneys in the fund shall be used as the source for the
24 nonfederal share of payments to hospitals under this section.

25 (h) Any funds remaining in the fund at the end of a fiscal year
26 shall be carried forward for use in the following fiscal year.

27 (i) Moneys shall be allocated from the fund by the department
28 and shall be applied to obtain federal financial participation in
29 accordance with customary Medi-Cal accounting procedures for
30 purposes of payments under this section. Distributions from the
31 fund shall be supplemental to any other Medi-Cal reimbursement
32 received by the hospitals, including amounts that hospitals receive
33 under the selective provider contracting program (Article 2.6
34 (commencing with Section 14081)), and shall not affect provider
35 rates paid under the selective provider contracting program.

36 (j) Each private hospital that was a private hospital during the
37 2002–03 fiscal year, received payments for the 2002–03 fiscal
38 year from any of the prior supplemental funds, and, during the
39 project year, satisfies the criteria in Section 14085.6, 14085.7,
40 14085.8, or 14085.9 to be eligible to negotiate for distributions

1 under any of those sections, shall receive no less from the Private
2 Hospital Supplemental Fund for the project year than 100 percent
3 of the amount the hospital received from the prior supplemental
4 funds for the 2002–03 fiscal year. Each private hospital described
5 in this subdivision shall be eligible for additional payments from
6 the fund pursuant to subdivision (k).

7 (k) All amounts that are in the fund for a project year in excess
8 of the amount necessary to make the payments under subdivision
9 (j) shall be available for negotiation by the California Medical
10 Assistance Commission, along with corresponding federal financial
11 participation, for supplemental payments to private hospitals, which
12 for the project year satisfy the criteria under Section 14085.6,
13 14085.7, 14085.8, or 14085.9 to be eligible to negotiate for
14 distributions under any of those sections, and paid for services
15 rendered during the project year pursuant to the selective provider
16 contracting program established under Article 2.6 (commencing
17 with Section 14081).

18 (l) The amount of any stabilization funding transferred to the
19 fund, or the amount of intergovernmental transfers deposited to
20 the fund pursuant to subdivision (o), together with the associated
21 federal reimbursement, with respect to a particular project year,
22 may, in the discretion of the California Medical Assistance
23 Commission, be paid for services furnished in the same project
24 year regardless of when the stabilization funds or intergovernmental
25 transfer funds, and the associated federal reimbursement, become
26 available, provided the payment is consistent with other applicable
27 federal or state law requirements and does not result in a hospital
28 exceeding any applicable reimbursement limitations.

29 (m) The department shall pay amounts due to a private hospital
30 from the fund for a project year, with the exception of stabilization
31 funding, in up to four installment payments, unless otherwise
32 provided in the hospital's contract negotiated with the California
33 Medical Assistance Commission, except that hospitals that are not
34 described in subdivision (j) shall not receive the first installment
35 payment. The first payment shall be made as soon as practicable
36 after the issuance of the tentative disproportionate share hospital
37 list for the project year, and in no event later than January 1 of the
38 project year. The second and subsequent payments shall be made
39 after the issuance of the final disproportionate hospital list for the
40 project year, and shall be made only to hospitals that are on the

1 final disproportionate share hospital list for the project year. The
2 second payment shall be made by February 1 of the project year
3 or as soon as practicable after the issuance of the final
4 disproportionate share hospital list for the project year. The third
5 payment, if scheduled, shall be made by April 1 of the project year.
6 The fourth payment, if scheduled, shall be made by June 30 of the
7 project year. This subdivision does not apply to hospitals that are
8 scheduled to receive payments from the fund because they meet
9 the criteria under Section 14085.7 and do not meet the criteria
10 under Section 14085.6, 14085.8, or 14085.9, which shall be paid
11 in accordance with the applicable contract or contract amendment
12 negotiated by the California Medical Assistance Commission.

13 (n) The department shall pay stabilization funding transferred
14 to the fund in amounts negotiated by the California Medical
15 Assistance Commission and shall pay the scheduled payments in
16 accordance with the applicable contract or contract amendment.

17 (o) Payments to private hospitals that are eligible to receive
18 payments pursuant to Section 14085.6, 14085.7, 14085.8, or
19 14085.9 may be made using funds transferred from governmental
20 entities to the state, at the option of the governmental entity. Any
21 payments funded by intergovernmental transfers shall remain with
22 the private hospital and shall not be transferred back to any unit
23 of government. An amount equal to 25 percent of the amount of
24 any intergovernmental transfer made in the project year that results
25 in a supplemental payment made for the same project year to a
26 project year private DSH hospital designated by the governmental
27 entity that made the intergovernmental transfer shall be deposited
28 in the fund for distribution as determined by the California Medical
29 Assistance Commission. An amount equal to 75 percent shall be
30 deposited in the fund and distributed to the private hospitals
31 designated by the governmental entity.

32 (p) A private hospital that receives payment pursuant to this
33 section for a particular project year shall not submit a notice for
34 the termination of its participation in the selective provider
35 contracting program established pursuant to Article 2.6
36 (commencing with Section 14081) until the later of the following
37 dates:

- 38 (1) On or after December 31 of the next project year.
- 39 (2) The date specified in the hospital's contract, if applicable.

1 (q) (1) For the 2007–08, 2008–09, and 2009–10 project years,
2 the County of Los Angeles shall make intergovernmental transfers
3 to the state to fund the nonfederal share of increased Medi-Cal
4 payments to those private hospitals that serve the South Los
5 Angeles population formerly served by Los Angeles County Martin
6 Luther King, Jr.-Harbor Hospital. The intergovernmental transfers
7 required under this subdivision shall be funded by county tax
8 revenues and shall total five million dollars (\$5,000,000) per
9 project year, except that, in the event that the director determines
10 that any amount is due to the County of Los Angeles under the
11 demonstration project for services rendered during the portion of
12 a project year during which Los Angeles County Martin Luther
13 King, Jr.-Harbor Hospital was operational, the amount of
14 intergovernmental transfers required under this subdivision shall
15 be reduced by a percentage determined by reducing 100 percent
16 by the percentage reduction in Los Angeles County Martin Luther
17 King, Jr.-Harbor Hospital’s baseline, as determined under
18 subdivision (c) of Section 14166.5 for that project year.

19 (2) Notwithstanding subdivision (o), an amount equal to 100
20 percent of the county’s intergovernmental transfers under this
21 subdivision shall be deposited in the fund and, within 30 days after
22 receipt of the intergovernmental transfer, shall be distributed,
23 together with related federal financial participation, to the private
24 hospitals designated by the county in the amounts designated by
25 the county. The director shall disregard amounts received pursuant
26 to this subdivision in calculating the OBRA 1993 payment
27 limitation, as defined in paragraph (24) of subdivision (a) of
28 Section 14105.98, for purposes of determining the amount of
29 disproportionate share hospital replacement payments due a private
30 hospital under Section 14166.11.

31 (r) (1) The reductions in supplemental payments under this
32 section that result from the reductions in the amounts transferred
33 from the General Fund to the Private Hospital Supplemental Fund
34 for the 2012–13 and 2013–14 fiscal years under subparagraphs
35 (B) and (C) of paragraph (1) of subdivision (d) shall be allocated
36 equally in the aggregate between children’s hospitals eligible for
37 supplemental payments under this section and other hospitals
38 eligible for supplemental payments under this section. When
39 negotiating payment amounts to a hospital under this section for
40 the 2012–13 and 2013–14 fiscal years, the California Medical

1 Assistance Commission, or its successor agency, shall identify
2 both a payment amount that would have been made absent the
3 funding reductions in subparagraphs (B) and (C) of paragraph (1)
4 of subdivision (d) and the payment amount that will be made taking
5 into account the funding reductions under subparagraphs (B) and
6 (C) of paragraph (1) of subdivision (d). For purposes of this
7 subdivision, “children’s hospital” shall have the meaning set forth
8 in paragraph (13) of subdivision (a) of Section 14105.98.

9 (2) This subdivision shall not preclude the department from
10 including some or all of the reductions under this section within
11 the payments made under a new diagnosis-related group payment
12 methodology for the 2012–13 fiscal year or the 2013–14 fiscal
13 year. In the event the department includes some or all of the
14 amounts, including reductions, within the payments made under
15 a new diagnosis-related group payment methodology for the
16 2012–13 fiscal year or the 2013–14 fiscal year, the department, in
17 implementing the reductions in paragraph (1) of subdivision (d),
18 shall, to the extent feasible, utilize the allocation specified in
19 paragraph (1).

20 SEC. 220. Section 14166.20 of the Welfare and Institutions
21 Code is amended to read:

22 14166.20. (a) With respect to each project year through
23 October 31, 2010, the total amount of stabilization funding shall
24 be the sum of the following:

25 (1) (A) Federal Medicaid funds available in the Health Care
26 Support Fund, established pursuant to Section 14166.21, reduced
27 by the amount necessary to meet the baseline funding amount, or
28 the adjusted baseline funding amount, as appropriate, for project
29 years after the 2005–06 project year for each designated public
30 hospital, project year private DSH hospitals in the aggregate, and
31 nondesignated public hospitals in the aggregate as determined in
32 Sections 14166.5, 14166.13, and 14166.18, respectively, taking
33 into account all other payments to each hospital under this article.
34 This amount shall be not less than zero.

35 (B) For purposes of subparagraph (A), federal Medicaid funds
36 available in the Health Care Support Fund shall not include health
37 care coverage initiative amounts identified under paragraph (2) of
38 subdivision (e) of Section 14166.9.

39 (C) The federal financial participation amount arising from the
40 certified public expenditures that has been paid to designated public

1 hospitals, or the governmental entities with which they are
2 affiliated, pursuant to subdivision (g) of Section 14166.221, shall
3 be disregarded for purposes of this section.

4 (2) The state general funds that were made available due to the
5 receipt of federal funding for previously state-funded programs
6 through the safety net care pool and any federal Medicaid hospital
7 reimbursements resulting from these expenditures, unless otherwise
8 recognized under paragraph (1), to the extent those funds are in
9 excess of the amount necessary to meet the baseline funding
10 amount, or the adjusted baseline funding amount, as appropriate,
11 for project years after the 2005–06 project year for each designated
12 public hospital, for project year private DSH hospitals in the
13 aggregate, and for nondesignated public hospitals in the aggregate,
14 as determined in Sections 14166.5, 14166.13, and 14166.18,
15 respectively.

16 (3) To the extent not included in paragraph (1) or (2), the amount
17 of the increase in state General Fund expenditures for Medi-Cal
18 inpatient hospital services for the project year for project year
19 private DSH hospitals and nondesignated public hospitals,
20 including amounts expended in accordance with paragraph (1) of
21 subdivision (c) of Section 14166.23, that exceeds the expenditure
22 amount for the same purpose and the same hospitals necessary to
23 provide the aggregate baseline funding amounts applicable to the
24 project determined pursuant to Sections 14166.13 and 14166.18,
25 and any direct grants to designated public hospitals for services
26 under the demonstration project.

27 (4) To the extent not included in paragraph (2), federal Medicaid
28 funds received by the state as a result of the General Fund
29 expenditures described in paragraph (3).

30 (5) The federal Medicaid funds received by the state as a result
31 of federal financial participation with respect to Medi-Cal payments
32 for inpatient hospital services made to project year private DSH
33 hospitals and to nondesignated public hospitals for services
34 rendered during the project year, the state share of which was
35 derived from intergovernmental transfers or certified public
36 expenditures of any public entity that does not own or operate a
37 public hospital.

38 (6) Federal safety net care pool funds claimed and received for
39 inpatient hospital services rendered under the health care coverage

1 initiative identified under paragraph (3) of subdivision (e) of
2 Section 14166.9.

3 (b) With respect to the 2005–06, 2006–07, and subsequent
4 project years through October 31, 2010, the stabilization funding
5 determined under subdivision (a) shall be allocated as follows:

6 (1) Eight million dollars (\$8,000,000) shall be paid to San Mateo
7 Medical Center. All or a portion of this amount may be paid as
8 disproportionate share hospital payments in addition to the
9 hospital’s allocation that would otherwise be determined under
10 Section 14166.6. The amount provided for in this paragraph shall
11 be disregarded in the application of the limitations described in
12 paragraph (3) of subdivision (a) of Section 14166.6, and in
13 paragraph (1) of subdivision (a) of Section 14166.7.

14 (2) (A) Ninety-six million two hundred twenty-eight thousand
15 dollars (\$96,228,000) shall be allocated to designated public
16 hospitals to be paid in accordance with Section 14166.75.

17 (B) Forty-two million two hundred twenty-eight thousand dollars
18 (\$42,228,000) shall be allocated to private DSH hospitals to be
19 paid in accordance with Section 14166.14.

20 (C) Five hundred forty-four thousand dollars (\$544,000) shall
21 be allocated to nondesignated public hospitals to be paid in
22 accordance with Section 14166.17.

23 (D) In the event that stabilization funding is less than one
24 hundred forty-seven million dollars (\$147,000,000), the amounts
25 allocated to designated public hospitals, private DSH hospitals,
26 and nondesignated public hospitals under this paragraph shall be
27 reduced proportionately.

28 (3) (A) An amount equal to the lesser of 10 percent of the total
29 amount determined under subdivision (a) or twenty-three million
30 five hundred thousand dollars (\$23,500,000), but at least fifteen
31 million three hundred thousand dollars (\$15,300,000), shall be
32 made available for additional payments to distressed hospitals that
33 participate in the selective provider contracting program under
34 Article 2.6 (commencing with Section 14081), including designated
35 public hospitals, in amounts to be determined by the California
36 Medical Assistance Commission. The additional payments to
37 designated public hospitals shall be negotiated by the California
38 Medical Assistance Commission, but shall be paid by the
39 department in the form of a direct grant rather than as Medi-Cal
40 payments.

1 (B) Notwithstanding subparagraph (A) and solely for the
2 2006–07 fiscal year, if the amount that otherwise would be made
3 available for additional payments to distressed hospitals under
4 subparagraph (A) is equal to or greater than eighteen million three
5 hundred thousand dollars (\$18,300,000), that amount shall be
6 reduced by eighteen million three hundred thousand dollars
7 (\$18,300,000) and the state’s obligation to make these payments
8 shall be reduced by this amount. In the event the amount that
9 otherwise would be made available under subparagraph (A) is less
10 than eighteen million three hundred thousand dollars (\$18,300,000),
11 but greater than or equal to the minimum amount of fifteen million
12 three hundred thousand dollars (\$15,300,000), then the amount
13 available under this paragraph shall be zero and the state’s
14 obligation to make these payments shall be zero.

15 (C) Notwithstanding subparagraph (A) and solely for the
16 2008–09 and 2009–10 fiscal years, the amount to be made available
17 shall be reduced by fifteen million three hundred thousand dollars
18 (\$15,300,000) in each of the two years. The funds generated from
19 this reduction shall be retained in the General Fund.

20 (4) An amount equal to 0.64 percent of the total amount
21 determined under subdivision (a), to nondesignated public hospitals
22 to be paid in accordance with Section 14166.19.

23 (5) The amount remaining after subtracting the amount
24 determined in paragraphs (1) and (2), subparagraph (A) of
25 paragraph (3), and paragraph (4), without taking into account
26 subparagraphs (B) and (C) of paragraph (3), shall be allocated as
27 follows:

28 (A) Sixty percent to designated public hospitals to be paid in
29 accordance with Section 14166.75.

30 (B) Forty percent to project year private DSH hospitals to be
31 paid in accordance with Section 14166.14.

32 (c) By April 1 of the year following the project year for which
33 the payment is made, and after taking into account final amounts
34 otherwise paid or payable to hospitals under this article, the director
35 shall calculate in accordance with subdivision (a), allocate in
36 accordance with subdivision (b), and pay to hospitals in accordance
37 with Sections 14166.75, 14166.14, and 14166.19, as applicable,
38 the stabilization funding.

1 (d) For purposes of determining amounts paid or payable to
2 hospitals under subdivision (c), the department shall apply the
3 following:

4 (1) In determining amounts paid or payable to designated public
5 hospitals that are based on allowable costs incurred by the hospital,
6 or the governmental entity with which it is affiliated, the following
7 shall apply:

8 (A) If the final payment amount is based on the hospital's
9 Medicare cost report, the department shall rely on the cost report
10 filed with the Medicare fiscal intermediary for the project year for
11 which the calculation is made, reduced by a percentage that
12 represents the average percentage change from total reported costs
13 to final costs for the three most recent cost reporting periods for
14 which final determinations have been made, taking into account
15 all administrative and judicial appeals. Protested amounts shall
16 not be considered in determining the average percentage change
17 unless the same or similar costs are included in the project year
18 cost report.

19 (B) If the final payment amount is based on costs not included
20 in subparagraph (A), the reported costs as of the date the
21 determination is made under subdivision (c), shall be reduced by
22 10 percent.

23 (C) In addition to adjustments required in subparagraphs (A)
24 and (B), the department shall adjust amounts paid or payable to
25 designated public hospitals by any applicable deferrals or
26 disallowances identified by the federal Centers for Medicare and
27 Medicaid Services as of the date the determination is made under
28 subdivision (c) not otherwise reflected in subparagraphs (A) and
29 (B).

30 (2) Amounts paid or payable to project year private DSH
31 hospitals and nondesignated public hospitals shall be determined
32 by the most recently available Medi-Cal paid claims data increased
33 by a percentage to reflect an estimate of amounts remaining unpaid.

34 (e) The department shall consult with hospital representatives
35 regarding the appropriate calculation of stabilization funding before
36 stabilization funds are paid to hospitals. The calculation may be
37 comprised of multiple steps involving interim computations and
38 assumptions as may be necessary to determine the total amount
39 of stabilization funding under subdivision (a) and the allocations
40 under subdivision (b). No later than 30 days after this consultation,

1 the department shall establish a final determination of stabilization
2 funding that shall not be modified for any reason other than
3 mathematical errors or mathematical omissions on the part of the
4 department.

5 (f) The department shall distribute 75 percent of the estimated
6 stabilization funding on an interim basis throughout the project
7 year.

8 (g) The allocation and payment of stabilization funding shall
9 not reduce the amount otherwise paid or payable to a hospital under
10 this article or any other provision of law, unless the reduction is
11 required by the demonstration project's Special Terms and
12 Conditions or by federal law.

13 (h) It is the intent of the Legislature that the amendments made
14 to Section 14166.12 and to this section by the act that added this
15 subdivision in the 2007–08 Regular Session shall not be construed
16 to amend or otherwise alter the ongoing structure of the
17 department's Medicaid Demonstration Project and Waiver
18 approved by the federal Centers for Medicare and Medicaid
19 Services to begin on September 1, 2005.

20 (i) The provisions of this section shall only apply with respect
21 to the demonstration project term, and shall not apply with respect
22 to the successor demonstration project term.

23 SEC. 221. Section 14168.1 of the Welfare and Institutions
24 Code is amended to read:

25 14168.1. For the purposes of this article, the following
26 definitions shall apply:

27 (a) "Acute psychiatric days" means the total number of
28 Short-Doyle administrative days, Short-Doyle acute care days,
29 acute psychiatric administrative days, and acute psychiatric acute
30 days identified in the Final Medi-Cal Utilization Statistics for the
31 2008–09 state fiscal year as calculated by the department on
32 September 15, 2008.

33 (b) "Converted hospital" means a private hospital that becomes
34 a designated public hospital or a nondesignated public hospital on
35 or after January 1, 2011, a nondesignated public hospital that
36 becomes a private hospital or a designated public hospital on or
37 after January 1, 2011, or a designated public hospital that becomes
38 a private hospital or a nondesignated public hospital on or after
39 January 1, 2011.

40 (c) "Days data source" means the following:

1 (1) For a hospital that did not submit an Annual Financial
2 Disclosure Report to the Office of Statewide Health Planning and
3 Development for a fiscal year ending during 2007, but submitted
4 that report for a fiscal period ending in 2008 that includes at least
5 10 months of 2007, the Annual Financial Disclosure Report
6 submitted by the hospital to the Office of Statewide Health
7 Planning and Development for the fiscal period in 2008 that
8 includes at least 10 months of 2007.

9 (2) For a hospital owned by Kaiser Foundation Hospitals that
10 submitted corrections to reported patient days to the Office of
11 Statewide Health Planning and Development for its fiscal year
12 ending in 2007 before July 31, 2009, the corrected data.

13 (3) For all other hospitals, the hospital's Annual Financial
14 Disclosure Report in the Office of Statewide Health Planning and
15 Development files as of October 31, 2008, for its fiscal year ending
16 during 2007.

17 (d) "Designated public hospital" shall have the meaning given
18 in subdivision (d) of Section 14166.1 as of January 1, 2011.

19 (e) "General acute care days" means the total number of
20 Medi-Cal general acute care days paid by the department to a
21 hospital in the 2008 calendar year, as reflected in the state paid
22 claims files on July 10, 2009.

23 (f) "High acuity days" means Medi-Cal coronary care unit days,
24 pediatric intensive care unit days, intensive care unit days, neonatal
25 intensive care unit days, and burn unit days paid by the department
26 during the 2008 calendar year, as reflected in the state paid claims
27 files on July 10, 2009.

28 (g) "Hospital inpatient services" means all services covered
29 under Medi-Cal and furnished by hospitals to patients who are
30 admitted as hospital inpatients and reimbursed on a fee-for-service
31 basis by the department directly or through its fiscal intermediary.
32 Hospital inpatient services include outpatient services furnished
33 by a hospital to a patient who is admitted to that hospital within
34 24 hours of the provision of the outpatient services that are related
35 to the condition for which the patient is admitted. Hospital inpatient
36 services do not include services for which a managed health care
37 plan is financially responsible.

38 (h) "Hospital outpatient services" means all services covered
39 under Medi-Cal furnished by hospitals to patients who are
40 registered as hospital outpatients and reimbursed by the department

1 on a fee-for-service basis directly or through its fiscal intermediary.
2 Hospital outpatient services do not include services for which a
3 managed health care plan is financially responsible, or services
4 rendered by a hospital-based federally qualified health center for
5 which reimbursement is received pursuant to Section 14132.100.

6 (i) “Individual hospital acute psychiatric supplemental payment”
7 means the total amount of acute psychiatric hospital supplemental
8 payments to a subject hospital for a quarter for which the
9 supplemental payments are made. The “individual hospital acute
10 psychiatric supplemental payment” shall be calculated for subject
11 hospitals by multiplying the number of acute psychiatric days for
12 the individual hospital for which a mental health plan was
13 financially responsible by four hundred eighty-five dollars (\$485)
14 and dividing the result by four.

15 (j) (1) “Managed health care plan” means a health care delivery
16 system that manages the provision of health care and receives
17 prepaid capitated payments from the state in return for providing
18 services to Medi-Cal beneficiaries.

19 (2) (A) Managed health care plans include county organized
20 health systems and entities contracting with the department to
21 provide services pursuant to two-plan models and geographic
22 managed care. Entities providing these services contract with the
23 department pursuant to any of the following:

24 (i) Article 2.7 (commencing with Section 14087.3).

25 (ii) Article 2.8 (commencing with Section 14087.5).

26 (iii) Article 2.81 (commencing with Section 14087.96).

27 (iv) Article 2.91 (commencing with Section 14089).

28 (B) Managed health care plans do not include any of the
29 following:

30 (i) Mental health plans contracting to provide mental health care
31 for Medi-Cal beneficiaries pursuant to Part 2.5 (commencing with
32 Section 5775) of Division 5.

33 (ii) Health plans not covering inpatient services such as primary
34 care case management plans operating pursuant to Section
35 14088.85.

36 (iii) Program of All-Inclusive Care for the Elderly organizations
37 operating pursuant to Chapter 8.75 (commencing with Section
38 14591).

39 (k) “Medi-Cal managed care days” means the total number of
40 general acute care days, including well baby days, listed for the

1 county organized health system and prepaid health plans identified
2 in the Final Medi-Cal Utilization Statistics for the 2008–09 fiscal
3 year, as calculated by the department on September 15, 2008,
4 except that the general acute care days, including well baby days,
5 for the Santa Barbara Health Care Initiative shall be derived from
6 the Final Medi-Cal Utilization Statistics for the 2007–08 fiscal
7 year.

8 (l) “Medicaid inpatient utilization rate” means Medicaid
9 inpatient utilization rate as defined in Section 1396r-4 of Title 42
10 of the United States Code and as set forth in the final
11 disproportionate share hospital eligibility list for the 2008–09 fiscal
12 year released by the department on October 22, 2008.

13 (m) “Mental health plan” means a mental health plan that
14 contracts with the State Department of Mental Health to furnish
15 or arrange for the provision of mental health services to Medi-Cal
16 beneficiaries pursuant to Part 2.5 (commencing with Section 5775)
17 of Division 5.

18 (n) “New hospital” means a hospital operation, business, or
19 facility functioning under current or prior ownership as a private
20 hospital that does not have a days data source or a hospital that
21 has a days data source in whole, or in part, from a previous operator
22 where there is an outstanding monetary liability owed to the state
23 in connection with the Medi-Cal program and the new operator
24 did not assume liability for the outstanding monetary obligation.

25 (o) “New noncontract hospital” means a private hospital that
26 was a contract hospital on March 1, 2011, and elects to become a
27 noncontract hospital at any time between March 1, 2011, and the
28 end of the program period.

29 (p) “Nondesignated public hospital” means either of the
30 following:

31 (1) A public hospital that is licensed under subdivision (a) of
32 Section 1250 of the Health and Safety Code, is not designated as
33 a specialty hospital in the hospital’s annual financial disclosure
34 report for the hospital’s latest fiscal year ending in 2007, and
35 satisfies the definition in paragraph (25) of subdivision (a) of
36 Section 14105.98, excluding designated public hospitals.

37 (2) A tax-exempt nonprofit hospital that is licensed under
38 subdivision (a) of Section 1250 of the Health and Safety Code, is
39 not designated as a specialty hospital in the hospital’s annual
40 financial disclosure report for the hospital’s latest fiscal year ending

1 in 2007, is operating a hospital owned by a local health care district,
2 and is affiliated with the health care district hospital owner by
3 means of the district's status as the nonprofit corporation's sole
4 corporate member.

5 (q) "Outpatient base amount" means the total amount of
6 payments for hospital outpatient services made to a hospital in the
7 2007 calendar year, as reflected in the state paid claims files on
8 January 26, 2008.

9 (r) "Private hospital" means a hospital that meets all of the
10 following conditions:

11 (1) Is licensed pursuant to subdivision (a) of Section 1250 of
12 the Health and Safety Code.

13 (2) Is in the Charitable Research Hospital peer group, as set
14 forth in the 1991 Hospital Peer Grouping Report published by the
15 department, or is not designated as a specialty hospital in the
16 hospital's Office of Statewide Health Planning and Development
17 Annual Financial Disclosure Report for the hospital's latest fiscal
18 year ending in 2007.

19 (3) Does not satisfy the Medicare criteria to be classified as a
20 long-term care hospital.

21 (4) Is a nonpublic hospital, nonpublic converted hospital, or
22 converted hospital as those terms are defined in paragraphs (26)
23 to (28), inclusive, respectively, of subdivision (a) of Section
24 14105.98.

25 (s) "Program period" means the period from January 1, 2011,
26 to June 30, 2011, inclusive.

27 (t) "Subject fiscal quarter" means a state fiscal quarter beginning
28 on or after January 1, 2011, and ending before July 1, 2011.

29 (u) "Subject hospital" means a hospital that meets all of the
30 following conditions:

31 (1) Is licensed pursuant to subdivision (a) of Section 1250 of
32 the Health and Safety Code.

33 (2) Is in the Charitable Research Hospital peer group, as set
34 forth in the 1991 Hospital Peer Grouping Report published by the
35 department, or is not designated as a specialty hospital in the
36 hospital's Office of Statewide Health Planning and Development
37 Annual Financial Disclosure Report for the hospital's latest fiscal
38 year ending in 2007.

39 (3) Does not satisfy the Medicare criteria to be classified as a
40 long-term care hospital.

1 (v) “Subject month” means a calendar month beginning on or
2 after January 1, 2011, and ending before July 1, 2011.

3 (w) “Upper payment limit” means a federal upper payment limit
4 on the amount of the Medicaid payment for which federal financial
5 participation is available for a class of service and a class of health
6 care providers, as specified in Part 447 of Title 42 of the Code of
7 Federal Regulations.

8 SEC. 222. Section 14168.11 of the Welfare and Institutions
9 Code is amended to read:

10 14168.11. The department shall make disbursements from the
11 Hospital Quality Assurance Revenue Fund consistent with the
12 following:

13 (a) Fund disbursements shall be made periodically within 15
14 days of each date on which quality assurance fees are due from
15 hospitals.

16 (b) The funds shall be disbursed in accordance with the order
17 of priority set forth in subdivision (b) of Section 14168.33, subject
18 to the following:

19 (1) The amount disbursed for children’s health coverage shall
20 not exceed one hundred five million dollars (\$105,000,000) until
21 at least one-half of the aggregate supplemental payments to
22 hospitals due under Sections 14168.2 and 14168.3 are made.

23 (2) Funds may be set aside for increased capitation payments
24 to managed-care health *care* plans pursuant to subdivision (f) of
25 Section 14168.5.

26 (c) The funds shall be disbursed in each payment cycle in
27 accordance with the order of priority set forth in subdivision (b)
28 of Section 14168.33 as modified by subdivision (b), and so that
29 the supplemental payments to hospitals, increased capitation
30 payments to managed health care plans, ~~and~~ increased payments
31 to mental health plans, and direct payments to hospitals of acute
32 psychiatric supplemental payments are made to the maximum
33 extent for which funds are available.

34 (d) To the maximum extent possible, consistent with the
35 availability of funds in the quality assurance fund and the timing
36 of federal approvals, the supplemental payments to hospitals,
37 increased capitation payments to managed health care plans, and
38 increased payments to mental health plans under this article shall
39 be made before July 1, 2011.

1 (e) The aggregate amount of funds to be disbursed to private
 2 hospitals shall be determined under Sections 14168.2 and 14168.3.
 3 The aggregate amount of funds to be disbursed to managed health
 4 care plans shall be determined under Section 14168.5.

5 SEC. 223. Section 14169.1 of the Welfare and Institutions
 6 Code is amended to read:

7 14169.1. For the purposes of this article, the following
 8 definitions shall apply:

9 (a) “Acute psychiatric days” means the total number of
 10 Short-Doyle administrative days, Short-Doyle acute care days,
 11 acute psychiatric administrative days, and acute psychiatric acute
 12 days identified in the Tentative Medi-Cal Utilization Statistics for
 13 the 2011–12 state fiscal year as calculated by the department as
 14 of July 21, 2011.

15 (b) “Converted hospital” means a private hospital that becomes
 16 a designated public hospital or a nondesignated public hospital on
 17 or after July 1, 2011.

18 (c) “Days data source” means the hospital’s Annual Financial
 19 Disclosure Report filed with the Office of Statewide Health
 20 Planning and Development as of May 5, 2011, for its fiscal year
 21 ending during 2009.

22 (d) “Designated public hospital” shall have the meaning given
 23 in subdivision (d) of Section 14166.1 as of July 1, 2011.

24 (e) “General acute care days” means the total number of
 25 Medi-Cal general acute care days paid by the department to a
 26 hospital for services in the 2009 calendar year, as reflected in the
 27 state paid claims file on July 15, 2011.

28 (f) “High acuity days” means Medi-Cal coronary care unit days,
 29 pediatric intensive care unit days, intensive care unit days, neonatal
 30 intensive care unit days, and burn unit days paid by the department
 31 during the 2009 calendar year, as reflected in the state paid claims
 32 file prepared by the department on July 15, 2011.

33 (g) “Hospital inpatient services” means all services covered
 34 under Medi-Cal and furnished by hospitals to patients who are
 35 admitted as hospital inpatients and reimbursed on a fee-for-service
 36 basis by the department directly or through its fiscal intermediary.
 37 Hospital inpatient services include outpatient services furnished
 38 by a hospital to a patient who is admitted to that hospital within
 39 24 hours of the provision of the outpatient services that are related
 40 to the condition for which the patient is admitted. Hospital inpatient

1 services do not include services for which a managed health care
2 plan is financially responsible.

3 (h) “Hospital outpatient services” means all services covered
4 under Medi-Cal furnished by hospitals to patients who are
5 registered as hospital outpatients and reimbursed by the department
6 on a fee-for-service basis directly or through its fiscal intermediary.
7 Hospital outpatient services do not include services for which a
8 managed health care plan is financially responsible, or services
9 rendered by a hospital-based federally qualified health center for
10 which reimbursement is received pursuant to Section 14132.100.

11 (i) “Individual hospital acute psychiatric supplemental payment”
12 means the total amount of acute psychiatric hospital supplemental
13 payments to a subject hospital for a quarter for which the
14 supplemental payments are made. The “individual hospital acute
15 psychiatric supplemental payment” shall be calculated for subject
16 hospitals by multiplying the number of acute psychiatric days for
17 the individual hospital for which a mental health plan was
18 financially responsible by the amount calculated in accordance
19 with paragraph (2) of subdivision (b) of Section 14169.3 and
20 dividing the result by four.

21 (j) (1) “Managed health care plan” means a health care delivery
22 system that manages the provision of health care and receives
23 prepaid capitated payments from the state in return for providing
24 services to Medi-Cal beneficiaries.

25 (2) (A) Managed health care plans include county organized
26 health systems and entities contracting with the department to
27 provide services pursuant to two-plan models and geographic
28 managed care. Entities providing these services contract with the
29 department pursuant to any of the following:

- 30 (i) Article 2.7 (commencing with Section 14087.3).
- 31 (ii) Article 2.8 (commencing with Section 14087.5).
- 32 (iii) Article 2.81 (commencing with Section 14087.96).
- 33 (iv) Article 2.91 (commencing with Section 14089).

34 (B) Managed health care plans do not include any of the
35 following:

- 36 (i) Mental health plans contracting to provide mental health care
37 for Medi-Cal beneficiaries pursuant to Part 2.5 (commencing with
38 Section 5775) of Division 5.

1 (ii) Health plans not covering inpatient services such as primary
2 care case management plans operating pursuant to Section
3 14088.85.

4 (iii) Program for All-Inclusive Care for the Elderly organizations
5 operating pursuant to Chapter 8.75 (commencing with Section
6 14591).

7 (k) “Medi-Cal managed care days” means the total number of
8 general acute care days, including well baby days, listed for the
9 county organized health system and prepaid health plans identified
10 in the Tentative Medi-Cal Utilization Statistics for the 2011–12
11 fiscal year, as calculated by the department as of July 21, 2011.

12 (l) “Medicaid inpatient utilization rate” means Medicaid
13 inpatient utilization rate as defined in Section 1396r-4 of Title 42
14 of the United States Code and as set forth in the final
15 disproportionate share hospital eligibility list for the 2010–11 fiscal
16 year released by the department as of May 1, 2011.

17 (m) “Mental health plan” means a mental health plan that
18 contracts with the state to furnish or arrange for the provision of
19 mental health services to Medi-Cal beneficiaries pursuant to Part
20 2.5 (commencing with Section 5775) of Division 5.

21 (n) “New hospital” means a hospital operation, business, or
22 facility functioning under current or prior ownership as a private
23 hospital that does not have a days data source or a hospital that
24 has a days data source in whole, or in part, from a previous operator
25 where there is an outstanding monetary liability owed to the state
26 in connection with the Medi-Cal program and the new operator
27 did not assume liability for the outstanding monetary obligation.

28 (o) “New noncontract hospital” means a private hospital that
29 was a contract hospital on March 1, 2011, and elects to become a
30 noncontract hospital at any time between March 1, 2011, and the
31 end of the program period.

32 (p) “Nondesignated public hospital” means either of the
33 following:

34 (1) A public hospital that is licensed under subdivision (a) of
35 Section 1250 of the Health and Safety Code, is not designated as
36 a specialty hospital in the hospital’s Annual Financial Disclosure
37 Report for the hospital’s latest fiscal year ending in 2009, and
38 satisfies the definition in paragraph (25) of subdivision (a) of
39 Section 14105.98, excluding designated public hospitals.

1 (2) A tax-exempt nonprofit hospital that is licensed under
2 subdivision (a) of Section 1250 of the Health and Safety Code, is
3 not designated as a specialty hospital in the hospital’s Annual
4 Financial Disclosure Report for the hospital’s latest fiscal year
5 ending in 2009, is operating a hospital owned by a local health
6 care district, and is affiliated with the health care district hospital
7 owner by means of the district’s status as the nonprofit
8 corporation’s sole corporate member.

9 (q) “Outpatient base amount” means the total amount of
10 payments for hospital outpatient services made to a hospital in the
11 2009 calendar year, as reflected in the state paid claims files
12 prepared by the department on June 2, 2011.

13 (r) “Private hospital” means a hospital that meets all of the
14 following conditions:

15 (1) Is licensed pursuant to subdivision (a) of Section 1250 of
16 the Health and Safety Code.

17 (2) Is in the Charitable Research Hospital peer group, as set
18 forth in the 1991 Hospital Peer Grouping Report published by the
19 department, or is not designated as a specialty hospital in the
20 hospital’s Office of Statewide Health Planning and Development
21 Annual Financial Disclosure Report for the hospital’s latest fiscal
22 year ending in 2009.

23 (3) Does not satisfy the Medicare criteria to be classified as a
24 long-term care hospital.

25 (4) Is a nonpublic hospital, nonpublic converted hospital, or
26 converted hospital as those terms are defined in paragraphs (26)
27 to (28), inclusive, respectively, of subdivision (a) of Section
28 14105.98.

29 (s) “Program period” means the period from July 1, 2011, to
30 December 31, 2013, inclusive.

31 (t) “Subject fiscal quarter” means a state fiscal quarter beginning
32 on or after July 1, 2011, and ending before January 1, 2014.

33 (u) “Subject fiscal year” means a state fiscal year that ends after
34 July 1, 2011, and begins before January 1, 2014.

35 (v) “Subject hospital” means a hospital that meets all of the
36 following conditions:

37 (1) Is licensed pursuant to subdivision (a) of Section 1250 of
38 the Health and Safety Code.

39 (2) Is in the Charitable Research Hospital peer group, as set
40 forth in the 1991 Hospital Peer Grouping Report published by the

1 department, or is not designated as a specialty hospital in the
2 hospital's Office of Statewide Health Planning and Development
3 Annual Financial Disclosure Report for the hospital's latest fiscal
4 year ending in 2009.

5 (3) Does not satisfy the Medicare criteria to be classified as a
6 long-term care hospital.

7 (w) "Subject month" means a calendar month beginning on or
8 after July 1, 2011, and ending before January 1, 2014.

9 (x) "Upper payment limit" means a federal upper payment limit
10 on the amount of the Medicaid payment for which federal financial
11 participation is available for a class of service and a class of health
12 care providers, as specified in Part 447 of Title 42 of the Code of
13 Federal Regulations. The applicable upper payment limit shall be
14 separately calculated for inpatient and outpatient hospital services.

15 SEC. 224. Section 14182 of the Welfare and Institutions Code
16 is amended to read:

17 14182. (a) (1) In furtherance of the waiver or demonstration
18 project developed pursuant to Section 14180, the department may
19 require seniors and persons with disabilities who do not have other
20 health coverage to be assigned as mandatory enrollees into new
21 or existing managed care health plans. To the extent that enrollment
22 is required by the department, an enrollee's access to
23 fee-for-service Medi-Cal shall not be terminated until the enrollee
24 has been assigned to a managed care health plan.

25 (2) For purposes of this section:

26 (A) "Other health coverage" means health coverage providing
27 the same full or partial benefits as the Medi-Cal program, health
28 coverage under another state or federal medical care program, or
29 health coverage under contractual or legal entitlement, including,
30 but not limited to, a private group or indemnification insurance
31 program.

32 (B) "Managed care health plan" means an individual,
33 organization, or entity that enters into a contract with the
34 department pursuant to Article 2.7 (commencing with Section
35 14087.3), Article 2.81 (commencing with Section 14087.96),
36 Article 2.91 (commencing with Section 14089), or Chapter 8
37 (commencing with Section 14200).

38 (b) In exercising its authority pursuant to subdivision (a), the
39 department shall do all of the following:

1 (1) Assess and ensure the readiness of the managed care health
2 plans to address the unique needs of seniors or persons with
3 disabilities pursuant to the applicable readiness evaluation criteria
4 and requirements set forth in paragraphs (1) to (8), inclusive, of
5 subdivision (b) of Section 14087.48.

6 (2) Ensure the managed care health plans provide access to
7 providers that comply with applicable state and federal laws,
8 including, but not limited to, physical accessibility and the
9 provision of health plan information in alternative formats.

10 (3) Develop and implement an outreach and education program
11 for seniors and persons with disabilities, not currently enrolled in
12 Medi-Cal managed care, to inform them of their enrollment options
13 and rights under the demonstration project. Contingent upon
14 available private or public dollars other than moneys from the
15 General Fund, the department or its designated agent for enrollment
16 and outreach may partner or contract with community-based,
17 nonprofit consumer or health insurance assistance organizations
18 with expertise and experience in assisting seniors and persons with
19 disabilities in understanding their health care coverage options.
20 Contracts entered into or amended pursuant to this paragraph shall
21 be exempt from Chapter 2 (commencing with Section 10290) of
22 Part 2 of Division 2 of the Public Contract Code and any
23 implementing regulations or policy directives.

24 (4) At least three months prior to enrollment, inform
25 beneficiaries who are seniors or persons with disabilities, through
26 a notice written at no more than a sixth grade reading level, about
27 the forthcoming changes to their delivery of care, including, at a
28 minimum, how their system of care will change, when the changes
29 will occur, and whom they can contact for assistance with choosing
30 a delivery system or with problems they encounter. In developing
31 this notice, the department shall consult with consumer
32 representatives and other stakeholders.

33 (5) Implement an appropriate cultural awareness and sensitivity
34 training program regarding serving seniors and persons with
35 disabilities for managed care health plans and plan providers and
36 staff in the Medi-Cal Managed Care Division of the department.

37 (6) Establish a process for assigning enrollees into an organized
38 delivery system for beneficiaries who do not make an affirmative
39 selection of a managed care health plan. The department shall
40 develop this process in consultation with stakeholders and in a

1 manner consistent with the waiver or demonstration project
2 developed pursuant to Section 14180. The department shall base
3 plan assignment on an enrollee's existing or recent utilization of
4 providers, to the extent possible. If the department is unable to
5 make an assignment based on the enrollee's affirmative selection
6 or utilization history, the department shall base plan assignment
7 on factors, including, but not limited to, plan quality and the
8 inclusion of local health care safety net system providers in the
9 plan's provider network.

10 (7) Review and approve the mechanism or algorithm that has
11 been developed by the managed care health plan, in consultation
12 with the plan's stakeholders and consumers, to identify, within the
13 earliest possible timeframe, persons with higher risk and more
14 complex health care needs pursuant to paragraph (11) of
15 subdivision (c).

16 (8) Provide managed care health plans with historical utilization
17 data for beneficiaries upon enrollment in a managed care health
18 plan so that the plans participating in the demonstration project
19 are better able to assist beneficiaries and prioritize assessment and
20 care planning.

21 (9) Develop and provide managed care health plans participating
22 in the demonstration project with a facility site review tool for use
23 in assessing the physical accessibility of providers, including
24 specialists and ancillary service providers that provide care to a
25 high volume of seniors and persons with disabilities, at a clinic or
26 provider site, to ensure that there are sufficient physically
27 accessible providers. Every managed care health plan participating
28 in the demonstration project shall make the results of the facility
29 site review tool publicly available on their Internet Web site and
30 shall regularly update the results to the department's satisfaction.

31 (10) Develop a process to enforce legal sanctions, including,
32 but not limited to, financial penalties, withholding of Medi-Cal
33 payments, enrollment termination, and contract termination, in
34 order to sanction any managed care health plan in the
35 demonstration project that consistently or repeatedly fails to meet
36 performance standards provided in statute or contract.

37 (11) Ensure that managed care health plans provide a mechanism
38 for enrollees to request a specialist or clinic as a primary care
39 provider. A specialist or clinic may serve as a primary care provider
40 if the specialist or clinic agrees to serve in a primary care provider

1 role and is qualified to treat the required range of conditions of the
2 enrollee.

3 (12) Ensure that managed care health plans participating in the
4 demonstration project are able to provide communication access
5 to seniors and persons with disabilities in alternative formats or
6 through other methods that ensure communication, including
7 assistive listening systems, sign language interpreters, captioning,
8 written communication, plain language or written translations and
9 oral interpreters, including for those who are limited
10 English-proficient, or non-English speaking, and that all managed
11 care health plans are in compliance with applicable cultural and
12 linguistic requirements.

13 (13) Ensure that managed care health plans participating in the
14 demonstration project provide access to out-of-network providers
15 for new individual members enrolled under this section who have
16 an ongoing relationship with a provider if the provider will accept
17 the health plan's rate for the service offered, or the applicable
18 Medi-Cal fee-for-service rate, whichever is higher, and the health
19 plan determines that the provider meets applicable professional
20 standards and has no disqualifying quality of care issues.

21 (14) Ensure that managed care health plans participating in the
22 demonstration project comply with continuity of care requirements
23 in Section 1373.96 of the Health and Safety Code.

24 (15) Ensure that the medical exemption criteria applied in
25 counties operating under Chapter 4.1 (commencing with Section
26 53800) or Chapter 4.5 (commencing with Section 53900) of
27 Subdivision 1 of Division 3 of Title 22 of the California Code of
28 Regulations are applied to seniors and persons with disabilities
29 served under this section.

30 (16) Ensure that managed care health plans participating in the
31 demonstration project take into account the behavioral health needs
32 of enrollees and include behavioral health services as part of the
33 enrollee's care management plan when appropriate.

34 (17) Develop performance measures that are required as part
35 of the contract to provide quality indicators for the Medi-Cal
36 population enrolled in a managed care health plan and for the
37 subset of enrollees who are seniors and persons with disabilities.
38 These performance measures may include measures from the
39 Healthcare Effectiveness Data and Information Set (HEDIS) or
40 measures indicative of performance in serving special needs

1 populations, such as the National Committee for Quality Assurance
2 (NCQA) Structure and Process measures, or both.

3 (18) Conduct medical audit reviews of participating managed
4 care health plans that include elements specifically related to the
5 care of seniors and persons with disabilities. These medical audits
6 shall include, but not be limited to, evaluation of the delivery
7 model's policies and procedures, performance in utilization
8 management, continuity of care, availability and accessibility,
9 member rights, and quality management.

10 (19) Conduct financial audit reviews to ensure that a financial
11 statement audit is performed on managed care health plans annually
12 pursuant to the Generally Accepted Auditing Standards, and
13 conduct other risk-based audits for the purpose of detecting fraud
14 and irregular transactions.

15 (c) Prior to exercising its authority under this section and Section
16 14180, the department shall ensure that each managed care health
17 plan participating in the demonstration project is able to do all of
18 the following:

19 (1) Comply with the applicable readiness evaluation criteria
20 and requirements set forth in paragraphs (1) to (8), inclusive, of
21 subdivision (b) of Section 14087.48.

22 (2) Ensure and monitor an appropriate provider network,
23 including primary care physicians, specialists, professional, allied,
24 and medical supportive personnel, and an adequate number of
25 accessible facilities within each service area. Managed care health
26 plans shall maintain an updated, accurate, and accessible listing
27 of a provider's ability to accept new patients and shall make it
28 available to enrollees, at a minimum, by ~~phone~~ *telephone*, written
29 material, and Internet Web site.

30 (3) Assess the health care needs of beneficiaries who are seniors
31 or persons with disabilities and coordinate their care across all
32 settings, including coordination of necessary services within and,
33 where necessary, outside of the plan's provider network.

34 (4) Ensure that the provider network and informational materials
35 meet the linguistic and other special needs of seniors and persons
36 with disabilities, including providing information in an
37 understandable manner in plain language, maintaining toll-free
38 telephone lines, and offering member or ombudsperson services.

39 (5) Provide clear, timely, and fair processes for accepting and
40 acting upon complaints, grievances, and disenrollment requests,

1 including procedures for appealing decisions regarding coverage
2 or benefits. Each managed care health plan participating in the
3 demonstration project shall have a grievance process that complies
4 with Section 14450, and Sections 1368 and 1368.01 of the Health
5 and Safety Code.

6 (6) Solicit stakeholder and member participation in advisory
7 groups for the planning and development activities related to the
8 provision of services for seniors and persons with disabilities.

9 (7) Contract with safety net and traditional providers as defined
10 in subdivisions (hh) and (jj) of Section 53810 of Title 22 of the
11 California Code of Regulations, to ensure access to care and
12 services. The managed care health plan shall establish participation
13 standards to ensure participation and broad representation of
14 traditional and safety net providers within a service area.

15 (8) Inform seniors and persons with disabilities of procedures
16 for obtaining transportation services to service sites that are offered
17 by the plan or are available through the Medi-Cal program.

18 (9) Monitor the quality and appropriateness of care for children
19 with special health care needs, including children eligible for, or
20 enrolled in, the California Children's Services Program, and seniors
21 and persons with disabilities.

22 (10) Maintain a dedicated liaison to coordinate with each
23 regional center operating within the plan's service area to assist
24 members with developmental disabilities in understanding and
25 accessing services and act as a central point of contact for
26 questions, access and care concerns, and problem resolution.

27 (11) At the time of enrollment apply the risk stratification
28 mechanism or algorithm described in paragraph (7) of subdivision
29 (b) approved by the department to determine the health risk level
30 of beneficiaries.

31 (12) (A) Managed care health plans shall assess an enrollee's
32 current health risk by administering a risk assessment survey tool
33 approved by the department. This risk assessment survey shall be
34 performed within the following timeframes:

35 (i) Within 45 days of plan enrollment for individuals determined
36 to be at higher risk pursuant to paragraph (11).

37 (ii) Within 105 days of plan enrollment for individuals
38 determined to be at lower risk pursuant to paragraph (11).

39 (B) Based on the results of the current health risk assessment,
40 managed care health plans shall develop individual care plans for

1 higher risk beneficiaries that shall include the following minimum
2 components:

- 3 (i) Identification of medical care needs, including primary care,
4 specialty care, durable medical equipment, medications, and other
5 needs with a plan for care coordination as needed.
- 6 (ii) Identification of needs and referral to appropriate community
7 resources and other agencies as needed for services outside the
8 scope of responsibility of the managed care health plan.
- 9 (iii) Appropriate involvement of caregivers.
- 10 (iv) Determination of timeframes for reassessment and, if
11 necessary, circumstances or conditions that require redetermination
12 of risk level.

13 (13) (A) Establish medical homes to which enrollees are
14 assigned that include, at a minimum, all of the following elements,
15 which shall be considered in the provider contracting process:

- 16 (i) A primary care physician who is the primary clinician for
17 the beneficiary and who provides core clinical management
18 functions.
- 19 (ii) Care management and care coordination for the beneficiary
20 across the health care system including transitions among levels
21 of care.
- 22 (iii) Provision of referrals to qualified professionals, community
23 resources, or other agencies for services or items outside the scope
24 of responsibility of the managed care health plan.
- 25 (iv) Use of clinical data to identify beneficiaries at the care site
26 with chronic illness or other significant health issues.
- 27 (v) Timely preventive, acute, and chronic illness treatment in
28 the appropriate setting.
- 29 (vi) Use of clinical guidelines or other evidence-based medicine
30 when applicable for treatment of beneficiaries' health care issues
31 or timing of clinical preventive services.

32 (B) In implementing this section, and the Special Terms and
33 Conditions of the demonstration project, the department may alter
34 the medical home elements described in this paragraph as necessary
35 to secure the increased federal financial participation associated
36 with the provision of medical assistance in conjunction with a
37 health home, as made available under the federal Patient Protection
38 and Affordable Care Act (P.L. 111-148), as amended by the federal
39 Health Care and Education Reconciliation Act of 2010 (P.L.
40 111-152), and codified in Section 1945 of Title XIX of the federal

1 Social Security Act. The department shall notify the appropriate
2 policy and fiscal committees of the Legislature of its intent to alter
3 medical home elements under this section at least five days in
4 advance of taking this action.

5 (14) Perform, at a minimum, the following care management
6 and care coordination functions and activities for enrollees who
7 are seniors or persons with disabilities:

8 (A) Assessment of each new enrollee's risk level and health
9 needs shall be conducted through a standardized risk assessment
10 survey by means such as telephonic, *Internet* Web-based, or
11 in-person communication or by other means as determined by the
12 department.

13 (B) Facilitation of timely access to primary care, specialty care,
14 durable medical equipment, medications, and other health services
15 needed by the enrollee, including referrals to address any physical
16 or cognitive barriers to access.

17 (C) Active referral to community resources or other agencies
18 for needed services or items outside the managed care health plans
19 responsibilities.

20 (D) Facilitating communication among the beneficiaries' health
21 care providers, including mental health and substance abuse
22 providers when appropriate.

23 (E) Other activities or services needed to assist beneficiaries in
24 optimizing their health status, including assisting with
25 self-management skills or techniques, health education, and other
26 modalities to improve health status.

27 (d) Except in a county where Medi-Cal services are provided
28 by a county organized health system, and notwithstanding any
29 other provision of law, in any county in which fewer than two
30 existing managed care health plans contract with the department
31 to provide Medi-Cal services under this chapter, the department
32 may contract with additional managed care health plans to provide
33 Medi-Cal services for seniors and persons with disabilities and
34 other Medi-Cal beneficiaries.

35 (e) Beneficiaries enrolled in managed care health plans pursuant
36 to this section shall have the choice to continue an established
37 patient-provider relationship in a managed care health plan
38 participating in the demonstration project if his or her treating
39 provider is a primary care provider or clinic contracting with the

1 managed care health plan and agrees to continue to treat that
2 beneficiary.

3 (f) The department may contract with existing managed care
4 health plans to operate under the demonstration project to provide
5 or arrange for services under this section. Notwithstanding any
6 other provision of law, the department may enter into the contract
7 without the need for a competitive bid process or other contract
8 proposal process, provided the managed care health plan provides
9 written documentation that it meets all qualifications and
10 requirements of this section.

11 (g) This section shall be implemented only to the extent that
12 federal financial participation is available.

13 (h) (1) The development of capitation rates for managed care
14 health plan contracts shall include the analysis of data specific to
15 the seniors and persons with disabilities population. For the
16 purposes of developing capitation rates for payments to managed
17 care health plans, the director may require managed care health
18 plans, including existing managed care health plans, to submit
19 financial and utilization data in a form, time, and substance as
20 deemed necessary by the department.

21 (2) (A) Notwithstanding Section 14301, the department may
22 incorporate, on a one-time basis for a three-year period, a
23 risk-sharing mechanism in a contract with the local initiative health
24 plan in the county with the highest normalized fee-for-service risk
25 score over the normalized managed care risk score listed in Table
26 1.0 of the Medi-Cal Acuity Study Seniors and Persons with
27 Disabilities (SPD) report written by Mercer Government Human
28 Services Consulting and dated September 28, 2010, if the local
29 initiative health plan meets the requirements of subparagraph (B).
30 The Legislature finds and declares that this risk-sharing mechanism
31 will limit the risk of beneficial or adverse effects associated with
32 a contract to furnish services pursuant to this section on an at-risk
33 basis.

34 (B) The local initiative health plan shall pay the nonfederal
35 share of all costs associated with the development, implementation,
36 and monitoring of the risk-sharing mechanism established pursuant
37 to subparagraph (A) by means of intergovernmental transfers. The
38 nonfederal share includes the state costs of staffing, state
39 contractors, or administrative costs directly attributable to
40 implementing subparagraph (A).

1 (C) This subdivision shall be implemented only to the extent
2 federal financial participation is not jeopardized.

3 (i) Persons meeting participation requirements for the Program
4 of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter
5 8.75 (commencing with Section 14591), may select a PACE plan
6 if one is available in that county.

7 (j) Persons meeting the participation requirements in effect on
8 January 1, 2010, for a Medi-Cal primary care case management
9 (PCCM) plan in operation on that date, may select that PCCM
10 plan or a successor health care plan that is licensed pursuant to the
11 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
12 (commencing with Section 1340) of Division 2 of the Health and
13 Safety Code) to provide services within the same geographic area
14 that the PCCM plan served on January 1, 2010.

15 (k) Notwithstanding Chapter 3.5 (commencing with Section
16 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
17 the department may implement, interpret, or make specific this
18 section and any applicable federal waivers and state plan
19 amendments by means of all-county letters, plan letters, plan or
20 provider bulletins, or similar instructions, without taking regulatory
21 action. Prior to issuing any letter or similar instrument authorized
22 pursuant to this section, the department shall notify and consult
23 with stakeholders, including advocates, providers, and
24 beneficiaries. The department shall notify the appropriate policy
25 and fiscal committees of the Legislature of its intent to issue
26 instructions under this section at least five days in advance of the
27 issuance.

28 (l) Consistent with state law that exempts Medi-Cal managed
29 care contracts from Chapter 2 (commencing with Section 10290)
30 of Part 2 of Division 2 of the Public Contract Code, and in order
31 to achieve maximum cost savings, the Legislature hereby
32 determines that an expedited contract process is necessary for
33 contracts entered into or amended pursuant to this section. The
34 contracts and amendments entered into or amended pursuant to
35 this section shall be exempt from Chapter 2 (commencing with
36 Section 10290) of Part 2 of Division 2 of the Public Contract Code
37 and the requirements of State Administrative Management Manual
38 Memo 03-10. The department shall make the terms of a contract
39 available to the public within 30 days of the contract's effective
40 date.

1 (m) In the event of a conflict between the Special Terms and
2 Conditions of the approved demonstration project, including any
3 attachment thereto, and any provision of this part, the Special
4 Terms and Conditions shall control. If the department identifies a
5 specific provision of this article that conflicts with a term or
6 condition of the approved waiver or demonstration project, or an
7 attachment thereto, the term or condition shall control, and the
8 department shall so notify the appropriate fiscal and policy
9 committees of the Legislature within 15 business days.

10 (n) In the event of a conflict between the provisions of this
11 article and any other provision of this part, the provisions of this
12 article shall control.

13 (o) Any otherwise applicable provisions of this chapter, Chapter
14 8 (commencing with Section 14200), or Chapter 8.75 (commencing
15 with Section 14591) not in conflict with this article or with the
16 terms and conditions of the demonstration project shall apply to
17 this section.

18 (p) To the extent that the director utilizes state plan amendments
19 or waivers to accomplish the purposes of this article in addition
20 to waivers granted under the demonstration project, the terms of
21 the state plan amendments or waivers shall control in the event of
22 a conflict with any provision of this part.

23 (q) (1) Enrollment of seniors and persons with disabilities into
24 a managed care health plan under this section shall be accomplished
25 using a phased-in process to be determined by the department and
26 shall not commence until necessary federal approvals have been
27 acquired or until June 1, 2011, whichever is later.

28 (2) Notwithstanding paragraph (1), and at the director's
29 discretion, enrollment in Los Angeles County of seniors and
30 persons with disabilities may be phased in over a 12-month period
31 using a geographic region method that is proposed by Los Angeles
32 County subject to approval by the department.

33 (r) A managed care health plan established pursuant to this
34 section, or under the Special Terms and Conditions of the
35 demonstration project pursuant to Section 14180, shall be subject
36 to, and comply with, the requirement for submission of encounter
37 data specified in Section 14182.1.

38 (s) (1) Commencing January 1, 2011, and until January 1, 2014,
39 the department shall provide the fiscal and policy committees of
40 the Legislature with semiannual updates regarding core activities

1 for the enrollment of seniors and persons with disabilities into
2 managed care health plans pursuant to the pilot program. The
3 semiannual updates shall include key milestones, progress toward
4 the objectives of the pilot program, relevant or necessary changes
5 to the program, submittal of state plan amendments to the federal
6 Centers for Medicare and Medicaid Services, submittal of any
7 federal waiver documents, and other key activities related to the
8 mandatory enrollment of seniors and persons with disabilities into
9 managed care health plans. The department shall also include
10 updates on the transition of individuals into managed care health
11 plans, the health outcomes of enrollees, the care management and
12 coordination process, and other information concerning the success
13 or overall status of the pilot program.

14 (2) (A) The requirement for submitting a report imposed under
15 paragraph (1) is inoperative on January 1, 2015, pursuant to Section
16 10231.5 of the Government Code.

17 (B) A report to be submitted pursuant to paragraph (1) shall be
18 submitted in compliance with Section 9795 of the Government
19 Code.

20 (t) The department, in collaboration with the State Department
21 of Social Services and county welfare departments, shall monitor
22 the utilization and caseload of the In-Home Supportive Services
23 (IHSS) program before and during the implementation of the pilot
24 program. This information shall be monitored in order to identify
25 the impact of the pilot program on the IHSS program for the
26 affected population.

27 (u) Services under Section 14132.95 or 14132.952, or Article
28 7 (commencing with Section 12300) of Chapter 3 that are provided
29 to individuals assigned to managed care health plans under this
30 section shall be provided through direct hiring of personnel,
31 contract, or establishment of a public authority or nonprofit
32 consortium, in accordance with and subject to the requirements of
33 ~~Section 12302~~ 12301.6 or ~~12301.6~~ 12302, as applicable.

34 (v) The department shall, at a minimum, monitor on a quarterly
35 basis the adequacy of provider networks of the managed care health
36 plans.

37 (w) The department shall suspend new enrollment of seniors
38 and persons with disabilities into a managed care health plan if it
39 determines that the managed care health plan does not have

1 sufficient primary or specialty providers to meet the needs of their
2 enrollees.

3 SEC. 225. Section 14589 of the Welfare and Institutions Code
4 is amended to read:

5 14589. (a) The Legislature finds and declares the following:

6 (1) During times of economic crisis, it is crucial to find areas
7 within the program where efficiencies can be achieved while
8 continuing to provide community-based services that support
9 independence.

10 (2) Adult Day Health Care (ADHC) has been vulnerable to
11 fraud and, despite attempts to curtail and prevent fraud, including,
12 but not limited to, a moratorium on new facilities and onsite
13 treatment authorization request review, fraud continues in this
14 area.

15 (3) The state has added services and programs to enable
16 vulnerable populations to remain in the community, including, but
17 not limited to, the Money Follows the Person project, California's
18 Section 1115(a) Comprehensive Medi-Cal Demonstration Project
19 Waiver: a Bridge to Reform, and services and supports, including
20 day programs, provided under the Lanterman Developmental
21 Disabilities Services Act (Division 4.5 (commencing with Section
22 4500)). It also continues to explore opportunities to add additional
23 services and programs to help individuals remain in the community,
24 including, but not limited to, pilot projects to better meet the health
25 care needs of individuals dually eligible for both Medicare and
26 Medicaid, and exploring the Community First Choice Option as
27 a Medi-Cal benefit.

28 (4) There are alternative services to meet the needs of Medi-Cal
29 beneficiaries utilizing ADHC, including in-home supportive
30 services, physical, occupational, and speech therapies,
31 nonemergency medical transportation, and home health services.

32 (b) Therefore, it is the intent of the Legislature for the
33 department to obtain federal approval to eliminate ADHC as an
34 optional Medi-Cal benefit.

35 SEC. 226. Section 14701 of the Welfare and Institutions Code
36 is amended to read:

37 14701. (a) The State Department of Health Care Services, in
38 collaboration with the State Department of Mental Health and the
39 California Health and Human Services Agency, shall create a state
40 administrative and programmatic transition plan, either as one

1 comprehensive transition plan or separately, to guide the transfer
2 of the Medi-Cal specialty mental health managed care and the
3 EPSDT Program to the State Department of Health Care Services
4 effective July 1, 2012.

5 (1) Commencing no later than July 15, 2011, the State
6 Department of Health Care Services, together with the State
7 Department of Mental Health, shall convene a series of stakeholder
8 meetings and forums to receive input from clients, family members,
9 providers, counties, and representatives of the Legislature
10 concerning the transition and transfer of Medi-Cal specialty mental
11 health managed care and the EPSDT Program. This consultation
12 shall inform the creation of a state administrative transition plan
13 and a programmatic transition plan that shall include, but is not
14 limited to, the following components:

15 (A) ~~Plan~~*The plan* shall ensure it is developed in a way that
16 continues access and quality of service during and immediately
17 after the transition, preventing any disruption of services to clients
18 and family members, providers and counties, and others affected
19 by this transition.

20 (B) A detailed description of the state administrative functions
21 currently performed by the State Department of Mental Health
22 regarding Medi-Cal specialty mental health managed care and the
23 EPSDT Program.

24 (C) Explanations of the operational steps, timelines, and key
25 milestones for determining when and how each function or program
26 will be transferred. These explanations shall also be developed for
27 the transition of positions and staff serving Medi-Cal specialty
28 mental health managed care and the EPSDT Program, and how
29 these will relate to, and align with, positions at the State
30 Department of Health Care Services. The State Department of
31 Health Care Services and the California Health and Human
32 Services Agency shall consult with the Department of Personnel
33 Administration in developing this aspect of the transition plan.

34 (D) A list of any planned or proposed changes or efficiencies
35 in how the functions will be performed, including the anticipated
36 fiscal and programmatic impacts of the changes.

37 (E) A detailed organization chart that reflects the planned
38 staffing at the State Department of Health Care Services in light
39 of the requirements of subparagraphs (A) to (C), inclusive, and
40 includes focused, high-level leadership for behavioral health issues.

1 (F) A description of how stakeholders were included in the
2 various phases of the planning process to formulate the transition
3 plans and a description of how their feedback will be taken into
4 consideration after transition activities are underway.

5 (2) The State Department of Health Care Services, together with
6 the State Department of Mental Health and the California Health
7 and Human Services Agency, shall convene and consult with
8 stakeholders at least twice following production of a draft of the
9 transition plans and before submission of transition plans to the
10 Legislature. Continued consultation with stakeholders shall occur
11 in accordance with the requirement in subparagraph (F) of
12 paragraph (1).

13 (b) The State Department of Health Care Services shall provide
14 the transition plans described in subdivision (a) to all fiscal
15 committees and appropriate policy committees of the Legislature
16 no later than October 1, 2011. The transition plans may also be
17 updated by the Governor and provided to all fiscal and applicable
18 policy committees of the Legislature upon its completion, but no
19 later than May 15, 2012.

20 SEC. 227. Section 15657.03 of the Welfare and Institutions
21 Code is amended to read:

22 15657.03. (a) (1) An elder or dependent adult who has suffered
23 abuse as defined in Section 15610.07 may seek protective orders
24 as provided in this section.

25 (2) A petition may be brought on behalf of an abused elder or
26 dependent adult by a conservator or a trustee of the elder or
27 dependent adult, an attorney-in-fact of an elder or dependent adult
28 who acts within the authority of the power of attorney, a person
29 appointed as a guardian ad litem for the elder or dependent adult,
30 or other person legally authorized to seek such relief.

31 (b) For the purposes of this section:

32 (1) "Conservator" means the legally appointed conservator of
33 the person or estate of the petitioner, or both.

34 (2) "Petitioner" means the elder or dependent adult to be
35 protected by the protective orders and, if the court grants the
36 petition, the protected person.

37 (3) "Protective order" means an order that includes any of the
38 following restraining orders, whether issued ex parte, after notice
39 and hearing, or in a judgment:

1 (A) An order enjoining a party from abusing, intimidating,
2 molesting, attacking, striking, stalking, threatening, sexually
3 assaulting, battering, harassing, telephoning, including, but not
4 limited to, making annoying telephone calls as described in Section
5 653m of the Penal Code, destroying personal property, contacting,
6 either directly or indirectly, by mail or otherwise, or coming within
7 a specified distance of, or disturbing the peace of, the petitioner,
8 and, in the discretion of the court, on a showing of good cause, of
9 other named family or household members or a conservator, if
10 any, of the petitioner.

11 (B) An order excluding a party from the petitioner’s residence
12 or dwelling, except that this order shall not be issued if legal or
13 equitable title to, or lease of, the residence or dwelling is in the
14 sole name of the party to be excluded, or is in the name of the party
15 to be excluded and any other party besides the petitioner.

16 (C) An order enjoining a party from specified behavior that the
17 court determines is necessary to effectuate orders described in
18 subparagraph (A) or (B).

19 (4) “Respondent” means the person against whom the protective
20 orders are sought and, if the petition is granted, the restrained
21 person.

22 (c) An order may be issued under this section, with or without
23 notice, to restrain any person for the purpose of preventing a
24 recurrence of abuse, if a declaration shows, to the satisfaction of
25 the court, reasonable proof of a past act or acts of abuse of the
26 petitioning elder or dependent adult.

27 (d) Upon filing a petition for protective orders under this section,
28 the petitioner may obtain a temporary restraining order in
29 accordance with Section 527 of the Code of Civil Procedure, except
30 to the extent this section provides a rule that is inconsistent. The
31 temporary restraining order may include any of the protective
32 orders described in paragraph (3) of subdivision (b). However, the
33 court may issue an ex parte order excluding a party from the
34 petitioner’s residence or dwelling only on a showing of all of the
35 following:

36 (1) Facts sufficient for the court to ascertain that the party who
37 will stay in the dwelling has a right under color of law to possession
38 of the premises.

1 (2) That the party to be excluded has assaulted or threatens to
2 assault the petitioner, other named family or household member
3 of the petitioner, or a conservator of the petitioner.

4 (3) That physical or emotional harm would otherwise result to
5 the petitioner, other named family or household member of the
6 petitioner, or a conservator of the petitioner.

7 (e) A request for the issuance of a temporary restraining order
8 without notice under this section shall be granted or denied on the
9 same day that the petition is submitted to the court, unless the
10 petition is filed too late in the day to permit effective review, in
11 which case the order shall be granted or denied on the next day of
12 judicial business in sufficient time for the order to be filed that day
13 with the clerk of the court.

14 (f) Within 21 days, or, if good cause appears to the court, 25
15 days, from the date that a request for a temporary restraining order
16 is granted or denied, a hearing shall be held on the petition. If no
17 request for temporary orders is made, the hearing shall be held
18 within 21 days, or, if good cause appears to the court, 25 days,
19 from the date that the petition is filed.

20 (g) The respondent may file a response that explains or denies
21 the alleged abuse.

22 (h) The court may issue, upon notice and a hearing, any of the
23 orders set forth in paragraph (3) of subdivision (b). The court may
24 issue, after notice and hearing, an order excluding a person from
25 a residence or dwelling if the court finds that physical or emotional
26 harm would otherwise result to the petitioner, other named family
27 or household member of the petitioner, or conservator of the
28 petitioner.

29 (i) (1) In the discretion of the court, an order issued after notice
30 and a hearing under this section may have a duration of not more
31 than five years, subject to termination or modification by further
32 order of the court either on written stipulation filed with the court
33 or on the motion of a party. These orders may be renewed upon
34 the request of a party, either for five years or permanently, without
35 a showing of any further abuse since the issuance of the original
36 order, subject to termination or modification by further order of
37 the court either on written stipulation filed with the court or on the
38 motion of a party. The request for renewal may be brought at any
39 time within the three months before the expiration of the order.

1 (2) The failure to state the expiration date on the face of the
2 form creates an order with a duration of three years from the date
3 of issuance.

4 (3) If an action is filed for the purpose of terminating or
5 modifying a protective order prior to the expiration date specified
6 in the order by a party other than the protected party, the party
7 who is protected by the order shall be given notice, pursuant to
8 subdivision (b) of Section 1005 of the Code of Civil Procedure,
9 of the proceeding by personal service or, if the protected party has
10 satisfied the requirements of Chapter 3.1 (commencing with
11 Section 6205) of Division 7 of Title 1 of the Government Code,
12 by service on the Secretary of State. If the party who is protected
13 by the order cannot be notified prior to the hearing for modification
14 or termination of the protective order, the court shall deny the
15 motion to modify or terminate the order without prejudice or
16 continue the hearing until the party who is protected can be
17 properly noticed and may, upon a showing of good cause, specify
18 another method for service of process that is reasonably designed
19 to afford actual notice to the protected party. The protected party
20 may waive his or her right to notice if he or she is physically
21 present in court and does not challenge the sufficiency of the notice.

22 (j) In a proceeding under this section, a support person may
23 accompany a party in court and, if the party is not represented by
24 an attorney, may sit with the party at the table that is generally
25 reserved for the party and the party's attorney. The support person
26 is present to provide moral and emotional support for a person
27 who alleges he or she is a victim of abuse. The support person is
28 not present as a legal adviser and may not provide legal advice.
29 The support person may assist the person who alleges he or she is
30 a victim of abuse in feeling more confident that he or she will not
31 be injured or threatened by the other party during the proceedings
32 if the person who alleges he or she is a victim of abuse and the
33 other party are required to be present in close proximity. This
34 subdivision does not preclude the court from exercising its
35 discretion to remove the support person from the courtroom if the
36 court believes the support person is prompting, swaying, or
37 influencing the party assisted by the support person.

38 (k) Upon the filing of a petition for protective orders under this
39 section, the respondent shall be personally served with a copy of
40 the petition, notice of the hearing or order to show cause, temporary

1 restraining order, if any, and any declarations in support of the
2 petition. Service shall be made at least five days before the hearing.
3 The court may, on motion of the petitioner or on its own motion,
4 shorten the time for service on the respondent.

5 (l) A notice of hearing under this section shall notify the
6 respondent that if he or she does not attend the hearing, the court
7 may make orders against him or her that could last up to five years.

8 (m) (1) The court may, upon the filing of a declaration by the
9 petitioner that the respondent could not be served within the time
10 required by statute, reissue an order previously issued and dissolved
11 by the court for failure to serve the respondent. The reissued order
12 shall remain in effect until the date set for the hearing.

13 (2) The reissued order shall state on its face the date of
14 expiration of the order.

15 (n) (1) If a respondent, named in an order issued under this
16 section after a hearing, has not been served personally with the
17 order but has received actual notice of the existence and substance
18 of the order through personal appearance in court to hear the terms
19 of the order from the court, no additional proof of service is
20 required for enforcement of the order.

21 (2) If the respondent named in a temporary restraining order is
22 personally served with the order and notice of hearing with respect
23 to a restraining order or protective order based on the temporary
24 restraining order, but the respondent does not appear at the hearing,
25 either personally or by an attorney, and the terms and conditions
26 of the restraining order or protective order issued at the hearing
27 are identical to the temporary restraining order, except for the
28 duration of the order, then the restraining order or protective order
29 issued at the hearing may be served on the respondent by first-class
30 mail sent to the respondent at the most current address for the
31 respondent that is available to the court.

32 (3) The Judicial Council form for temporary orders issued
33 pursuant to this subdivision shall contain a statement in
34 substantially the following form:

35
36 “If you have been personally served with a temporary restraining
37 order and notice of hearing, but you do not appear at the hearing
38 either in person or by a lawyer, and a restraining order that is the
39 same as this temporary restraining order except for the expiration

1 date is issued at the hearing, a copy of the order will be served on
2 you by mail at the following address: _____.

3 If that address is not correct or you wish to verify that the
4 temporary restraining order was converted to a restraining order
5 at the hearing without substantive change and to find out the
6 duration of that order, contact the clerk of the court.”

7

8 (o) (1) Information on any protective order relating to elder or
9 dependent adult abuse issued by a court pursuant to this section
10 shall be transmitted to the Department of Justice in accordance
11 with either paragraph (2) or (3).

12 (2) The court shall order the petitioner or the attorney for the
13 petitioner to deliver a copy of an order issued under this section,
14 or a reissuance, extension, modification, or termination of the
15 order, and any subsequent proof of service, by the close of the
16 business day on which the order, reissuance, extension,
17 modification, or termination was made, to each law enforcement
18 agency having jurisdiction over the residence of the petitioner, and
19 to any additional law enforcement agencies within the court’s
20 discretion as are requested by the petitioner.

21 (3) Alternatively, the court or its designee shall transmit, within
22 one business day, to law enforcement personnel all information
23 required under subdivision (b) of Section 6380 of the Family Code
24 regarding any order issued under this section, or a reissuance,
25 extension, modification, or termination of the order, and any
26 subsequent proof of service, by either one of the following
27 methods:

28 (A) Transmitting a physical copy of the order or proof of service
29 to a local law enforcement agency authorized by the Department
30 of Justice to enter orders into the California Law Enforcement
31 Telecommunications System (CLETS).

32 (B) With the approval of the Department of Justice, entering
33 the order or proof of service into CLETS directly.

34 (4) Each appropriate law enforcement agency shall make
35 available information as to the existence and current status of these
36 orders to law enforcement officers responding to the scene of
37 reported abuse.

38 (5) An order issued under this section shall, on request of the
39 petitioner, be served on the respondent, whether or not the
40 respondent has been taken into custody, by any law enforcement

1 officer who is present at the scene of reported abuse involving the
2 parties to the proceeding. The petitioner shall provide the officer
3 with an endorsed copy of the order and a proof of service, which
4 the officer shall complete and send to the issuing court.

5 (6) Upon receiving information at the scene of an incident of
6 abuse that a protective order has been issued under this section,
7 or that a person who has been taken into custody is the respondent
8 to that order, if the protected person cannot produce an endorsed
9 copy of the order, a law enforcement officer shall immediately
10 attempt to verify the existence of the order.

11 (7) If the law enforcement officer determines that a protective
12 order has been issued, but not served, the officer shall immediately
13 notify the respondent of the terms of the order and where a written
14 copy of the order can be obtained, and the officer shall at that time
15 also enforce the order. The law enforcement officer's verbal notice
16 of the terms of the order shall constitute service of the order and
17 is sufficient notice for the purposes of this section and for the
18 purposes of Section 273.6 of the Penal Code.

19 (p) Nothing in this section shall preclude either party from
20 representation by private counsel or from appearing on the party's
21 own behalf.

22 (q) There is no filing fee for a petition, response, or paper
23 seeking the reissuance, modification, or enforcement of a protective
24 order filed in a proceeding brought pursuant to this section.

25 (r) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2
26 of the Government Code, a petitioner shall not be required to pay
27 a fee for law enforcement to serve an order issued under this
28 section.

29 (s) The prevailing party in any action brought under this section
30 may be awarded court costs and attorney's fees, if any.

31 (t) (1) A person subject to a protective order under this section
32 shall not own, possess, purchase, receive, or attempt to receive a
33 firearm or ammunition while the protective order is in effect.

34 (2) The court shall order a person subject to a protective order
35 issued under this section to relinquish any firearms he or she owns
36 or possesses pursuant to Section 527.9 of the Code of Civil
37 Procedure.

38 (3) Every person who owns, possesses, purchases, or receives,
39 or attempts to purchase or receive a firearm or ammunition while

1 subject to a protective order issued under this section is punishable
2 pursuant to Section 29825 of the Penal Code.

3 (4) This subdivision shall not apply in a case in which the
4 protective order issued under this section was made solely on the
5 basis of financial abuse unaccompanied by force, threat,
6 harassment, intimidation, or any other form of abuse.

7 (u) Any willful disobedience of any temporary restraining order
8 or restraining order after hearing granted under this section is
9 punishable pursuant to Section 273.6 of the Penal Code.

10 (v) This section does not apply to any action or proceeding
11 governed by Title 1.6C (commencing with Section 1788) of Part
12 4 of Division 3 of the Civil Code, by Chapter 3 (commencing with
13 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure,
14 or by Division 10 (commencing with Section 6200) of the Family
15 Code. Nothing in this section shall preclude a petitioner's right to
16 use other existing civil remedies.

17 (w) The Judicial Council shall develop forms, instructions, and
18 rules relating to matters governed by this section. The petition and
19 response forms shall be simple and concise, and their use by parties
20 in actions brought pursuant to this section shall be mandatory.

21 SEC. 228. Section 15910 of the Welfare and Institutions Code
22 is amended to read:

23 15910. (a) Subject to federal approval of a demonstration
24 project effective on or after November 1, 2010, the department
25 shall, by no later than July 1, 2011, authorize local LIHPs to
26 provide scheduled health care services, consistent with the Special
27 Terms and Conditions of the demonstration project, to eligible
28 low-income individuals 19 to 64 years of age, inclusive, who are
29 not otherwise eligible for the Medi-Cal program or the Children's
30 Health Insurance Program, with family incomes at or below 133
31 percent of the federal poverty level. To the extent federal financial
32 participation is made available under the Special Terms and
33 Conditions of the demonstration project pursuant to Section
34 15910.1, LIHP health care services may be made available to
35 eligible individuals with family incomes above 133 percent through
36 200 percent of the federal poverty level.

37 (b) Eligible entities, consistent with the Special Terms and
38 Conditions of the demonstration project, may perform outreach
39 and enrollment activities to target populations, including, but not
40 limited to, people who are homeless, individuals who frequently

1 use hospital inpatient or emergency department services for
2 avoidable reasons, or people with mental health or substance abuse
3 treatment needs.

4 (c) The LIHP shall be designed and implemented with the
5 systems and program elements necessary to facilitate the transition
6 of those eligible individuals to Medi-Cal coverage, or alternatively,
7 to coverage through the California Health Benefit Exchange, by
8 2014, pursuant to state and federal law, and the Special Terms and
9 Conditions of the demonstration project.

10 (d) The department shall authorize a LIHP that meets the
11 requirements set forth in this part and the Special Terms and
12 Conditions of the demonstration project.

13 (e) (1) By January 1, 2011, or alternatively, 60 days after federal
14 approval of the demonstration project, whichever occurs later, the
15 department shall notify all eligible entities of the opportunity to
16 elect to implement a LIHP, the applicable requirements, and the
17 process for submitting an application for department approval of
18 a LIHP application.

19 (2) The director shall approve or deny an eligible entity's LIHP
20 application within 60 days of receipt of the application. If the
21 director denies an application, the denial shall be in writing and
22 shall specify the reasons therefor.

23 (3) Within 10 days of a denial by the director under this
24 subdivision, a participating entity may submit a written request
25 for reconsideration. The director shall respond in writing to a
26 request for reconsideration within 20 days, confirming or reversing
27 the denial, and specifying the reasons for the reconsidered decision.

28 (f) If the eligible entity had in operation a Health Care Coverage
29 Initiative program under Part 3.5 (commencing with Section 15900)
30 as of November 1, 2010, and the eligible entity elects to continue
31 funding the program, then the existing Health Care Coverage
32 Initiative program shall, to the extent permitted by the Special
33 Terms and Conditions of the demonstration project, remain in
34 effect and receive federal reimbursement in accordance with the
35 Special Terms and Conditions of the demonstration project until
36 the LIHP is effective, but no later than July 1, 2011.

37 (g) Health care services provided pursuant to this part shall be
38 available to those eligible, low-income individuals enrolled in the
39 applicable LIHP, subject to the limitations of this part and the
40 Special Terms and Conditions of the demonstration project.

1 However, nothing in this part is intended to create an entitlement
2 program of any kind.

3 (h) Each LIHP may establish an upper income limit for eligible
4 MCE individuals to enroll in the LIHP, which shall be expressed
5 as a percentage between 0 percent and up to, and including, 133
6 percent of the federal poverty level. If the LIHP elects to enroll
7 HCCI-eligible individuals with family incomes above 133 percent
8 through 200 percent of the federal poverty level, it may also
9 establish an upper income limit between this range.
10 Notwithstanding any established upper income limit, the LIHP
11 may impose a limit on enrollment in the LIHP, which shall be
12 subject to all of the following provisions:

13 (1) The Special Terms and Conditions required by the federal
14 Centers for Medicare and Medicaid Services for the approval of
15 the demonstration project described in Section 14180 permit a
16 limitation on enrollment in a LIHP.

17 (2) Any enrollment limitation by a LIHP shall be administered
18 in accordance with the Special Terms and Conditions required by
19 the federal Centers for Medicare and Medicaid Services.

20 (3) Any enrollment limitation by a LIHP is subject to approval
21 by the director, and notification to the federal Centers for Medicare
22 and Medicaid Services. A LIHP shall establish an income limit at
23 a level that minimizes the need for imposing a limit on enrollment
24 for the MCE population.

25 (4) Prior to applying for approval from the director, the LIHP
26 shall submit to the director a resolution from its governing board
27 approving the proposed limitation on enrollment by the LIHP.

28 (i) LIHPs shall be established and implemented only to the
29 extent that federal financial participation is available and only to
30 the extent that available federal financial participation is not
31 jeopardized.

32 (j) For the purposes of operating a LIHP approved under this
33 part, and notwithstanding Section 14181, participating entities
34 shall be exempt from the provisions of Chapter 2.2 (commencing
35 with Section 1340) of Division 2 of the Health and Safety Code,
36 shall not be considered Medi-Cal managed care health plans subject
37 to the requirements applicable to the two-plan model and
38 geographic managed care plans, as contained in Article 2.7
39 (commencing with Section 14087.3), Article 2.81 (commencing
40 with Section 14087.96), and Article 2.91 (commencing with

1 Section 14089) of Chapter 7 of Part 3 and the corresponding
2 regulations, and shall not be considered prepaid health plans as
3 defined in Section 14251.

4 SEC. 229. Section 15911 of the Welfare and Institutions Code
5 is amended to read:

6 15911. (a) Funding for each LIHP shall be based on all of the
7 following:

8 (1) The amount of funding that the participating entity
9 voluntarily provides for the nonfederal share of LIHP expenditures.

10 (2) For a LIHP that had in operation a Health Care Coverage
11 Initiative program under Part 3.5 (commencing with Section 15900)
12 as of November 1, 2010, and elects to continue funding the
13 program, the amount of funds requested to ensure that eligible
14 enrollees continue to receive health care services for persons
15 enrolled in the Health Care Coverage Initiative program as of
16 November 1, 2010.

17 (3) Any limitations imposed by the Special Terms and
18 Conditions of the demonstration project.

19 (4) The total allocations requested by participating entities for
20 Health Care Coverage Initiative-eligible individuals.

21 (5) Whether funding under this part would result in the reduction
22 of other payments under the demonstration project.

23 (b) Nothing in this part shall be construed to require a political
24 subdivision of the state to participate in a LIHP as set forth in this
25 part, and those local funds expended or transferred for the
26 nonfederal share of LIHP expenditures under this part shall be
27 considered voluntary contributions for purposes of the federal
28 Patient Protection and Affordable Care Act (P.L. 111-148), as
29 amended by the federal Health Care and Education Reconciliation
30 Act of 2010 (P.L. 111-152), and the federal American Recovery
31 and Reinvestment Act of 2009 (P.L. 111-5), as amended by the
32 federal Patient Protection and Affordable Care Act.

33 (c) No state General Fund moneys shall be used to fund LIHP
34 services, nor to fund any related administrative costs incurred by
35 counties or any other political subdivision of the state.

36 (d) Subject to the Special Terms and Conditions of the
37 demonstration project, if a participating entity elects to fund the
38 nonfederal share of a LIHP, the nonfederal funding and payments
39 to the LIHP shall be provided through one of the following
40 mechanisms, at the option of the participating entity:

1 (1) On a quarterly basis, the participating entity shall transfer
2 to the department for deposit in the LIHP Fund established for the
3 participating counties and pursuant to subparagraph (A), the
4 amount necessary to meet the nonfederal share of estimated
5 payments to the LIHP for the next quarter under subdivision (g)
6 Section 15910.3.

7 (A) The LIHP Fund is hereby created in the State Treasury.
8 Notwithstanding Section 13340 of the Government Code, all
9 moneys in the fund shall be continuously appropriated to the
10 department for the purposes specified in this part. The fund shall
11 contain all moneys deposited into the fund in accordance with this
12 paragraph.

13 (B) The department shall obtain the related federal financial
14 participation and pay the rates established under Section 15910.3,
15 provided that the intergovernmental transfer is transferred in
16 accordance with the deadlines imposed under the Medi-Cal
17 Checkwrite Schedule, no later than the next available warrant
18 release date. This payment shall be a nondiscretionary obligation
19 of the department, enforceable under a writ of mandate pursuant
20 to Section 1085 of the Code of Civil Procedure. Participating
21 entities may request expedited processing within seven business
22 days of the transfer as made available by the Controller's office,
23 provided that the participating entity prepay the department for
24 the additional administrative costs associated with the expedited
25 processing.

26 (C) Total quarterly payment amounts shall be determined in
27 accordance with estimates of the number of enrollees in each rate
28 category, subject to annual reconciliation to final enrollment data.

29 (2) If a participating entity operates its LIHP through a contract
30 with another entity, the participating entity may pay the operating
31 entity based on the per enrollee rates established under Section
32 15910.3 on a quarterly basis in accordance with estimates of the
33 number of enrollees in each rate category, subject to annual
34 reconciliation to final enrollment data.

35 (A) (i) On a quarterly basis, the participating entity shall certify
36 the expenditures made under this paragraph and submit the report
37 of certified public expenditures to the department.

38 (ii) The department shall report the certified public expenditures
39 of a participating entity under this paragraph on the next available
40 quarterly report as necessary to obtain federal financial

1 participation for the expenditures. The total amount of federal
2 financial participation associated with the participating entity's
3 expenditures under this paragraph shall be reimbursed to the
4 participating entity.

5 (B) At the option of the participating entity, the LIHP may be
6 reimbursed on a cost basis in accordance with the methodology
7 applied to Health Care Coverage Initiative programs established
8 under Part 3.5 (commencing with Section 15900) including interim
9 quarterly payments.

10 (e) Notwithstanding Section 15910.3 and subdivision (d) of this
11 section, if the participating entity cannot reach an agreement with
12 the department as to the appropriate rate to be paid under Section
13 15910.3, at the option of the participating entity, the LIHP shall
14 be reimbursed on a cost basis in accordance with the methodology
15 applied to Health Care Coverage Initiative programs established
16 under Part 3.5 (commencing with Section 15900), including interim
17 quarterly payments. If the participating entity and the department
18 reach an agreement as to the appropriate rate, the rate shall be
19 applied no earlier than the first day of the LIHP year in which the
20 parties agree to the rate.

21 (f) If authorized under the Special Terms and Conditions of the
22 demonstration project, pending the department's development of
23 rates in accordance with Section 15910.3, the department shall
24 make interim quarterly payments to approved LIHPs for
25 expenditures based on estimated costs submitted for ratesetting.

26 (g) Participating entities that operate a LIHP directly or through
27 contract with another entity shall be entitled to any federal financial
28 participation available for administrative expenditures incurred in
29 the operation of the Medi-Cal program or the demonstration
30 project, including, but not limited to, outreach, screening and
31 enrollment, program development, data collection, reporting and
32 quality monitoring, and contract administration, but only to the
33 extent that the expenditures are allowable under federal law and
34 only to the extent the expenditures are not taken into account in
35 the determination of the per enrollee rates under Section 15910.3.

36 (h) On and after January 1, 2014, the state shall implement
37 comprehensive health care reform for the populations targeted by
38 the LIHP in compliance with federal health care reform law,
39 regulation, and policy, including the federal Patient Protection and
40 Affordable Care Act (P.L. 111-148), as amended by the federal

1 Health Care and Education Reconciliation Act of 2010 (P.L.
2 111-152), and subsequent amendments.

3 (i) Subject to the Special Terms and Conditions of the
4 demonstration project, a participating entity may elect to include,
5 in collaboration with the department, as the nonfederal share of
6 LIHP expenditures, voluntary intergovernmental transfers or
7 certified public expenditures of another governmental entity, as
8 long as the intergovernmental transfer or certified public
9 expenditure is consistent with federal law.

10 (j) Participation in the LIHP under this part is voluntary on the
11 part of the eligible entity for purposes of all applicable federal
12 laws. As part of its voluntary participation under this article, the
13 participating entity shall agree to reimburse the state for the
14 nonfederal share of state staffing and administrative costs directly
15 attributable to the cost of administering that LIHP, including, but
16 not limited to, the state administrative costs related to certified
17 public expenditures and intergovernmental transfers. This section
18 shall be implemented only to the extent federal financial
19 participation is not jeopardized.

20 SEC. 230. Section 15916 of the Welfare and Institutions Code
21 is amended to read:

22 15916. (a) It is the intent of the Legislature that the State
23 Department of Health Care Services and all other departments take
24 all appropriate steps to fully maximize and claim all available
25 expenditures for Designated State Health Programs listed in the
26 Special Terms and Conditions of California’s Bridge to Reform
27 Section 1115(a) Demonstration under the safety net care pool
28 (SNCP) for an applicable demonstration year.

29 (b) For the purposes of this section, the following definitions
30 apply:

31 (1) “California’s Bridge to Reform Section 1115(a)
32 Demonstration” means the Section 1115(a) Medicaid demonstration
33 project, No. 11-W-00193/9, as approved by the federal Centers
34 for Medicare and Medicaid Services (CMS), effective for the period
35 of November 1, 2010, to October 31, 2015, inclusive.

36 (2) “Demonstration year” means a specific period of time during
37 California’s Bridge to Reform Section 1115(a) Demonstration as
38 identified in the Special Terms and Conditions.

39 (3) “Designated public hospital” has the meaning given in
40 subdivision (d) of Section 14166.1.

1 (4) “Excess certified public expenditures” means the amount
2 of allowable uncompensated care expenditures reported and
3 certified for the applicable demonstration year under Section
4 14166.8 by designated public hospitals (DPHs), including the
5 governmental entities with which they are affiliated, that is in
6 excess of the amount necessary to draw the maximum amount of
7 federal funding for DPHs for uncompensated care under the safety
8 net care pool and for disproportionate share hospital payments
9 without regard to subdivision (c) or to the amount authorized
10 pursuant to paragraph (5).

11 (5) “Reserved SNCP funds for DSHP” means the amount of
12 SNCP uncompensated care funds used to fund expenditures for
13 the Designated State Health Programs, as specified in the Special
14 Terms and Conditions of California’s Bridge to Reform Section
15 1115(a) Demonstration.

16 (6) “Redirected SNCP funds” means the amount of federal
17 funding available for a specified demonstration year that would
18 otherwise be restricted for expenditures associated with the Health
19 Care Coverage Initiative (HCCI) program, for which there are
20 insufficient HCCI expenditures to draw the federal funds and which
21 CMS has authorized to be available for uncompensated care
22 expenditures under the safety net care pool in either the
23 demonstration year for which the funds were initially reserved or
24 a subsequent demonstration year.

25 (7) “Safety net care pool” or “SNCP” means the federal funds
26 available under the Medi-Cal Hospital/Uninsured Care
27 Demonstration Project and the successor demonstration project,
28 California’s Bridge to Reform, to ensure continued government
29 support for the provision of health care services to uninsured
30 populations.

31 (c) Notwithstanding any other provision of law, the state shall
32 annually seek authority from CMS under the Special Terms and
33 Conditions of California’s Bridge to Reform Section 1115(a)
34 Demonstration to redirect to the uncompensated care category
35 within the SNCP the portion of the restricted funds used to fund
36 expenditures under the HCCI that will not be fully utilized by the
37 end of the demonstration year.

38 (d) Designated public hospitals may utilize the redirected SNCP
39 funds described in subdivision (c) as follows:

1 (1) Designated public hospitals may opt to utilize excess
2 certified public expenditures to claim the redirected SNCP funds.

3 (2) As a condition of exercising the option in paragraph (1),
4 DPHs voluntarily agree that to the extent the state is unable to fully
5 claim the maximum annual amount of reserved SNCP funds for
6 DSHP, the excess certified public expenditures are to be allocated
7 equally between the state and the DPHs, such that for every dollar
8 of excess certified public expenditure used by the DPHs, the DPHs
9 will voluntarily allow the state to use a corresponding excess
10 certified public expenditure amount for claiming purposes. The
11 amount in excess certified public expenditures that may be used
12 by the state shall be limited to that amount necessary to enable the
13 state to receive total SNCP uncompensated care funds, in
14 conjunction with its claims for expenditures for DSHP, to the
15 maximum amount described in paragraph (5) of subdivision (b).

16 (3) After the state achieves its maximum claiming amount
17 described in paragraph (5) of subdivision (b), or to the extent the
18 condition in subdivision (e) is not satisfied, the DPHs may use any
19 remaining excess certified public expenditures to claim SNCP
20 uncompensated care funds as authorized by the Special Terms and
21 Conditions of California's Bridge to Reform Section 1115(a)
22 Demonstration.

23 (e) As a condition for the state's use of the excess certified
24 public expenditures pursuant to paragraph (2) of subdivision (d),
25 the department shall seek any necessary authorization from the
26 federal Centers for Medicare and Medicaid Services.

27 (f) Participation in the utilization of the excess certified public
28 expenditures and redirected SNCP funds under this section is
29 voluntary on the part of the DPHs for the purpose of all applicable
30 federal laws.

31 (g) The department shall consult with DPH representatives
32 regarding the availability of excess certified public expenditures
33 and the appropriate allocation of SNCP funds under paragraph (2)
34 of subdivision (d). The department may make interim
35 determinations and allocations of the SNCP funds, provided that
36 the interim determinations and allocations take into account
37 adjustments to reported expenditures for possible audit
38 disallowances, consistent with the type of adjustments applied in
39 prior projects years under Article 5.2 (commencing with Section
40 14166). Any interim determinations and allocations of redirected

1 SNCP funds based on excess certified public expenditures shall
2 be subject to interim and final reconciliations.

3 (h) Notwithstanding any other provision of law, upon the receipt
4 of a notice of disallowance or deferral from the federal government
5 related to any certified public expenditures for uncompensated
6 care incurred by DPHs that are used for federal claiming under
7 the SNCP pursuant to California's Bridge to Reform Section
8 1115(a) Demonstration after this section is implemented, and
9 subject to the processes described in subdivisions (a) ~~through~~ to
10 (d), *inclusive*, of Section 14166.24, the following shall apply with
11 respect to the disallowance or deferral:

12 (1) First, the DPH shall be solely responsible for the repayment
13 of the federal portion of any federal disallowance or deferral related
14 to the claiming of a certified public expenditure in a particular year
15 up to the amount claimed pursuant to paragraph (3) of subdivision
16 (d), after paragraph (2) of subdivision (d) was satisfied for that
17 particular year.

18 (2) Second, if there are additional disallowances or deferrals
19 beyond those described in paragraph (1), the department and the
20 DPH shall each be responsible for half of the repayment of the
21 federal portion of any federal disallowance or deferral for the
22 applicable demonstration year, up to the amount claimed and
23 allocated pursuant to paragraph (2) of subdivision (d) for that
24 particular year.

25 (3) Third, if there are additional disallowances or deferrals
26 beyond those described in paragraphs (1) and (2) for the applicable
27 demonstration year, the DPH shall be solely responsible for the
28 repayment of the federal portion of all remaining federal
29 disallowances or deferrals for that particular year.

30 (i) The department shall obtain federal approvals or waivers as
31 necessary to implement this section and to obtain federal matching
32 funds to the maximum extent permitted by federal law. This section
33 shall be implemented only to the extent federal financial
34 participation is not jeopardized.

35 SEC. 231. Section 15926 of the Welfare and Institutions Code
36 is amended to read:

37 15926. (a) The following definitions apply for purposes of
38 this part:

1 (1) “Accessible” means in compliance with Section 11135 of
2 the Government Code, Section 1557 of the PPACA, and regulations
3 or guidance adopted pursuant to these statutes.

4 (2) “Limited-English-proficient” means not speaking English
5 as one’s primary language and having a limited ability to read,
6 speak, write, or understand English.

7 (3) “State health subsidy programs” means the programs
8 described in Section 1413(e) of the PPACA.

9 (b) An individual shall have the option to apply for state health
10 subsidy programs in person, by mail, online, by facsimile, or by
11 telephone.

12 (c) (1) A single, accessible, standardized paper, electronic, and
13 telephone application for state health subsidy programs shall be
14 developed by the department in consultation with MRMIB and
15 the board governing the Exchange as part of the stakeholder process
16 described in subdivision (b) of Section 15925. The application
17 shall be used by all entities authorized to make an eligibility
18 determination for any of the state health subsidy programs and by
19 their agents.

20 (2) The application shall be tested and operational by the date
21 as required by the federal Secretary of California Health and
22 Human Services.

23 (3) The application form shall, to the extent not inconsistent
24 with federal statutes, regulations, and guidance, satisfy all of the
25 following criteria:

26 (A) Include simple, user-friendly language and instructions.

27 (B) Do not ask for information related to a nonapplicant that is
28 not necessary to determine eligibility in the applicant’s particular
29 circumstances.

30 (C) Require only information necessary to support the eligibility
31 and enrollment processes for state health subsidy programs.

32 (D) May be used for, but shall not be limited to, screening.

33 (E) Ask, or be used otherwise to identify, if the mother of an
34 infant applicant under one year of age had coverage through a state
35 health subsidy program for the infant’s birth, for the purpose of
36 automatically enrolling the infant into the applicable program
37 without the family having to complete the application process for
38 the infant.

39 (F) Include questions that are voluntary for applicants to answer
40 regarding demographic data categories, including race, ethnicity,

1 primary language, disability status, and other categories recognized
2 by the federal Secretary of Health and Human Services under
3 Section 4302 of the PPACA.

4 (d) Nothing in this section shall preclude the use of a
5 provider-based application form or enrollment procedures for state
6 health subsidy programs or other health programs that differs from
7 the application form described in subdivision (c), and related
8 enrollment procedures.

9 (e) The entity making the eligibility determination shall grant
10 eligibility immediately whenever possible and with consent of the
11 applicant in accordance with the state and federal rules governing
12 state health subsidy programs.

13 (f) (1) If the eligibility, enrollment, and retention system has
14 the ability to prepopulate an application form for insurance
15 affordability programs with personal information from available
16 electronic databases, an applicant shall be given the option, with
17 his or her informed consent, to have the application form
18 prepopulated. Before a prepopulated renewal form or, if available,
19 prepopulated application is submitted to the entity authorized to
20 make eligibility determinations, the individual shall be given the
21 opportunity to provide additional eligibility information and to
22 correct any information retrieved from a database.

23 (2) All state health subsidy programs may accept self-attestation,
24 instead of requiring an individual to produce a document, with
25 respect to all information needed to determine the eligibility of an
26 applicant or recipient, to the extent permitted by state and federal
27 law.

28 (3) An applicant or recipient shall have his or her information
29 electronically verified in the manner required by the PPACA and
30 implementing federal regulations and guidance.

31 (4) Before an eligibility determination is made, the individual
32 shall be given the opportunity to provide additional eligibility
33 information and to correct information.

34 (5) An applicant shall not have his or her eligibility delayed or
35 denied for any state health subsidy program without being given
36 a reasonable opportunity, of at least the kind provided for under
37 the Medi-Cal program pursuant to Section 14007.5 and paragraph
38 (7) of subdivision (e) of Section 14011.2, to resolve discrepancies
39 concerning any information provided by a verifying entity.

1 (6) To the extent federal financial participation is available, an
2 applicant shall be provided benefits in accordance with the rules
3 of the state health subsidy program, as implemented in federal
4 regulations and guidance, for which he or she otherwise qualifies
5 until a determination is made that he or she is not eligible and all
6 applicable notices have been provided.

7 (g) The eligibility, enrollment, and retention system shall offer
8 an applicant and recipient assistance with his or her application or
9 renewal for a state health subsidy program in person, over the
10 telephone, and online, and in a manner that is accessible to
11 individuals with disabilities and those who are limited English
12 proficient.

13 (h) (1) During the processing of an application, renewal, or a
14 transition due to a change in circumstances, an entity making
15 eligibility determinations for a public health coverage program
16 shall ensure that an eligible applicant and recipient of state health
17 subsidy programs that meets all program eligibility requirements
18 and complies with all necessary requests for information moves
19 between programs without any breaks in coverage and without
20 being required to provide any forms, documents, or other
21 information or undergo verification that is duplicative or otherwise
22 unnecessary. The individual shall be informed how to obtain
23 information about the status of his or her application, renewal, or
24 transfer to another program at any time, and the information shall
25 be promptly provided when requested.

26 (2) An individual screened as not eligible for Medi-Cal on the
27 basis of Modified Adjusted Gross Income (MAGI) household
28 income but who may be potentially eligible for Medi-Cal on
29 another basis shall have his or her application or case forwarded
30 to the Medi-Cal program for an eligibility determination. During
31 the period this application or case is processed for a non-MAGI
32 Medi-Cal eligibility determination, if the applicant or recipient is
33 otherwise eligible for a state health subsidy program, he or she
34 shall be determined eligible for that program.

35 (3) Renewal procedures shall include all available methods for
36 reporting renewal information, including, but not limited to,
37 face-to-face, telephone, and online renewal.

38 (4) An applicant who is not eligible for a state health subsidy
39 program for a reason other than income eligibility, or for any reason
40 in the case of applicants and recipients residing in a county that

1 offers a health coverage program for individuals with income above
2 the maximum allowed for the Exchange premium tax credits, shall
3 be referred to the county health coverage program in his or her
4 county of residence.

5 (i) Notwithstanding subdivisions (e), (f), and (j), before an online
6 applicant who appears to be eligible for the Exchange with a
7 premium tax credit or reduction in cost sharing, or both, may be
8 enrolled in the Exchange, both of the following shall occur:

9 (1) The applicant shall be informed of the overpayment penalties
10 under the Comprehensive 1099 Taxpayer Protection and
11 Repayment of Exchange Subsidy Overpayments Act of 2011 (P.L.
12 112-9), if the individual's annual family income increases by a
13 specified amount or more, calculated on the basis of the
14 individual's current family size and current income, and that
15 penalties are avoided by prompt reporting of income increases
16 throughout the year.

17 (2) The applicant shall be informed of the penalty for failure to
18 have minimum essential health coverage.

19 (j) The department shall, in coordination with MRMIB and the
20 Exchange board, streamline and coordinate all eligibility rules and
21 requirements among state health subsidy programs using the least
22 restrictive rules and requirements permitted by federal and state
23 law. This process shall include the consideration of methodologies
24 for determining income levels, assets, rules for household size,
25 citizenship and immigration status, and self-attestation and
26 verification requirements.

27 (k) (1) Forms and notices developed pursuant to this section
28 shall be accessible and standardized, as appropriate, and shall
29 comply with federal and state laws, regulations, and guidance
30 prohibiting discrimination.

31 (2) Forms and notices developed pursuant to this section shall
32 be developed using plain language and shall be provided in a
33 manner that affords meaningful access to limited-English-proficient
34 individuals, in accordance with applicable state and federal law,
35 and at a minimum, provided in the same threshold languages as
36 Medi-Cal managed care.

37 (l) The department, the California Health and Human Services
38 Agency, MRMIB, and the Exchange board shall establish a process
39 for receiving and acting on stakeholder suggestions regarding the
40 functionality of the eligibility systems supporting the Exchange,

1 including the activities of all entities providing eligibility screening
2 to ensure the correct eligibility rules and requirements are being
3 used. This process shall include consumers and their advocates,
4 be conducted no less than quarterly, and include the recording,
5 review, and analysis of potential defects or enhancements of the
6 eligibility systems. The process shall also include regular updates
7 on the work to analyze, prioritize, and implement corrections to
8 confirmed defects and proposed enhancements, and to monitor
9 screening.

10 (m) In designing and implementing the eligibility, enrollment,
11 and retention system, the department, MRMIB, and the Exchange
12 board shall ensure that all privacy and confidentiality rights under
13 the PPACA and other federal and state laws are incorporated and
14 followed, including responses to security breaches.

15 (n) Except as otherwise specified, this section shall be operative
16 on and after January 1, 2014.

17 SEC. 232. Section 17600 of the Welfare and Institutions Code
18 is amended to read:

19 17600. (a) There is hereby created the Local Revenue Fund,
20 which shall have all of the following accounts:

- 21 (1) The Sales Tax Account.
- 22 (2) The Vehicle License Fee Account.
- 23 (3) The Vehicle License Collection Account.
- 24 (4) The Sales Tax Growth Account.
- 25 (5) The Vehicle License Fee Growth Account.

26 (b) The Sales Tax Account shall have all of the following
27 subaccounts:

- 28 (1) The Mental Health Subaccount.
- 29 (2) The Social Services Subaccount.
- 30 (3) The Health Subaccount.
- 31 (4) The CalWORKs Maintenance of Effort Subaccount.

32 (c) The Sales Tax Growth Account shall have all of the
33 following subaccounts:

- 34 (1) The Caseload Subaccount.
- 35 (2) The Base Restoration Subaccount.
- 36 (3) The Indigent Health Equity Subaccount.
- 37 (4) The Community Health Equity Subaccount.
- 38 (5) The Mental Health Equity Subaccount.
- 39 (6) The State Hospital Mental Health Equity Subaccount.
- 40 (7) The County Medical Services Subaccount.

1 (8) The General Growth Subaccount.

2 (9) The Special Equity Subaccount.

3 (d) Notwithstanding Section 13340 of the Government Code,
4 the Local Revenue Fund is hereby continuously appropriated,
5 without regard to fiscal years, for the purpose of this chapter.

6 (e) The Local Revenue Fund shall be invested in the Surplus
7 Money Investment Fund and all interest earned shall be distributed
8 in January and July among the accounts and subaccounts in
9 proportion to the amounts deposited into each subaccount, except
10 as provided in subdivision (f).

11 (f) If a distribution required by subdivision (e) would cause a
12 subaccount to exceed its limitations imposed pursuant to any of
13 the following, the distribution shall be made among the remaining
14 subaccounts in proportion to the amounts deposited into each
15 subaccount in the six prior months:

16 (1) Subdivision (a) of Section 17605.

17 (2) Subdivision (a) of Section 17605.05.

18 (3) Subdivision (b) of Section 17605.10.

19 (4) Subdivision (c) of Section 17605.10.

20 SEC. 233. Section 18220.1 of the Welfare and Institutions
21 Code is amended to read:

22 18220.1. (a) Of the amount deposited in the Local Safety and
23 Protection Account in the Transportation Fund authorized by
24 Section 10752.2 of the Revenue and Taxation Code, the Controller
25 shall allocate 5.85 percent in the 2009–10 fiscal year and each
26 fiscal year thereafter. The Controller shall allocate these funds on
27 a quarterly basis beginning April 1, 2009, to the Department of
28 Corrections and Rehabilitation. The department shall allocate the
29 funds appropriated in the annual Budget Act and included in the
30 Local Safety and Protection Account among counties that operate
31 juvenile camps and ranches based on the number of occupied beds
32 in each camp as of 12:01 a.m. each day, up to the Corrections
33 Standards Authority rated maximum capacity, as determined by
34 the Corrections Standards Authority.

35 (b) Commencing with the 2011–12 fiscal year, the Controller
36 shall, on a quarterly basis beginning October 1, allocate 6.47
37 percent of the funds deposited in the Local Law Enforcement
38 Services Account in the Local Revenue Fund 2011 pursuant to a
39 schedule provided by the Department of Corrections and
40 Rehabilitation. The department’s schedule shall provide for the

1 allocation of funds appropriated in the annual Budget Act, and
2 included in the Local Law Enforcement Services Account, among
3 counties that operate juvenile camps and ranches based on the
4 number of occupied beds in each camp as of 12:01 a.m. each day,
5 up to the Corrections Standards Authority rated maximum capacity,
6 as determined by the Corrections Standards Authority.

7 SEC. 234. Section 59 of Chapter 7 of the Statutes of 2011 is
8 amended to read:

9 Sec. 59. (a) For the 2011–12 fiscal year only, Items
10 6440-001-0001, 6440-004-0001, and 6440-005-0001 of Section
11 2.00 of the Budget Act of 2011 collectively reflect a General Fund
12 budget reduction of five hundred million dollars (\$500,000,000),
13 which is offset by revenues associated with the fee increases
14 adopted by the Regents of the University of California (regents)
15 in November 2010, including an 8-percent increase for
16 undergraduates, for a net programmatic reduction of approximately
17 three hundred eighty-four million dollars (\$384,000,000), excluding
18 mandatory cost increases. In implementing the General Fund
19 reduction, the regents shall minimize fee and enrollment impacts
20 on students by targeting actions that lower the costs of instruction
21 and administration.

22 (b) The regents shall submit recommended budget options,
23 based on input from stakeholders, including, but not limited to,
24 input received as of February 18, 2011, with savings estimates for
25 each identified solution, for implementing the budget reductions
26 to the Legislature, the Governor, and stakeholders, including
27 representatives of students and employees, for review and comment
28 by June 1, 2011, prior to adoption of a final plan by the regents.

29 (c) The Legislature expects the university to enroll 209,977
30 state-supported full-time equivalent students (FTES) during the
31 2011–12 academic year. This enrollment target does not include
32 nonresident students and students enrolled in nonstate-supported
33 summer programs. The regents shall report to the Legislature by
34 May 1, 2012, on whether the university has met the 2011–12
35 enrollment goal. If the university does not meet its total
36 state-supported enrollment goal by at least 1,050 FTES, the
37 Director of Finance shall revert to the General Fund by May 15,
38 2012, the total amount of enrollment funding associated with the
39 total share of the enrollment goal that was not met, using the
40 marginal cost per student of ten thousand eleven dollars (\$10,011).

1 (d) Not later than September 1, 2012, the regents shall submit
2 a final detailed report to the Governor, the Department of Finance,
3 and the Legislature identifying the value of all of the solutions
4 implemented to achieve the intent of this provision, including the
5 value of any solutions that were not anticipated in the initially
6 approved plan pursuant to subdivision (b), including the reasons
7 therefor.

8 SEC. 235. Section 60 of Chapter 7 of the Statutes of 2011 is
9 amended to read:

10 Sec. 60. (a) For the 2011–12 fiscal year only, Items
11 6610-001-0001 and 6610-002-0001 of Section 2.00 of the Budget
12 Act of 2011 collectively reflect a General Fund budget reduction
13 of five hundred million dollars (\$500,000,000), which is offset by
14 revenues associated with the fee increases adopted by the Trustees
15 of the California State University (trustees) in November 2010,
16 including a 10-percent increase for undergraduates, for a net
17 programmatic reduction of approximately three hundred fifty-three
18 million dollars (\$353,000,000), excluding mandatory cost increases.
19 In implementing this General Fund reduction, the trustees shall
20 minimize fee and enrollment impacts on students by targeting
21 actions that lower the costs of instruction and administration.

22 (b) The trustees shall submit recommended budget options,
23 based on input from stakeholders, including, but not limited to,
24 input received as of February 18, 2011, with savings estimates for
25 each identified solution, for implementing the budget reductions
26 to the Legislature, the Governor, and stakeholders, including
27 representatives of students and employees for review and comment
28 by June 1, 2011, prior to adoption of a final plan by the trustees.

29 (c) The Legislature expects the university to enroll 331,716
30 state-supported full-time equivalent students (FTES) during the
31 2011–12 academic year. This enrollment target does not include
32 nonresident students and students enrolled in nonstate-supported
33 summer programs. The trustees shall report to the Legislature by
34 May 1, 2012, on whether the university has met the 2011–12
35 enrollment goal. If the university does not meet its total
36 state-supported enrollment goal by at least 1,659 FTES, the
37 Director of Finance shall revert to the General Fund by May 15,
38 2012, the total amount of enrollment funding associated with the
39 total share of the enrollment goal that was not met, using the

1 marginal cost per student of seven thousand three hundred five
2 dollars (\$7,305).

3 (d) Not later than September 1, 2012, the trustees shall submit
4 a final detailed report to the Governor, the Department of Finance,
5 and the Legislature identifying the value of all of the solutions
6 implemented to achieve the intent of this provision, including the
7 value of any solutions that were not anticipated in the initially
8 approved plan pursuant to subdivision (b), including the reasons
9 therefor.

10 SEC. 236. Section 9 of Chapter 136 of the Statutes of 2011 is
11 amended to read:

12 Sec. 9. (a) Section 7 of this act shall remain operative until
13 July 1, 2012.

14 (b) Section 8 of this act shall become operative on July 1, 2012.

15 SEC. 237. Section 34 of Chapter 136 of the Statutes of 2011
16 is amended to read:

17 Sec. 34. An amount of one thousand dollars (\$1,000) is
18 provided to the Department of Corrections and Rehabilitation for
19 the purpose of state operations in the 2011–12 fiscal year, payable
20 from the General Fund.

21 SEC. 238. Section 2 of Chapter 211 of the Statutes of 2011 is
22 amended to read:

23 Sec. 2. Section 1.5 of this bill incorporates amendments to
24 Section 803 of the Penal Code proposed by both this bill and
25 Assembly Bill 109, which has been chaptered but is conditionally
26 operative on October 1, 2011. Section 1.5 shall become operative
27 only if (1) this bill is enacted and becomes effective on or before
28 January 1, 2012, (2) this bill amends Section 803 of the Penal
29 Code, and (3) Assembly Bill 109 becomes operative, in which
30 case Section 803 of the Penal Code, as amended by Section 1 of
31 this bill, shall remain operative only until the operative date of
32 Assembly Bill 109, at which time Section 1.5 of this bill shall
33 become operative.

34 SEC. 239. Section 1 of Chapter 404 of the Statutes of 2011 is
35 amended to read:

36 Section 1. The Legislature finds and declares all of the
37 following:

38 (a) Certain speech-generating devices are classified by the
39 United States Department of Health and Human Services guidelines
40 as durable medical equipment.

1 (b) The provision of durable medical equipment traditionally
2 has been a function of public and private health insurance
3 programs.

4 (c) It is the intent of the Legislature that public and private health
5 insurance programs continue to be the provider of first resort for
6 speech-generating devices that are classified as durable medical
7 equipment and that the Public Utilities Commission only provide
8 access to those devices when funding from traditional public and
9 private health insurance policies and programs is unavailable.

10 SEC. 240. Section 17 of Chapter 13 of the Statutes of 2011,
11 First Extraordinary Session, is amended to read:

12 SEC. 17. There is hereby appropriated one thousand dollars
13 (\$1,000) from the General Fund to the California Emergency
14 Management Agency for program administrative costs incurred
15 in connection with Section 13821 of the Penal Code.

16 SEC. 241. Section 2 of Chapter 14 of the Statutes of 2011,
17 First Extraordinary Session, is amended to read:

18 SEC. 2. There is hereby appropriated one thousand dollars
19 (\$1,000) from the General Fund to the California Emergency
20 Management Agency for program administrative costs incurred
21 in connection with Section of 13821 of the Penal Code.

22 SEC. 242. Any section of any act enacted by the Legislature
23 during the 2012 calendar year that takes effect on or before January
24 1, 2013, and that amends, amends and renumbers, adds, repeals
25 and adds, or repeals a section that is amended, amended and
26 renumbered, added, repealed and added, or repealed by this act,
27 shall prevail over this act, whether that act is enacted prior to, or
28 subsequent to, the enactment of this act. The repeal, or repeal and
29 addition, of any article, chapter, part, title, or division of any code
30 by this act shall not become operative if any section of any other
31 act that is enacted by the Legislature during the 2012 calendar year
32 and takes effect on or before January 1, 2013, amends, amends
33 and renumbers, adds, repeals and adds, or repeals any section
34 contained in that article, chapter, part, title, or division.