Senate Bill No. 1171

Passed the Senate July 6, 2012

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Secretary of the Senate

Passed the Assembly July 2, 2012

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Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2012, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

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 66499.20¼, 66499.20½, and 66499.20¾ 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, 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.

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

SECTION 1. Section 2313 of the Business and Professions Code is amended to read:

2313. The board shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board to enjoin licensees pursuant to Sections 125.7, 125.8, and 2311, the circumstances in each case that prompted the board to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances, including those related to the undertreatment or undermedication of pain.

(c) Information relative to the performance of the board, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of complaint forms received; number of Section 805 and Section 805.01 reports by type; number of Section 801.01 and Section 803 reports; coroner reports received; number of convictions reported to the board; number of criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the board and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines, and number of public reprimands issued; number of cases in process more than six months from receipt by the board of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the board for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number successfully completing diversion programs and failing to do so, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and caseloads of investigators for original cases and for probation cases, respectively.

"Action," for purposes of this section, includes proceedings brought by, or on behalf of, the board against licensees for

unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

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

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

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

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

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

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

(d) The person qualifying on behalf of a licensee under Section 7068 shall be responsible for the licensee's construction operations

until the date of disassociation or the date the board receives the written notification of disassociation, whichever is later.

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

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

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

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

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

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

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

12241. On or before January 1, 2012, the secretary shall establish by regulation an annual administrative fee to recover reasonable administrative and enforcement costs incurred by the department for exercising supervision over and performing investigations in connection with the activities performed pursuant to Sections 12210 and 12211. This administrative fee shall be collected for every device registered with each county office of weights and measures, and paid to the Department of Food and Agriculture Fund beginning January 1, 2012, and annually thereafter.

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

19607.5. (a) Notwithstanding any other provision of law, if both a fair and a thoroughbred association are licensed by the board

to conduct live racing meetings within the northern zone during the same calendar period, signals of both racing programs shall be accepted at each live racing meeting within the northern zone and at all satellite wagering facilities eligible to receive these programs.

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

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

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

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

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

If the satellite wagering commissions received by the 2nd District Agricultural Association are less than the greater of the amounts specified in subparagraph (B) or (C), the thoroughbred association shall pay to the fair from amounts deducted from satellite wagering on its meeting and before distribution of any satellite wagering commissions and purses on its meeting, an amount equal to the difference between the actual satellite wagering commissions received by the fair in that year and the applicable amount from subparagraph (B) or (C). No additional satellite wagering commission shall be paid to the fair by an association unless the fair conducts live racing during the period described in subdivision (a).

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

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

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

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

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

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

(2) If a thoroughbred association and the 2nd District Agricultural Association in Stockton or the California Exposition and State Fair in Sacramento both conduct live racing meetings during any period described in subdivision (a), the total amount deducted shall be distributed by both the association and fair in the percentages specified for fair meetings in subdivision (b) of Section 19605.7.

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

(d) Notwithstanding any other provision of law, an association and fair that conduct their meeting pursuant to subdivision (b) shall

combine the operating expenses incurred at satellite wagering facilities during the period described in subdivision (a). For purposes of this subdivision only, the combined satellite wagering operating expenses of the association and the fair during the period described in subdivision (a) shall not exceed the actual expenses, or 6 percent of the combined parimutuel pool at satellite wagering facilities, whichever amount is less.

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

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

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

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

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

(i) An "institutional investor" as defined in subdivision (w) of Section 19805.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Any officer or director.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (A) Except as provided in subparagraph (B), the instructional tasting event may include the serving of alcoholic beverages to an attendee of legal drinking age. An instructional

tasting event on the subject of wine or distilled spirits shall be limited to not more than three tastings per person per day. A single tasting of distilled spirits shall not exceed one-fourth of one ounce and a single tasting of wine shall not exceed one ounce. An instructional tasting event on the subject of beer shall be limited to not more than the tasting of eight ounces of beer per person per day. The wine, beer, or distilled spirits tasted shall be limited to the products that are authorized to be sold by the authorized licensee and the licenseholder under its off-sale license.

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

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

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

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

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

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

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

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

(b) For purposes of this section:

(1) "Authorized licensee" means a winegrower, California winegrower's agent, beer and wine importer general, beer and wine wholesaler, wine rectifier, distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits importer general, distilled spirits rectifier, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper's certificate holder, distilled spirits wholesaler, brandy manufacturer, brandy importer, California brandy wholesaler, beer manufacturer, or an out-of-state beer manufacturer certificate holder. "Authorized licensee" shall not include an entity that solely holds a combination of a beer and wine wholesale license and an off-sale beer and wine retail license or holds those licenses solely in combination with any license not listed in this paragraph, or holds a limited off-sale retail wine license.

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

(3) "Location" means the total contiguous area encompassed by the off-sale and on-sale licenses.

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

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

(e) A licenseholder that also holds an on-sale beer and wine license, an on-sale beer and wine eating place license, or an on-sale

general license shall not allow an authorized licensee, or its designated representative, to conduct an instructional tasting event on the same day and at the same location as any instructional tasting event held pursuant to subdivision (b) of Section 23386, Section 25503.4, subdivision (c) of Section 25503.5, or Section 25503.55.

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

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

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

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

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

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

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

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

(k) (1) A licenseholder shall not require, or enter into a collusive scheme with, an authorized licensee or its designated representative to conduct one or more instructional tasting events as a condition of the licenseholder's carrying or continuing to carry a brand or brands of the authorized licensee or as a condition for display or other merchandising plan which is based on an agreement to provide shelf space. An authorized licensee or its designated representative shall not require any preferential treatment or benefit from, or enter into a collusive scheme with, a licenseholder as a condition of conducting one or more instructional tasting events, require a licenseholder to carry or continue to carry a brand or brands of the authorized licensee as a condition of conducting one or more instructional tasting events, or condition display or other merchandising plans that are based on agreements for the provision of shelf space on the conducting of one or more instructional tasting events. Any agreement, whether written or oral, entered into by and between a licenseholder and an authorized licensee or its designated representative that precludes the conducting of instructional tasting events on the premises of the licenseholder by any other authorized licensee is prohibited. A licenseholder or authorized licensee, or its designated representative, shall not use an instructional tasting event to circumvent any other requirements of this division.

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

(*l*) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales

of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

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

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

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

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

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

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

IMPORTANT INFORMATION FOR BUILDING OWNERS AND TENANTS

This form is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons

with visual impairments can get assistance in viewing this form through the Judicial Council Internet Web site at http://www.courts.ca.gov.

Existing law requires that you receive this information because the demand for money or complaint you received with this document claims that your building or property does not comply with one or more existing construction-related accessibility laws or regulations protecting the civil rights of persons with disabilities to access public places.

YOU HAVE IMPORTANT LEGAL OBLIGATIONS. Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect. Commencing September 1, 2009, information will also be available from the California Commission on Disability Access Internet Web site.

YOU HAVE IMPORTANT LEGAL RIGHTS. You are not required to pay any money unless and until a court finds you liable. Moreover, RECEIPT OF THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING.

You may wish to promptly consult an attorney experienced in this area of the law to get helpful legal advice or representation in responding to the demand for money or complaint you received. You may contact the local bar association in your county for information on available attorneys in your area. If you have insurance, you may also wish to contact your insurance provider. You have the right to seek assistance or advice about this demand for money or complaint from any person of your choice, and no one may instruct you otherwise. Your best interest may be served by seeking legal advice or representation from an attorney.

If a complaint has been filed and served on you and your property has been inspected by a Certified Access Specialist (CASp; see http://www.dgs.ca.gov/dsa/Programs/programCert/casp.aspx), you may have the right to a court stay (temporary stoppage) and early evaluation conference to evaluate the merits of the construction-related accessibility claim against you pursuant to Civil Code Section 55.54. At your option, you may be, but need

not be, represented by an attorney to file a reply and to file an application for a court stay and early evaluation conference. If you choose not to hire an attorney to represent you, you may obtain additional information about how to represent yourself and how to file a reply without hiring an attorney through the Judicial Council Internet Web site at http://www.courts.ca.gov. You may also obtain a form to file your reply to the lawsuit, as well as the form and information for filing an application to request the court stay and early evaluation conference at that same Web site.

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

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

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

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

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

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and

Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

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

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

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

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

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (g) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the initial list of defects provided to each member of the association pursuant to Section 1375, unless the association

and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the initial list of defects pursuant to this paragraph does not waive any privilege attached to the document. The initial list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

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

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

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

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

(b) (1) Upon written request, the association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest, or any other recipient authorized by the owner, with a copy of the requested documents specified in paragraphs (1) to (10), inclusive, of subdivision (a). Upon receipt of a written request, the association shall provide, on the form described in Section 1368.2, a written or electronic estimate of the fees that will be assessed for providing the requested documents. The documents required to be made available pursuant to this section may be maintained in electronic form, and may be posted on the association's Internet Web site. Requesting parties shall have the option of receiving the documents by electronic transmission if the association maintains the documents in electronic form. The association may collect a reasonable fee based upon the association's actual cost for the procurement, preparation, reproduction, and delivery of the documents requested pursuant to the provisions of this section.

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

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

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

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

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

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

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

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

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

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

(ii) The community service organization or similar entity exists and operates, in whole or in part, to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat, as required by the state or local government as an express written condition of development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A minor, under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, shall be permitted to appear in court without counsel for the limited purpose of requesting or opposing a request for a temporary restraining order or injunction, or both, under this section as provided in Section 374.

(b) For the purposes of this section:

(1) “Course of conduct” is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a

continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or computer email. Constitutionally protected activity is not included within the meaning of "course of conduct."

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

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

(4) "Petitioner" means the person to be protected by the temporary restraining order and injunction and, if the court grants the petition, the protected person.

(5) "Respondent" means the person against whom the temporary restraining order and injunction are sought and, if the petition is granted, the restrained person.

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

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

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

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

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

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

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

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

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

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

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

(j) (1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of not more

than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed, upon the request of a party, for a duration of not more than three years, without a showing of any further harassment since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

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

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

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

(*l*) In a proceeding under this section if there are allegations of unlawful violence or credible threats of violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person

who alleges he or she is a victim of violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges he or she is a victim of violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings if the person who alleges he or she is a victim of violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

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

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

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

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

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

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions

of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the respondent by first-class mail sent to the respondent at the most current address for the respondent available to the court.

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

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

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

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

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

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any

subsequent proof of service, by either one of the following methods:

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

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

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

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

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

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

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

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

(t) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to

purchase or receive a firearm or ammunition while the protective order is in effect.

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

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

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

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

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

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

(x) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process by a sheriff or marshal of a protective order,

restraining order, or injunction to be issued, if either of the following conditions applies:

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

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

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

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

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

(b) For the purposes of this section:

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

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

(3) "Employer" and "employee" mean persons defined in Section 350 of the Labor Code. "Employer" also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. "Employee" also includes the members of boards of directors of private, public, and quasi-public corporations and

elected and appointed public officers. For purposes of this section only, "employee" also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.

(4) "Petitioner" means the employer that petitions under subdivision (a) for a temporary restraining order and injunction.

(5) "Respondent" means the person against whom the temporary restraining order and injunction are sought and, if the petition is granted, the restrained person.

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

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

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

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

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

(d) In the discretion of the court, on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members, or other persons employed at the employee's workplace or workplaces.

(e) Upon filing a petition for an injunction under this section, the petitioner may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the petitioner also files a declaration that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the respondent, and that great or irreparable harm would result to an employee. The temporary

restraining order may include any of the protective orders described in paragraph (6) of subdivision (b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) (1) The Judicial Council shall develop forms, instructions, and rules for relating to matters governed by this section. The

forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

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

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

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

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

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

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

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

527.85. (a) Any chief administrative officer of a postsecondary educational institution, or an officer or employee designated by

the chief administrative officer to maintain order on the school campus or facility, a student of which has suffered a credible threat of violence made off the school campus or facility from any individual, which can reasonably be construed to be carried out or to have been carried out at the school campus or facility, may, with the written consent of the student, seek a temporary restraining order and an injunction, on behalf of the student and, at the discretion of the court, any number of other students at the campus or facility who are similarly situated.

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

(1) "Chief administrative officer" means the principal, president, or highest ranking official of the postsecondary educational institution.

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

(A) Following or stalking a student to or from school.

(B) Entering the school campus or facility.

(C) Following a student during school hours.

(D) Making telephone calls to a student.

(E) Sending correspondence to a student by any means, including, but not limited to, the use of the public or private mails, interoffice mail, facsimile, or computer email.

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

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

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

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

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

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

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

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

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

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

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

(e) Upon filing a petition for an injunction under this section, the petitioner may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the petitioner also files a declaration that, to the satisfaction of the court, shows reasonable proof that a student has suffered a credible threat of violence made off the school campus or facility by the respondent, and that great or irreparable harm would result to the student. The temporary restraining order may include any of the protective orders described in paragraph (8) of subdivision (b).

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

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

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

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

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

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

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

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party

who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

to any additional law enforcement agencies within the court's discretion as are requested by the petitioner.

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

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

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

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

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

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

(7) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and obtain the respondent's address. The law enforcement officer shall at that time also enforce the order, but may not arrest or take the respondent into custody for acts in violation of the order that were

committed prior to the verbal notice of the terms and conditions of the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and constitutes sufficient notice for the purposes of this section, and Section 29825 of the Penal Code. The petitioner shall mail an endorsed copy of the order to the respondent's mailing address provided to the law enforcement officer within one business day of the reported incident of unlawful violence or a credible threat of violence at which a verbal notice of the terms of the order was provided by a law enforcement officer.

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

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

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

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

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

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

(2) A temporary restraining order or injunction relating to unlawful violence or a credible threat of violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial

Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

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

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

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

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

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

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

1287. If the award is vacated, the court may order a rehearing before new arbitrators. If the award is vacated on the grounds set forth in paragraph (4) or (5) of subdivision (a) of Section 1286.2, the court with the consent of the parties to the court proceeding may order a rehearing before the original arbitrators.

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

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

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

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

(c) The face of the notice shall contain a heading at the top that reads as follows: "THE STATE OF CALIFORNIA REQUIRES US TO NOTIFY YOU THAT YOUR UNCLAIMED PROPERTY MAY BE TRANSFERRED TO THE STATE IF YOU DO NOT CONTACT US," or substantially similar language. The notice required by this subdivision shall specify the date that the property will escheat and the effects of escheat, including the necessity for filing a claim for the return of the property. The notice required by this section shall, in boldface type or in a font a minimum of two points larger than the rest of the notice, exclusive of the heading, do all of the following:

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

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

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

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

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

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

(e) The contents of, or the proceeds of sale of the contents of, a safe deposit box or other safekeeping repository shall not escheat to the state if, as of June 30 or the fiscal yearend next preceding the date on which a report is required to be filed under Section 1530, the owner has owned, with a banking organization providing the safe deposit box or other safekeeping repository, any demand, savings, or matured time deposit, or account subject to a negotiable order of withdrawal, which has not escheated under Section 1513 and is not reportable under subdivision (d) of Section 1530.

(f) The contents of, or the proceeds of sale of the contents of, a safe deposit box or other safekeeping repository shall not escheat to the state if, as of June 30 or the fiscal yearend next preceding the date on which a report is required to be filed under Section 1530, the owner has owned, with a financial organization providing the safe deposit box or other safekeeping repository, any demand, savings, or matured time deposit, or matured investment certificate, or account subject to a negotiable order of withdrawal, or other

interest in a financial organization or any deposit made therewith, and any interest or dividends thereon, which has not escheated under Section 1513 and is not reportable under subdivision (d) of Section 1530.

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

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

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

(j) A business association may directly escheat the contents of a safe deposit box or other safekeeping repository without

exercising its rights under Article 2 (commencing with Section 1630) of Chapter 17 of Division 1 of the Financial Code.

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

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

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

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

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

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

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

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

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

(b) For the purpose of applying paragraph (1) of subdivision (a) to a distribution by a corporation, "preferential dividends arrears amount" means the amount, if any, of cumulative dividends in arrears on all shares having a preference with respect to payment of dividends over the class or series to which the applicable distribution is being made, provided that if the articles of incorporation provide that a distribution can be made without regard to preferential dividends arrears amount, then the preferential dividends arrears amount shall be zero. For the purpose of applying paragraph (2) of subdivision (a) to a distribution by a

corporation, "preferential rights amount" means the amount that would be needed if the corporation were to be dissolved at the time of the distribution to satisfy the preferential rights, including accrued but unpaid dividends, of other shareholders upon dissolution that are superior to the rights of the shareholders receiving the distribution, provided that if the articles of incorporation provide that a distribution can be made without regard to any preferential rights, then the preferential rights amount shall be zero. In the case of a distribution of cash or property in payment by the corporation in connection with the purchase of its shares, (1) there shall be added to retained earnings all amounts that had been previously deducted therefrom with respect to obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that remain unpaid immediately prior to the distribution and (2) there shall be deducted from liabilities all amounts that had been previously added thereto with respect to the obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that will remain unpaid after the distribution, provided that no addition to retained earnings or deduction from liabilities under this subdivision shall occur on account of any obligation that is a distribution to the corporation's shareholders (Section 166) at the time the obligation is incurred.

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

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

(2) A fair valuation.

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

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

(e) (1) If terms of indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to shareholders could then be made under this

section, indebtedness of a corporation, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under paragraph (2) of subdivision (a).

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

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

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

2900. (a) As used in this section:

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

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

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

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

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

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

(1) The plaintiff alleges in the complaint that plaintiff was a shareholder, of record or beneficially, or the holder of voting trust certificates at the time of the transaction or any part thereof of which plaintiff complains or that plaintiff's shares or voting trust certificates thereafter devolved upon plaintiff by operation of law from a holder who was a holder at the time of the transaction or any part thereof complained of. Any shareholder who does not meet these requirements may nevertheless be allowed, in the

discretion of the court, to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing, at which the court shall consider the evidence by affidavit or testimony, as it deems material, of all of the following:

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

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

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

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

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

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

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

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

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

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

(e) At the hearing upon any motion pursuant to subdivision (c), the court shall consider the evidence, written or oral, by witnesses or affidavit, as may be material to the ground or grounds upon which the motion is based, or to a determination of the probable reasonable expenses, including attorney's fees, of the flexible purpose corporation and the moving party that will be incurred in the defense of the action. If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the amount of the bond, not to exceed fifty thousand dollars ($50,000), to be furnished by the plaintiff for reasonable expenses, including attorney's fees, which may be incurred by the moving party and the flexible purpose corporation in connection with the action, including expenses for which the flexible purpose corporation may become liable pursuant to Section 2702. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. If the court, upon the motion, makes a determination that a bond shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to the defendant or defendants, unless the bond required by the court has been furnished within such reasonable time as may be fixed by the court.

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

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

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

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

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

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

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

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

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

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

8210. (a) Every corporation shall, within 90 days after the filing of its original articles and biennially thereafter during the applicable filing period, file, on a form prescribed by the Secretary of State, a statement containing: (1) the name of the corporation and the Secretary of State's file number; (2) the names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer; (3) the street address of its principal office in this state, if any; (4) the mailing address of the corporation, if different from the street address of its principal executive office or if the corporation has no principal office address in this state; and (5) if the corporation chooses to receive renewal notices and any other notifications from the Secretary of State by electronic mail instead of by United States mail, a valid electronic mail address for the corporation or for the corporation's designee to receive those notices.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or any domestic or foreign or foreign business corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall

set forth the person's complete business or residence street address. If a corporate agent is designated, no address for it shall be set forth.

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

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

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

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

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

12570. (a) Every corporation shall, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period in each year, file, on a form prescribed by the Secretary of State, a statement containing: (1) the name of the

corporation and the Secretary of State's file number; (2) the names and complete business or residence addresses of its chief executive officer or general manager, secretary, and chief financial officer; (3) the street address of its principal office in this state, if any; (4) the mailing address of the corporation, if different from the street address of its principal office in this state; and (5) if the corporation chooses to receive renewal notices and any other notifications from the Secretary of State by electronic mail instead of by United States mail, a valid electronic mail address for the corporation or for the corporation's designee to receive those notices.

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

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

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

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

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

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

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

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

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

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

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

(a) Adopted a policy that prohibits discrimination, harassment, intimidation, and bullying based on the actual or perceived characteristics set forth in Section 422.55 of the Penal Code and Section 220 of this code, and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual

orientation, or association with a person or group with one or more of these actual or perceived characteristics. The policy shall include a statement that the policy applies to all acts related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district.

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

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

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

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

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

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

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

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

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

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

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

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

(b) An existing after school supplemental grantee may operate a three-hour or a six-hour per day program, but is not eligible to receive additional grant funds for the purpose of operating a six-hour per day program pursuant to this section. If the grantee operates a six-hour per day program, the target attendance level for the purpose of grant reductions pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 8483.7 shall be computed as if the grant award were based upon the lesser of fifteen dollars ($15) per day of pupil attendance or 30 percent of the total grant awarded to the school per school year. It is the intent of the Legislature that a grantee who serves additional pupils by operating a longer day program not receive additional funding for this purpose.

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

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

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

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

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

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

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

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

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

(1) Conduct an assessment of child care needs in the county no less than once every five years. The department shall define and prescribe data elements to be included in the needs assessment and shall specify the format for the data reporting. The needs assessment shall also include all factors deemed appropriate by the local planning council in order to obtain an accurate picture of the comprehensive child care needs in the county. The factors include, but are not limited to, all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

(3) Encourage public input in the development of the priorities. Opportunities for public input shall include at least one public hearing during which members of the public can comment on the proposed priorities.

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

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

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

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

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

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

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

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

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

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

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

(b) If a federal law designates a state educational agency or other agency or officer primarily responsible for state supervision of public schools, that designation shall be deemed to refer to the state board. The state board shall make timely application for any

federal funds made available, and shall, pursuant to the federal law and this article, direct the allocation and apportionment of the federal funds to school districts.

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

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

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

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

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

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

(b) "General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means General Fund revenues that are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the California Constitution, including, for the 1986–87 fiscal year only, any revenues that are determined to be in excess of the appropriations limit established pursuant to Article XIII B of the California Constitution for the fiscal year in which they are received. General

Fund revenues for a fiscal year to which paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution is being applied shall include, in that computation, only General Fund revenues for that fiscal year that are the proceeds of taxes, as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and shall not include prior fiscal year revenues. Commencing with the 1995–96 fiscal year, and each fiscal year thereafter, "General Fund revenues that are the proceeds of taxes," as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, includes any portion of the proceeds of taxes received from the state sales tax that are transferred to the counties pursuant to, and only if, legislation is enacted during the 1995–96 fiscal year the purpose of which is to realign children's programs. The amount of the proceeds of taxes shall be computed for any fiscal year in a manner consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor's Budget for the Budget Act of 1986.

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

(d) "General Fund revenues appropriated for community college districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to community college districts.

The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(e) "Total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, and community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Superintendent, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to school districts and community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

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

(1) Any appropriation that is not made for allocation to a school district, as defined in Section 41302.5, or to a community college district, regardless of whether the appropriation is made for any purpose that may be considered to be for the benefit to a school district, as defined in Section 41302.5, or a community college district. This paragraph shall not be construed to exclude any

funding appropriated for part-day California state preschool programs under Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of Division 1 of Title 1 or the After School Education and Safety Program established pursuant to Article 22.5 (commencing with Section 8482) of Chapter 2 of Part 6 of Division 1 of Title 1.

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

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

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

(g) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for school districts as defined, those local revenues, except revenues identified pursuant to paragraph (5) of subdivision (h) of Section 42238, that are used to offset state aid for school districts in calculations performed pursuant to Sections 2558 and 42238, and Chapter 7.2 (commencing with Section 56836) of Part 30 of Division 4 of Title 2.

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

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

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

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

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

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

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

(b) It is the intent of the Legislature to clarify that the part-time state preschool programs and the After School Education and Safety Program fall within the Proposition 98 guarantee and to fund other child care programs less directly associated with school districts from appropriations that do not count toward the Proposition 98 minimum guarantee.

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

(1) For purposes of paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, "General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87" does not include General Fund revenues appropriated for any program within Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1, with the exception of the part-day California state preschool programs set forth in Article 7 (commencing with Section 8235) and the After School Education and Safety Program in Article 22.5 (commencing with Section 8482). The Director of Finance shall adjust accordingly "the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87," for purposes of

applying that percentage in the 2011–12 fiscal year and each subsequent fiscal year in making the calculations required under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

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

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

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

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

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

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

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

(c) The moneys transferred to the Supplemental Revenue Augmentation Fund in the 2011–12 fiscal year shall be transferred

by the county office of education to the Controller, in amounts and for those purposes as directed by the Director of Finance, exclusively to reimburse the state for the costs of providing trial court services and costs until those moneys are exhausted.

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

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

(2) Items 6110-104-0001, 6110-105-0001, 6110-108-0001, 6110-122-0001, 6110-124-0001, 6110-137-0001, 6110-144-0001, 6110-150-0001, 6110-151-0001, 6110-156-0001, 6110-181-0001, 6110-188-0001, 6110-189-0001, 6110-190-0001, 6110-193-0001, 6110-195-0001, 6110-198-0001, 6110-204-0001, 6110-208-0001, 6110-209-0001, 6110-211-0001, 6110-227-0001, 6110-228-0001, 6110-232-0001, 6110-240-0001, 6110-242-0001, 6110-243-0001, 6110-244-0001, 6110-245-0001, 6110-246-0001, 6110-247-0001, 6110-248-0001, 6110-260-0001, 6110-265-0001, 6110-266-0001, 6110-267-0001, 6110-268-0001, and 6360-101-0001 of Section 2.00.

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

(2) This section and Section 42 of Chapter 12 of the Third Extraordinary Session of the Statutes of 2009 do not authorize a school district that receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 to redirect this funding for another purpose unless otherwise authorized in law or pursuant to an agreement between a charter school and its chartering authority. Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2014–15 fiscal year, inclusive, a school district that

receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 shall continue to distribute the funds to those charter schools based on the relative proportion that the school district distributed in the 2007–08 fiscal year, and shall adjust those amounts to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a). For a charter school that began operation in the 2008–09 fiscal year, if a school district received funding on behalf of that charter school pursuant to Sections 47634.1 and 47651, the school district shall continue to distribute the funds to that charter school based on the relative proportion that the school district distributed in the 2008–09 fiscal year and shall adjust the amount of those funds to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a).

(3) Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2014–15 fiscal year, inclusive, the Superintendent shall apportion from the amounts appropriated by Item 6110-211-0001 of Section 2.00 of the annual Budget Act an amount to a charter school in accordance with the per-pupil methodology prescribed in subdivision (c) of Section 47634.1.

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

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

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

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

(B) The regularly scheduled open public hearing held pursuant to subparagraph (A) shall be held prior to and independent of a meeting where the governing board of the school district or governing board of the county office of education adopts a budget. If the governing board intends to close a program funded by the items listed in paragraph (2) of subdivision (a), the governing board shall identify, in the notice of the agenda of the public hearing or at another public hearing, the program or programs proposed to be closed.

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

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

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

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

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

(B) For purposes of this section, "sufficiency" means that each pupil has sufficient textbooks and instructional materials in the four core areas as defined by Section 60119 and that all pupils within the local educational agency who are enrolled in the same course shall have identical textbooks and instructional materials, as specified in Section 1240.3.

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

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

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

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

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

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

(1) Property tax payment receipts.

(2) Rental property contract, lease, or payment receipts.

(3) Utility service contract, statement, or payment receipts.

(4) Pay stubs.

(5) Voter registration.

(6) Correspondence from a government agency.

(7) Declaration of residency executed by the parent or legal guardian of a pupil.

(b) Nothing in this section shall be construed to require a parent or legal guardian of a pupil to show all of the items of documentation listed in paragraphs (1) to (7), inclusive, of subdivision (a).

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

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

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

unaccompanied youth in lieu of a declaration of residency executed by his or her parent or legal guardian.

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

49061. As used in this chapter:

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

(b) "Pupil record" means any item of information directly related to an identifiable pupil, other than directory information, that is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm, or other means.

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

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

(d) "School district" means any school district maintaining any kindergarten or any of grades 1 to 12, inclusive, any public school providing instruction in any kindergarten or any of grades 1 to 12,

inclusive, the office of the county superintendent of schools, or any special school operated by the department.

(e) "Access" means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record.

(f) "County placing agency" means the county social service department or county probation department.

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

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

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

51501. The state board and any governing board shall not adopt any textbooks or other instructional materials for use in the public schools that contain any matter reflecting adversely upon persons on the basis of race or ethnicity, gender, religion, disability, nationality, or sexual orientation, or because of a characteristic listed in Section 220.

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

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

(2) If sufficient funds are not available to fully meet the funding requirement of paragraph (1), for the 2010–11, 2011–12, and 2012–13 fiscal years, the Controller shall allocate the balance of funds required to meet the funding requirement from the Alternative and Renewable Fuel and Vehicle Technology Fund

established pursuant to Section 44273 of the Health and Safety Code, upon appropriation by the Legislature, for expenditure in the form of grants to school districts, that shall be allocated using the same criteria as provided in Article 5 (commencing with Section 54690), except as provided in subdivision (b) of Section 54691, and pursuant to the additional requirements of this article.

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

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

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

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

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

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

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

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

(A) First, to school districts that propose to establish partnership academies that are consistent with the guidelines developed by the

State Energy Resources Conservation and Development Commission pursuant to subdivision (e).

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

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

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

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

(A) A district operating a partnership academy may receive one thousand dollars ($1,000) per year for each qualified student enrolled in grade 9 in an academy during the first year of that academy's operation, except that no more than forty-five thousand dollars ($45,000) may be granted to any one academy for the initial year.

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

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

(D) A district operating a partnership academy may receive one thousand dollars ($1,000) for each qualified student enrolled in any of grades 9 to 12, inclusive, in an academy during the fourth and following years of that academy's operation, except that no

more than one hundred fifty thousand dollars ($150,000) may be granted to any one academy for each fiscal year.

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

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

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

(i) Commencing in 2014 and not later than January 1 of each year for which this article is operative, the Superintendent, in consultation with the State Energy Resources Conservation and Development Commission, shall provide a report to the Legislature that includes, but is not limited to, a description of the curriculum and substance of the programs funded by grants awarded pursuant to this article. The first annual report shall include the identification of gaps in available curricula relating to clean technology and renewable energy that are consistent with current state energy policy and priorities, as well as the proportion of participating pupils who meet the at-risk criteria enumerated in subdivision (d) of Section 54690. The report also shall include pupil participation data and data collected pursuant to subdivision (d) of Section 54691.

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

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

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

(a) Any matter reflecting adversely upon persons on the basis of race or ethnicity, gender, religion, disability, nationality, or

sexual orientation, occupation, or because of a characteristic listed in Section 220.

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

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

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

(b) Notwithstanding any other law, the Student Aid Commission shall establish procedures and forms that enable students who are exempt from paying nonresident tuition under Section 68130.5, or who meet equivalent requirements adopted by the regents, to apply for, and participate in, all student financial aid programs administered by the State of California to the full extent permitted by federal law.

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

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

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

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

(1) Are secure, are not susceptible to fraud, and protect student privacy in a manner that complies with federal and state privacy

laws, including, but not limited to, the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g).

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

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

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

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

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

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

(b) By January 1, 2012, the Office of the Chancellor of the California Community Colleges shall implement a procedure that complies with subdivision (a) to facilitate the electronic receipt and transmission of student transcripts by community college districts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) (1) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits

under the Temporary Assistance for Needy Families program, the Supplemental Security Income/State Supplementary Payment Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

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

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

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a dependent or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

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

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

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

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

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

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

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

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

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

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

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) to (j), inclusive. It is the intent of the Legislature that funds provided pursuant to this subdivision be used to support the determination of financial need and delivery of student financial aid services, on the basis of the number of

students for whom fees are waived. It also is the intent of the Legislature that the funds provided pursuant to this subdivision directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers). Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) His or her date of birth.

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

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

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

(A) That the applicant has a California driver's license or state identification card and that the number for that driver's license or

identification card provided by the applicant matches the number for that person's driver's license or identification card that is on file with the Department of Motor Vehicles.

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

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

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

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

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

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

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

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

(A) The United States Election Assistance Commission has approved the use of the federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301) funding to provide online voter registration

in advance of the deployment of the statewide voter registration database or other federal funding is available and approved for the same purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14101.6. (a) Every credit union shall, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period in each year, file, in a form prescribed by the Secretary of State, a statement containing: (1) the name of the credit union and the Secretary of State's file number; (2) the names and complete business or residence addresses of its chief executive officers, secretary, and chief financial officer; (3) the street address of its principal office, if any; (4) if the credit union chooses to receive renewal notices and any other notifications from the Secretary of State by electronic mail instead of by United States mail, a valid electronic mail address for the credit union or for the credit union's designee to receive those notices; and (5) the mailing address of the credit union, if different from the street address of its principal office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) The remaining California permits with the next highest California landings to those in subparagraph (E), which are not

described in paragraph (1) or (2) of subdivision (g) of Section 8276.4, shall receive a maximum allocation of 250 trap tags.

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

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

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

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

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

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

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

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

(5) Permitholders may replace lost tags by application to the department and payment of a fee not to exceed the reasonable costs

incurred by the department. The department may waive or reduce a fee in the case of catastrophic loss of tags.

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

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

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

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

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

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

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

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

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

(2) After the program is implemented pursuant to paragraph (1), the director may modify the program, if consistent with the requirements of this section, after consultation with the Dungeness crab task force or its representatives and after the task force has had 60 days or more to review the proposed modifications and recommend any proposed changes. The director may implement the modifications earlier than 60 days after it is sent to the Dungeness crab task force for review, if recommended by the task force.

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

(f) For purposes of meeting the necessary expenses of initial organization and operation of the program until fees may be collected, or other funding sources may be received, the department may borrow money as needed for these expenses from the council. The borrowed money shall be repaid within one year from the fees collected or other funding sources received. The council shall give high priority to providing funds or services to the department, in addition to loans, to assist in the development of the program,

including, but not limited to, the costs of convening the Dungeness crab task force, environmental review, and the department's costs of attending meetings with task force members.

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

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

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

(i) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.

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

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

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

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

(c) Out-of-state egg handlers and producers shall report and pay the fee on egg sales into California sold to a retailer, producer, handler, or breaking plant, and on egg products brought into the

state, at a maximum rate of fifteen cents ($0.15) for each equivalent of 30 dozen eggs.

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

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

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

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

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

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

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

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

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

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

(a) California Horse Racing Board.

(b) Court Reporters Board of California.

(c) Chief, Division of Occupational Safety and Health.
(d) Chief, Division of Labor Standards Enforcement.
(e) Commissioner of Corporations.
(f) Contractors' State License Board.
(g) Director of Fish and Game.
(h) Director of Health Care Services.
(i) Chief Deputy, State Department of Health Care Services.
(j) Real Estate Commissioner.
(k) State Athletic Commissioner.
(*l*) State Board of Barbering and Cosmetology.
(m) State Librarian.
(n) Director of Social Services.
(o) Chief Deputy, State Department of Social Services.
(p) Director of Mental Health.
(q) Chief Deputy, State Department of Mental Health.
(r) Director of Developmental Services.
(s) Chief Deputy, State Department of Developmental Services.
(t) Director of Alcohol and Drug Programs.
(u) Director of Rehabilitation.
(v) Chief Deputy, Department of Rehabilitation.
(w) Director of Statewide Health Planning and Development.
(x) Deputy, California Health and Human Services Agency.
(y) Director of the Department of Managed Health Care.
(z) Patient Advocate, California Health and Human Services Agency.
(aa) State Public Health Officer, State Department of Public Health.
(ab) Chief Deputy, State Department of Public Health.

SEC. 54. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization that has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means an employee who is required to develop or present management positions with respect to

employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

(d) "Employee organization" means an organization that includes employees of a public school employer and that has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person of the organization authorized to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of public school employees, as "public school employee" is defined in subdivision (j), in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means an employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

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

(i) "Organizational security" is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good

standing for the duration of the written agreement. However, an arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

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

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

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code, an auxiliary organization established pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of Division 7 of Title 3 of the Education Code, except an auxiliary organization solely formed as or operating a student body association or student union, or a joint powers agency, except a joint powers agency established solely to provide services pursuant to Section 990.8, if all the following apply to the joint powers agency:

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

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

(3) Any of the following are true:

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

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

(C) It is comprised solely of educational agencies.

(*l*) "Recognized organization" or "recognized employee organization" means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

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

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

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

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

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

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

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

6218.01. (a) (1) No person shall post on the Internet, with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against

the provider, employee, volunteer, or patient of a reproductive health service facility or other individuals residing at the same home address, the home address, the telephone number, or personal identifying information of a provider, employee, volunteer, or patient of a reproductive health services facility or other individuals residing at the same home address.

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

(3) A violation of this subdivision that leads to the bodily injury of the provider, employee, volunteer, or patient of a reproductive health services facility or other individuals residing at the same home address, is a misdemeanor punishable by a fine of up to five thousand dollars ($5,000), imprisonment of up to one year in a county jail, or by both that fine and imprisonment.

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

SEC. 57. Section 7572 of the Government Code is amended to read:

7572. (a) A child shall be assessed in all areas related to the suspected disability by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of occupational therapy and physical therapy. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code.

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Care Services in consultation with the State Department of Education.

(c) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the

assessment recommended the service in order for the child to benefit from special education. In no case shall the inclusion of necessary related services in a pupil's individualized education plan be contingent upon identifying the funding source. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

(1) If an assessment has been conducted pursuant to subdivision (b), the recommendation of the person who conducted the assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. When the proposed recommendation of the person has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation. The person who conducted the assessment shall attend the individualized education program team meeting if requested. Following this discussion and review, the recommendation of the person who conducted the assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

(2) If an independent assessment for the provision of related services or designated instruction and services is submitted to the individualized education program team, review of that assessment shall be conducted by the person specified in subdivision (b). The recommendation of the person who reviewed the independent assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. The parent shall be notified in writing and may request the person who reviewed the independent assessment to attend the individualized education program team meeting to discuss the recommendation. The person who reviewed the independent assessment shall attend the individualized education program team meeting if requested. Following this review and discussion, the recommendation of the person who reviewed the independent

assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

(3) Any disputes between the parent and team members representing the public agencies regarding a recommendation made in accordance with paragraphs (1) and (2) shall be resolved pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of Title 2 of the Education Code.

(d) Whenever a related service or designated instruction and service specified in subdivision (b) is to be considered for inclusion in the child's individualized educational program, the local educational agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (c). Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program team meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

SEC. 58. Section 7582 of the Government Code is amended to read:

7582. Assessments and therapy treatment services provided under programs of the State Department of Health Care Services, or its designated local agencies, rendered to a child referred by a local educational agency for an assessment or a disabled child or youth with an individualized education program, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered pursuant to this chapter.

SEC. 59. Section 8310.7 of the Government Code is amended to read:

8310.7. (a) This section shall only apply to the following state agencies:

(1) The Department of Industrial Relations.

(2) The Department of Fair Employment and Housing.

(b) In addition to the duties imposed under Section 8310.5, the state agencies described in subdivision (a), in the course of collecting demographic data directly or by contract as to the ancestry or ethnic origin of California residents, shall collect and tabulate data for the following:

(1) Additional major Asian groups, including, but not limited to, Bangladeshi, Hmong, Indonesian, Malaysian, Pakistani, Sri Lankan, Taiwanese, and Thai.

(2) Additional major Native Hawaiian and other Pacific Islander groups, including, but not limited to, Fijian and Tongan.

(c) The state agencies identified in subdivision (a) shall make any data collected pursuant to subdivision (b) publicly available, except for personal identifying information, which shall be deemed confidential, by posting the data on the Internet Web site of the agency on or before July 1, 2012, and annually thereafter. This subdivision shall not be construed to prevent any other state agency from posting data collected pursuant to subdivision (b) on the agency's Internet Web site, in the manner prescribed by this section.

(d) The state agencies identified in subdivision (a) shall, within 18 months after the decennial United States Census for the year 2020 is released to the public, update their data collection to reflect the additional Asian groups and additional Native Hawaiian and Pacific Islander groups as they are reported by the United States Census Bureau.

SEC. 60. Section 12011.5 of the Government Code is amended to read:

12011.5. (a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor, or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of Section 16 of Article VI of the California Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for the judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Section 6013.5 of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, gender, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision. Each member of the designated agency of the State Bar responsible for evaluation of judicial candidates shall complete a minimum of 60 minutes of training in the areas of fairness and bias in the judicial appointments process at an orientation for new members. If the member serves more than one term, the member shall complete an additional 60 minutes of that training during the member's service on the designated agency of the State Bar responsible for evaluation of judicial candidates.

(c) Upon receipt from the Governor of the names of candidates for judicial office and their completed personal data questionnaires, the State Bar shall employ appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to his or her ability to discharge the judicial duties of the office to which the appointment or nomination shall be made. Within 90 days of submission by the Governor of the name of a potential appointee for judicial office, the State Bar shall report in confidence to the Governor its recommendation whether the candidate is exceptionally well qualified, well qualified, qualified, or not qualified and the reasons therefor, and may report, in confidence, other information as the State Bar deems pertinent to the qualifications of the candidate.

(d) In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal

experience. The State Bar shall consider legal experience broadly, including, but not limited to, litigation and nonlitigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.

(e) The State Bar shall establish and promulgate rules and procedures regarding the investigation of the qualifications of candidates for judicial office by the designated agency. These rules and procedures shall establish appropriate, confidential methods for disclosing to the candidate the subject matter of substantial and credible adverse allegations received regarding the candidate's health, physical or mental condition, or moral turpitude which, unless rebutted, would be determinative of the candidate's unsuitability for judicial office. No provision of this section shall be construed as requiring that any rule or procedure be adopted that permits the disclosure to the candidate of information from which the candidate may infer the source, and no information shall either be disclosed to the candidate nor be obtainable by any process that would jeopardize the confidentiality of communications from persons whose opinion has been sought on the candidate's qualifications.

(f) All communications, written, verbal, or otherwise, of and to the Governor, the Governor's authorized agents or employees, including, but not limited to, the Governor's Legal Affairs Secretary and Appointments Secretary, or of and to the State Bar in furtherance of the purposes of this section are absolutely privileged from disclosure and confidential, and any communication made in the discretion of the Governor or the State Bar with a candidate or person providing information in furtherance of the purposes of this section shall not constitute a waiver of the privilege or a breach of confidentiality.

(g) If the Governor has appointed a person to a trial court who has been found not qualified by the designated agency, the State Bar may make public this fact after due notice to the appointee of its intention to do so, but that notice or disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the appointee.

(h) If the Governor has nominated or appointed a person to the Supreme Court or court of appeal in accordance with subdivision

(d) of Section 16 of Article VI of the California Constitution, the Commission on Judicial Appointments may invite, or the State Bar's governing board or its designated agency may submit to the commission, its recommendation, and the reasons therefor, but that disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the nominee or appointee.

(i) No person or entity shall be liable for any injury caused by any act or failure to act, be it negligent, intentional, discretionary, or otherwise, in the furtherance of the purposes of this section, including, but not limited to, providing or receiving any information, making any recommendations, and giving any reasons therefor. As used in this section, the term "State Bar" means its governing board and members thereof, the designated agency of the State Bar and members thereof, and employees and agents of the State Bar.

(j) At any time prior to the receipt of the report from the State Bar specified in subdivision (c) the Governor may withdraw the name of any person submitted to the State Bar for evaluation pursuant to this section.

(k) A candidate for judicial office shall not be appointed until the State Bar has reported to the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate's name to the State Bar, whichever occurs earlier. The requirement of this subdivision shall not apply to any vacancy in judicial office occurring within the 90 days preceding the expiration of the Governor's term of office, provided, however, that with respect to those vacancies and with respect to nominations pursuant to subdivision (d) of Section 16 of Article VI of the California Constitution, the Governor shall be required to submit any candidate's name to the State Bar in order to provide an opportunity, if time permits, to make an evaluation.

(*l*) Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to judicial office, nor shall anything in this section be construed as adding any additional qualifications for the office of a judge.

(m) The Board of Governors of the State Bar shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity,

diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature, except an evaluation, review, or report on potential judicial appointees or nominees as authorized by this section.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in an evaluation, review, or report in his or her individual capacity.

(n) (1) Notwithstanding any other provision of this section, but subject to paragraph (2), on or before March 1 of each year for the prior calendar year, all of the following shall occur:

(A) The Governor shall collect and release, on an aggregate statewide basis, all of the following:

(i) Demographic data provided by all judicial applicants relative to ethnicity, race, gender, gender identity, and sexual orientation.

(ii) Demographic data relative to ethnicity, race, gender, gender identity, and sexual orientation as provided by all judicial applicants, both as to those judicial applicants who have been and those who have not been submitted to the State Bar for evaluation.

(iii) Demographic data relative to ethnicity, race, gender, gender identity, and sexual orientation of all judicial appointments or nominations as provided by the judicial appointee or nominee.

(B) The designated agency of the State Bar responsible for evaluation of judicial candidates shall collect and release both of the following on an aggregate statewide basis:

(i) Statewide demographic data provided by all judicial applicants reviewed relative to ethnicity, race, gender, gender identity, sexual orientation, and areas of legal practice and employment.

(ii) The statewide summary of the recommendations of the designated agency of the State Bar by ethnicity, race, gender, gender identity, sexual orientation, and areas of legal practice and employment.

(C) The Administrative Office of the Courts shall collect and release the demographic data provided by justices and judges described in Article VI of the California Constitution relative to ethnicity, race, gender, gender identity, and sexual orientation by specific jurisdiction.

(2) For purposes of subparagraph (A) of paragraph (1), in the year following a general election or recall election that will result

in a new Governor taking office prior to March 1, the departing Governor shall provide all of the demographic data collected for the year by that Governor pursuant to this subdivision to the incoming Governor. The incoming Governor shall then be responsible for releasing the provided demographic data, and the demographic data collected by that incoming Governor, if any, prior to the March 1 deadline imposed pursuant to this subdivision.

(3) Any demographic data disclosed or released pursuant to this subdivision shall disclose only aggregated statistical data and shall not identify any individual applicant, justice, or judge.

(4) The State Bar and the Administrative Office of the Courts shall use the following ethnic and racial categories: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander, White, some other race, and more than one race, as those categories are defined by the United States Census Bureau for the 2010 Census for reporting purposes.

(5) Any demographic data disclosed or released pursuant to this subdivision shall also indicate the percentage of respondents who declined to respond.

(o) Members of judicial selection advisory committees are encouraged to recommend candidates from diverse backgrounds and cultures reflecting the demographics of California.

(p) If any provision of this section other than a provision relating to or providing for confidentiality or privilege from disclosure of any communication or matter, or the application of the provision to any person or circumstances, is held invalid, the remainder of this section to the extent it can be given effect, or the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable. If any other act of the Legislature conflicts with the provisions of this section, this section shall prevail.

SEC. 61. Section 12172.5 of the Government Code is amended to read:

12172.5. (a) The Secretary of State is the chief elections officer of the state, and shall administer the provisions of the Elections Code. The Secretary of State shall see that elections are efficiently conducted and that state election laws are enforced. The Secretary

of State may require elections officers to make reports concerning elections in their jurisdictions.

(b) If, at any time, the Secretary of State concludes that state election laws are not being enforced, the Secretary of State shall call the violation to the attention of the district attorney of the county or to the Attorney General. In these instances, the Secretary of State may assist the county elections officer in discharging his or her duties.

(c) In order to determine whether an elections law violation has occurred, the Secretary of State may examine voted, unvoted, spoiled and canceled ballots, vote-counting computer programs, vote by mail ballot envelopes and applications, and supplies referred to in Section 14432 of the Elections Code. The Secretary of State may also examine any other records of elections officials as he or she finds necessary in making his or her determination, subject to the restrictions set forth in Section 6253.5.

(d) The Secretary of State may adopt regulations to assure the uniform application and administration of state election laws.

SEC. 62. Section 14502 of the Government Code is amended to read:

14502. The commission consists of 13 members appointed as follows:

(a) Nine members shall be appointed by the Governor with the advice and consent of the Senate. One member shall be appointed by the Speaker of the Assembly and one member shall be appointed by the Senate Committee on Rules, with neither of these members subject to confirmation by the Senate. A member appointed pursuant to this subdivision shall not simultaneously hold an elected public office, or serve on any local or regional public board or commission with business before the commission.

(b) One Member of the Senate appointed by the Senate Committee on Rules and one Member of the Assembly appointed by the Speaker of the Assembly shall be ex officio members without vote and shall participate in the activities of the commission to the extent that such participation is not incompatible with their positions as Members of the Legislature.

(c) Notwithstanding any other provision of law, a voting member of the commission may serve on the High-Speed Rail Authority as established in Division 19.5 (commencing with Section 185000) of the Public Utilities Code.

SEC. 63. Section 17280.3 of the Government Code is amended to read:

17280.3. (a) If a registered warrant, as defined in Section 17221, is issued for payment of any principal or interest due and payable on a state bond that is held in book entry form by a securities settlement system, the beneficial owner of the state bond may offset the portion of the principal amount of the registered warrant (exclusive of interest thereon) that is attributable to that beneficial owner's beneficial interest in the state bond against an existing tax liability, as defined in subdivision (a) of Section 17280.1, of that beneficial owner, in accordance with Sections 17280.1 and 17280.2, or otherwise in accordance with procedures established by the Controller, notwithstanding that the securities settlement system, or its nominee, is the registered owner of the state bond or the named payee of the registered warrant. The amount of that beneficial owner's tax liability that may be offset pursuant to this section shall not exceed the portion of the principal amount of the registered warrant, exclusive of interest thereon, that is attributable to the taxpayer's beneficial ownership of the state bond. Any beneficial owner who exercises the offset right set forth in this section in payment of an existing tax liability shall not be entitled to receive payment of any interest accruing on the portion of the registered warrant attributable to that beneficial owner's beneficial interest in the state bond after the date on which the beneficial owner exercises the offset right in accordance with the applicable procedures, and the beneficial owner shall be required to promptly repay to the state any interest accruing on the registered warrant after that date that may be paid to or ultimately received by the beneficial owner, if any. The preceding sentence shall apply even if the portion of the principal amount of the registered warrant that is attributable to the beneficial owner's ownership interest in the state bond is larger than the amount of the tax liability offset by the beneficial owner with that registered warrant. Upon exercising the right of offset pursuant to this subdivision, the beneficial owner shall not be permitted to sell, transfer, or assign his or her beneficial ownership of the applicable state bond until the applicable registered warrant has been redeemed by the state and the beneficial owner has repaid any interest received on his or her portion of that registered warrant attributable to the period after that beneficial owner's exercise of

the right of offset as provided in this subdivision. For purposes of this subdivision and subdivision (b), "state bond" means any general obligation bond or revenue anticipation note issued by the state.

(b) No state entity shall take any action that would materially adversely impair, limit, or restrict the rights of a beneficial owner of a state bond, as set forth in this section, Section 17280.1, or Section 17280.2, or any successor provisions, as those provisions were in effect when the person or party became a beneficial owner of the state bond, until the state bond is fully paid and discharged.

SEC. 64. Section 25825.5 of the Government Code is amended to read:

25825.5. (a) The Legislature finds and declares all of the following:

(1) There are ongoing discharges to the Los Osos Discharge Prohibition Zone established in the Water Quality Control Plan for the Central Coast Basin.

(2) The agency responsible for eliminating these discharges is the Los Osos Community Services District, which is a relatively new agency, formed in 1998.

(3) The Central Coast Regional Water Quality Control Board has imposed substantial fines on the Los Osos Community Services District for failing to make adequate progress toward eliminating these discharges.

(4) The Los Osos Community Services District has a relatively small staff that has no experience of successfully designing and constructing facilities of the size and type needed to eliminate these discharges.

(5) The County of San Luis Obispo has a larger staff that has experience in successfully designing large public works projects.

(6) There is an urgent need to protect the public health and safety by eliminating these discharges and the most feasible alternative is best accomplished by a temporary realignment of certain wastewater collection and treatment powers between the Los Osos Community Services District and the County of San Luis Obispo.

(7) It is the intent of the Legislature in enacting this section and amending Section 61105 to authorize the County of San Luis Obispo to design, construct, and operate a wastewater collection and treatment project that will eliminate these discharges, particularly in the prohibition zone, to avoid a wasteful duplication

of effort and funds, and to temporarily prohibit the Los Osos Community Services District from exercising those powers.

(b) As used in this section, the following definitions apply:

(1) "Board" means the Board of Supervisors of the County of San Luis Obispo.

(2) "County" means the County of San Luis Obispo.

(3) "District" means the Los Osos Community Services District, formed pursuant to the Community Services District Law (Division 3 (commencing with Section 61000) of Title 6) located in San Luis Obispo County.

(4) "Prohibition zone" means that territory within the Baywood Park-Los Osos area of the county that is subject to the wastewater discharge prohibition imposed by the Central Coast Regional Water Quality Control Board pursuant to Resolution 83-13.

(c) The county may undertake any efforts necessary to construct and operate a community wastewater collection and treatment system to meet the wastewater collection and treatment needs within the district. These efforts may include programs and projects for recharging aquifers, preventing saltwater intrusion, and managing groundwater resources to the extent that they are related to the construction and operation of the community wastewater collection and treatment system. These efforts shall include any services that the county deems necessary, including, but not limited to, any planning, design, engineering, financial analysis, pursuit of grants to mitigate affordability issues, administrative support, project management, and environmental review and compliance services. The county shall not exercise any powers authorized by this section outside the district.

(d) Nothing in this section shall affect the district's power to do any of the following:

(1) Operate wastewater collection and treatment facilities within the district that the district was operating on January 1, 2006.

(2) Provide facilities and services, other than wastewater collection and treatment.

(e) To finance the construction and operation of a wastewater collection and treatment system, the county may levy benefit assessments consistent with the requirements of Article XIII D of the California Constitution, pursuant to any of the following:

(1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(2) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(f) The county may charge standby charges for sewer services, consistent with the requirements of Article XIII D of the California Constitution, pursuant to the Uniform Standby Charge Procedures Act (Chapter 12.4 (commencing with Section 54984) of Part 1 of Division 2 of Title 5).

(g) The county may develop a program to offset assessments, standby charges, or user fees and charges that are authorized pursuant to subdivisions (e), (f), and (h) for very low or low-income households with funding sources, including, but not limited to, grants, principal forgiveness, and noncounty funds from low-interest loans approved for the project by the State Water Resources Control Board or the United States Department of Agriculture. The county shall not include in an assessment or charge an amount to cover the costs to the county in carrying out this subdivision.

(h) The county may impose and collect user fees and charges and any other sources of revenue permitted by law sufficient to cover the reasonable costs of any wastewater collection or treatment services provided pursuant to this section.

(i) Promptly upon the adoption of a resolution by the board requesting this action, the board of directors of the district shall convey to the county any requested retained rights-of-way, licenses, funds, and permits previously acquired by the district in connection with construction projects for which the district awarded contracts in 2005. The county shall use those fee interests, rights-of-way, licenses, and funds for the purpose of furthering the construction and operation of a wastewater collection and treatment system pursuant to this section.

(j) After the approval of a benefit assessment, the board shall complete a due diligence review before deciding to proceed with the construction and operation of a wastewater collection and treatment system. The board shall consider any relevant factors, including, but not limited to, the prompt availability of reasonable and sufficient financing, the status of enforcement actions, the

successful development of reasonable project technology and location options, the availability of any necessary permits and other approvals, and the absence of other significant impediments. At the completion of this due diligence review, the board shall adopt a resolution declaring its intention to proceed or not proceed with the construction and operation of the wastewater collection and treatment system.

(k) Collection of assessments may not commence until the adoption of the resolution to proceed pursuant to subdivision (i).

(*l*) The county shall have no power or responsibility to construct and operate a wastewater collection and treatment system pursuant to this section and the district shall resume that power and responsibility when any of the following occurs:

(1) If the board adopts a resolution not to hold a benefit assessment election pursuant to subdivision (e).

(2) If there is a majority protest to a benefit assessment proposed by the county, on the date of the resolution adopted by the board determining that the majority protest exists.

(3) If there is not a majority protest, but the board adopts a resolution, pursuant to subdivision (i), which declares that the county will no longer exercise its powers pursuant to this section, on the date specified in the board's resolution.

(4) If the county constructs and operates a wastewater collection and treatment system pursuant to this section, not less than three years after the operation of the system commences, the board and the board of directors of the district shall mutually apply to the Central Coast Regional Water Quality Control Board for a modification of the waste discharge permit, requesting permission to transfer responsibility to operate the wastewater collection and treatment system from the county to the district. Consistent with that modification, the board shall adopt a resolution that specifies the date on which the county will no longer exercise its powers pursuant to this section.

(m) When the power and responsibility to construct and operate a wastewater collection and treatment system transfers from the county to the district pursuant to subdivision (k), the county shall do all of the following:

(1) Promptly convey to the district any remaining retained fee interests in any real property, rights-of-way, licenses, other interests

in real property, funds, and other personal property that the county previously acquired pursuant to subdivision (h).

(2) Promptly convey to the district the wastewater collection and treatment system that the county constructed pursuant to this section.

(3) Continue to collect any necessary assessments and use them to repay any indebtedness incurred by the county to finance the construction of the wastewater collection and treatment system pursuant to this section.

(4) The county shall cease collecting any benefit assessments after repayment of any indebtedness incurred by the county to finance the construction of the wastewater collection and treatment system.

(n) Nothing in this section shall be construed as imposing upon the county any liability for any district decisions or actions, or failures to act, or imposing upon the county any liability for any decisions or actions, or failures to act, by any district officers, employees, or agents. In addition, nothing in this section shall be construed as imposing upon the county any liability for any prior or subsequent district liabilities, whether liquidated or contingent, or any prior or subsequent liabilities of district officers, employees, or agents, whether liquidated or contingent.

SEC. 65. Section 30025 of the Government Code is amended to read:

30025. (a) The Local Revenue Fund 2011 is hereby created in the State Treasury and shall receive all revenues, less refunds, derived from the taxes described in Sections 6051.15 and 6201.15; revenues as may be allocated to the fund pursuant to Sections 11001.5 and 11005 of the Revenue and Taxation Code; and other moneys that may be specifically appropriated to the fund.

(b) The Trial Court Security Account, the Local Community Corrections Account, the Local Law Enforcement Services Account, the Mental Health Account, the District Attorney and Public Defender Account, the Juvenile Justice Account, the Health and Human Services Account, the Reserve Account, and the Undistributed Account are hereby created within the Local Revenue Fund 2011.

(c) The Youthful Offender Block Grant Subaccount and the Juvenile Reentry Grant Subaccount are hereby created within the Juvenile Justice Account.

(d) The Adult Protective Services Subaccount, the Foster Care Assistance Subaccount, the Foster Care Administration Subaccount, the Child Welfare Services Subaccount, the Adoptions Subaccount, the Adoption Assistance Program Subaccount, the Child Abuse Prevention Subaccount, the Women and Children's Residential Treatment Services Subaccount, the Drug Court Subaccount, the Nondrug Medi-Cal Substance Abuse Treatment Services Subaccount, and the Drug Medi-Cal Subaccount are hereby created within the Health and Human Services Account within the Local Revenue Fund 2011.

(e) Funds transferred to the Local Revenue Fund 2011 and its accounts and subaccounts are, notwithstanding Section 13340, continuously appropriated and shall be allocated pursuant to statute exclusively for Public Safety Services as defined in subdivision (i) and as further limited by statute. The moneys derived from taxes described in subdivision (a) and deposited in the Local Revenue Fund 2011 shall be available to reimburse the General Fund for moneys that are advanced to the Local Revenue Fund 2011. Additionally, all funds deposited in the Local Revenue Fund 2011 and its accounts shall be available to pay for state costs incurred during the 2011–12 fiscal year from state agency or department appropriations authorized in the Budget Act of 2011 for the realignment of Public Safety Services programs during the 2011–12 legislative session. The Department of Finance is authorized to determine the time, manner, and amount to be reimbursed pursuant to this subdivision.

(f) (1) Each county treasurer, city and county treasurer, or other appropriate official shall create a County Local Revenue Fund 2011 for the county or city and county and shall create the Local Community Corrections Account, the Trial Court Security Account, the District Attorney and Public Defender Account, the Juvenile Justice Account, the Health and Human Services Account, and the Supplemental Law Enforcement Services Account within the County Local Revenue Fund 2011 for the county or city and county.

(2) The moneys in the County Local Revenue Fund 2011 for each county or city and county and its accounts shall be exclusively used for Public Safety Services as defined in subdivision (i) and as further described in this section.

(3) The moneys in the Trial Court Security Account shall be used exclusively to fund trial court security provided by county sheriffs. General county administrative costs shall not be charged to this account, including, but not limited to, the costs of administering the account.

(4) The moneys in the Local Community Corrections Account shall be used exclusively to fund the provisions of Chapter 15 of the Statutes of 2011. The moneys within this account shall not be used by local agencies to supplant other funding for Public Safety Services. This account shall be the source of funding for the Postrelease Community Supervision Act of 2011, as enacted by Section 479 of Chapter 15 of the Statutes of 2011, and to fund the housing of parolees in county jails.

(5) The moneys in the District Attorney and Public Defender Account shall be used exclusively to fund costs associated with revocation proceedings involving persons subject to state parole and the Postrelease Community Supervision Act of 2011 (Title 2.05 (commencing with Section 3450) of Part 3 of the Penal Code). The moneys shall be allocated equally by the county or city and county to the district attorney's office and county public defender's office, or where no public defender's office is established, to the county for distribution for the same purpose.

(6) The moneys in the Juvenile Justice Account shall only be used to fund activities in connection with the grant programs described in this paragraph.

(A) The Youthful Offender Block Grant Subaccount shall be used to fund grants solely to enhance the capacity of county probation, mental health, drug and alcohol, and other county departments to provide appropriate rehabilitative, housing, and supervision services to youthful offenders, subject to Sections 731.1, 733, 1766, and 1767.35 of the Welfare and Institutions Code. Counties, in expending an allocation from this subaccount, shall provide all necessary services related to the custody and parole of the offenders.

(B) The Juvenile Reentry Grant Subaccount shall be used to fund grants exclusively to address local program needs for persons discharged from the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. County probation departments, in expending the Juvenile Reentry Grant allocation, shall provide evidence-based supervision and detention practices

and rehabilitative services to persons who are subject to the jurisdiction of the juvenile court, and who were committed to and discharged from the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. "Evidence-based" refers to supervision and detention policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals on probation or under postrelease supervision. The funds allocated from this subaccount shall supplement existing services and shall not be used by local agencies to supplant any existing funding for existing services provided by those entities. The funding provided from this subaccount is intended to provide payment in full for all local government costs of the supervision, programming, education, incarceration, or any other cost resulting from persons discharged from custody or held in local facilities pursuant to the provisions of Chapter 729 of the Statutes of 2010.

(7) The Health and Human Services Account and its subaccounts described in subdivision (d) shall be used only to fund activities performed in connection with the programs described in this subdivision. The subaccounts shall be used exclusively as follows:

(A) The Adult Protective Services Subaccount shall be used to fund adult protective services described in statute and regulation.

(B) The Foster Care Assistance Subaccount shall be used to fund the cost of foster care grants and services as those services are described in statute and regulation, including the costs for the Title IV-E Child Welfare Waiver Demonstration Capped Allocation Project.

(C) The Foster Care Administration Subaccount shall be used to fund the administrative costs of foster care services as those services are described in statute and regulation, including the costs for the Title IV-E Child Welfare Waiver Demonstration Capped Allocation Project.

(D) The Child Welfare Services Subaccount shall be used to fund the costs of child welfare services as those services are described in statute and regulation, including the costs for the Title IV-E Child Welfare Waiver Demonstration Capped Allocation Project.

(E) The Adoptions Subaccount shall be used to fund the costs connected with providing adoptive services, including agency adoptions, as described in statute and regulation, including the costs incurred by the county or city and county if the county or

city and county elects to contract with the state to provide those services.

(F) The Child Abuse Prevention Subaccount shall be used to fund the costs of child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation.

(G) The Adoption Assistance Program Subaccount shall be used to fund the administrative costs and payments for families adopting children with special needs.

(H) The Women and Children's Residential Treatment Services Subaccount shall be used to fund the costs of residential perinatal drug services and treatment as those services and treatment are described in statute and regulation.

(I) The Drug Court Subaccount shall be used to fund the costs of drug court operations and services as those costs are currently permitted and described by statute and regulation.

(J) The Nondrug Medi-Cal Substance Abuse Treatment Services Subaccount shall be used to fund the costs of nondrug Medi-Cal substance abuse treatment programs, as described in statute and regulation.

(K) The Drug Medi-Cal Subaccount shall be used to fund the costs of the Drug Medi-Cal program as that program is described in statute, regulation, or the current State Plan Amendment.

(g) The moneys in the Reserve Account shall be used to fund entitlements paid from the Foster Care Assistance Subaccount, the Drug Medi-Cal Subaccount and the Adoption Assistance Program Subaccount of the Health and Human Services Account.

(h) The moneys in the Undistributed Account shall be used to reimburse the General Fund for costs incurred and expenditures made by the state on behalf of any local government entity in providing Public Safety Services, as defined in subdivision (i), and are available for transfer to the Local Law Enforcement Services Account to permit the full allocation as described in subdivision (e) of Section 30029.

(i) For purposes of this section, "Public Safety Services" shall include all of the following:

(1) Employing public safety officials, prosecutors, public defenders, and court security staff.

(2) Managing local jails, housing and treating youthful offenders, and providing services for, and overseeing the supervised release of, offenders.

(3) Preventing child abuse, providing services to children who are abused, neglected, or exploited, providing services to vulnerable children and their families, and providing adult protective services.

(4) Providing mental health services to children and adults in order to reduce failure in school, harm to themselves and others, homelessness, and preventable incarceration.

(5) Preventing, treating, and providing recovery services for alcohol and drug abuse.

(j) The realignment moneys collected by the state and distributed to the local governmental entities pursuant to this article shall be considered state funds for the purposes of the political subdivision provision of the nonfederal share of Medicaid expenditures for purposes of Section 5001(g)(2) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5) and Section 10201(c)(6) of the federal Patient Protection and Affordable Care Act (P.L. 111-148).

SEC. 66. Section 53395.3.5 of the Government Code is amended to read:

53395.3.5. Notwithstanding subdivision (b) of Section 53395.3, a district may reimburse a developer of a project that is located entirely within the boundaries of that district for any permit expenses incurred and to offset additional expenses incurred by the developer in constructing affordable housing units pursuant to the Transit Priority Project Program established in Section 65470.

SEC. 67. Section 53395.81 of the Government Code is amended to read:

53395.81. (a) This section shall apply only to a special waterfront district.

(b) A special waterfront district may be created as a waterfront district pursuant to, and shall be subject to, all applicable requirements of Sections 53395.3 and 53395.8, except as provided in this section.

(c) (1) The special waterfront district ERAF share produced in a Port America's Cup district with a special waterfront district enhanced financing plan shall be used only to finance the following:

(A) Construction of the port's maritime facilities at Pier 27.

(B) Planning and design work that is directly related to the port's maritime facilities at Pier 27.

(C) Planning, design, and construction of improvements to publicly owned waterfront lands held by trustee agencies, such as the National Park Service and the California State Parks, and used as public spectator viewing sites for America's Cup-related events, including the San Francisco Bay Trail along the Marina Green.

(D) Future installations of shoreside power facilities on port maritime facilities.

(2) A special waterfront district enhanced financing plan for a Port America's Cup district shall provide that the proceeds of special waterfront district ERAF-secured debt are restricted for use to finance directly, reimburse the port for its costs related to, or refinance other debt incurred in, the construction of the port's maritime facilities at Pier 27, including public access and public open-space improvements.

(3) Twenty percent in the aggregate of the special waterfront district ERAF share allocated to a Port America's Cup district under this section shall be set aside to finance costs of improvements to federally or state-owned waterfront lands approved by trustee agencies such as the National Park Service or the California State Parks as provided in subparagraph (C) of paragraph (1).

(4) The 20 percent set-aside requirements applicable to a special waterfront district set forth in paragraph (3) are in lieu of the set-aside requirement set forth in clause (ii) of subparagraph (C) of paragraph (3) of subdivision (g) of Section 53395.8.

(d) (1) Before adopting the resolution authorizing the first debt issuance by a Port America's Cup district with a special waterfront district enhanced financing plan authorized by this section, the board of supervisors shall submit a fiscal analysis to the California Infrastructure and Economic Development Bank for review and approval.

(2) The bank may circulate the fiscal analysis to other state agencies, including, but not limited to, the Department of Finance, the Department of Housing and Community Development, and the Office of Planning and Research, and solicit their comments and recommendations. After considering the comments and recommendations of other state agencies, if any, the bank shall take one of the following actions:

(A) Approve the fiscal analysis if the bank makes the finding required pursuant to paragraph (4).

(B) Return the fiscal analysis to the board of supervisors with specific recommendations for changes that would allow the bank to approve the fiscal analysis.

(3) The bank shall have 90 days from the receipt of the fiscal analysis to act pursuant to this subdivision. If the bank does not act within 90 days, the fiscal analysis shall be deemed approved.

(4) For bank approval, the fiscal analysis shall demonstrate to the bank's reasonable satisfaction a reasonable probability that the economic activity proposed to occur as a result of hosting the America's Cup event in California would result in an amount of revenue to the General Fund with a net present value that is greater than the net present value of the amount of property tax increment revenues that would be diverted from ERAF over the term of the Port America's Cup district, taking into consideration all pertinent data. In reviewing the board's fiscal analysis, the bank shall consider only those General Fund revenues that would occur because of economic activity proposed to occur as a result of hosting the America's Cup event in California. The bank shall not consider those General Fund revenues that would have occurred if the America's Cup event were not held in California.

(5) The legislative body shall reimburse the bank for the reasonable cost of the review and approval of the fiscal analysis.

(e) The county auditor or officer responsible for the payment of taxes into the funds of the respective taxing entities shall allocate and pay to a special waterfront district the portion of taxes required to be allocated pursuant to an approved special waterfront district enhanced financing plan. If the plan allocates 100 percent of the incremental tax revenue of San Francisco that is available under applicable law to be allocated to the special waterfront district, then the special waterfront district shall not make a payment to ERAF, but if the plan allocates less than 100 percent of the incremental tax revenue of San Francisco that is available under applicable law to be allocated to a special waterfront district then the special waterfront district shall pay a proportionate share of incremental tax revenue into ERAF. The special waterfront district shall file a statement of indebtedness and a reconciliation statement annually in the same manner as described in subdivision (i) of Section 53395.8. It is the intent of this subdivision that any special

waterfront district shall be deemed to be a district formed pursuant to subparagraph (D) of paragraph (3) of subdivision (g) of Section 53395.8 for purposes of allocation and payment of taxes by the county auditor as set forth in subdivision (i) of Section 53395.8.

(f) This section implements and fulfills the intent of Article 2 (commencing with Section 53395.10) of this chapter and of Article XIII B of the California Constitution and is consistent with the conclusion of California courts that tax increment revenues are not "proceeds of taxes" for purposes of the latter. The allocation and payment to a special waterfront district of the special waterfront district ERAF share for the purpose of paying principal of, or interest on, loans, advances, or indebtedness incurred for facilities or the cost of acquisition and construction of facilities under this section shall not be deemed the receipt by the special waterfront district of proceeds of taxes levied by or on behalf of the special waterfront district within the meaning or for the purposes of Article XIII B of the California Constitution, nor shall this portion of taxes be deemed the receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B of the California Constitution or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to a special waterfront district of this portion of taxes shall not be deemed the appropriation by a special waterfront district of proceeds of taxes levied by or on behalf of a district within the meaning or for purposes of Article XIII B of the California Constitution.

(g) For purposes of this section, the meanings set forth in subdivision (c) of Section 53395.8 shall apply as appropriate, and the following terms have the following meanings, except as otherwise provided:

(1) "Port America's Cup district" means a special waterfront district in the City and County of San Francisco designated as America's Cup venues, excluding any venues within the Rincon Point-South Beach Redevelopment Project Area.

(2) "Special waterfront district" means a waterfront district in San Francisco that may comprise some or all of the America's Cup venues or potential venues.

(3) "Special waterfront district enhanced financing plan" means an infrastructure financing plan for a special waterfront district

that contains a provision substantially similar to that authorized for a Pier 70 district under subparagraph (D) of paragraph (3) of subdivision (g) of Section 55395.8, with only those changes deemed necessary by the legislative body of the special waterfront district to implement the financing of the improvements described in paragraph (1) of subdivision (c).

(4) "Special waterfront district ERAF-secured debt" means debt incurred in accordance with a special waterfront district enhanced financing plan that is secured by and will be repaid from the special waterfront district ERAF share. For a Port America's Cup district, special waterfront district ERAF-secured debt includes the portion of any debt that is payable from the special waterfront district ERAF share as long as the same percentage of debt proceeds will be used for the purposes authorized by paragraph (2) of subdivision (c).

(5) (A) "Special waterfront district ERAF share" means the county ERAF portion of incremental tax revenue committed, as applicable, to a special waterfront district under a special waterfront district enhanced financing plan.

(B) Notwithstanding any other provision of this chapter, the maximum amount of the county ERAF portion of incremental tax revenues committed to a special waterfront district under this section shall not exceed one million dollars ($1,000,000) in any fiscal year.

SEC. 68. Section 53760.3 of the Government Code is amended to read:

53760.3. (a) A local public entity may initiate the neutral evaluation process if the local public entity is or likely will become unable to meet its financial obligations as and when those obligations are due or become due and owing. The local public entity shall initiate the neutral evaluation by providing notice by certified mail of a request for neutral evaluation to all interested parties as defined in Section 53760.1.

(b) Interested parties shall respond within 10 business days of receipt of notice of the local public entity's request for neutral evaluation.

(c) (1) The local public entity and the interested parties agreeing to participate in the neutral evaluation shall, through a mutually agreed-upon process, select the neutral evaluator to oversee the

neutral evaluation process and facilitate all discussions in an effort to resolve their disputes.

(2) If the local public entity and interested parties fail to agree on a neutral evaluator within seven days after the interested parties have responded to the notification sent by the public entity, the public entity shall select five qualified neutral evaluators and provide their names, references, and backgrounds to the participating interested parties. Within three business days, a majority of participating interested parties may strike up to four names from the list. If a majority of participating interested parties strikes four names, the remaining candidate shall be the neutral evaluator. If the majority of participating parties strikes fewer than four names, the local public entity may choose which of the remaining candidates shall be the neutral evaluator.

(d) A neutral evaluator shall have experience and training in conflict resolution and alternative dispute resolution and shall meet at least one of the following qualifications:

(1) At least 10 years of high-level business or legal practice involving bankruptcy or service as a United States Bankruptcy Judge.

(2) Professional experience or training in municipal finance and one or more of the following issue areas:

(A) Municipal organization.

(B) Municipal debt restructuring.

(C) Municipal finance dispute resolution.

(D) Chapter 9 bankruptcy.

(E) Public finance.

(F) Taxation.

(G) California constitutional law.

(H) California labor law.

(I) Federal labor law.

(e) The neutral evaluator shall be impartial, objective, independent, and free from prejudice. The neutral evaluator shall not act with partiality or prejudice based on any participant's personal characteristics, background, values or beliefs, or performance during the neutral evaluation process.

(f) The neutral evaluator shall avoid a conflict of interest or the appearance of a conflict of interest during the neutral evaluation process. The neutral evaluator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual

would consider likely to create a potential or actual conflict of interest. Notwithstanding subdivision (n), if the neutral evaluator is informed of the existence of any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest, the neutral evaluator shall disclose these facts in writing to the local public entity and all interested parties involved in the neutral evaluation. If any party to the neutral evaluation objects to the neutral evaluator, that party shall notify all other parties to the neutral evaluation, including the neutral evaluator, within 15 days of receipt of the notice from the neutral evaluator, the neutral evaluator shall withdraw and a new neutral evaluator shall be selected.

(g) Prior to the neutral evaluation process, the neutral evaluator shall not establish another relationship with any of the parties in a manner that would raise questions about the integrity of the neutral evaluation, except that the neutral evaluator may conduct further neutral evaluations regarding other potential local public entities that may involve some of the same or similar constituents to a prior mediation.

(h) The neutral evaluator shall conduct the neutral evaluation process in a manner that promotes voluntary, uncoerced decisionmaking in which each party makes free and informed choices regarding the process and outcome.

(i) The neutral evaluator shall not impose a settlement on the parties. The neutral evaluator shall use his or her best efforts to assist the parties to reach a satisfactory resolution of their disputes. Subject to the discretion of the neutral evaluator, the neutral evaluator may make oral or written recommendations for settlement or plan of readjustment to a party privately or to all parties jointly.

(j) The neutral evaluator shall inform the local public entity and all parties of the provisions of Chapter 9 relative to other chapters of the bankruptcy codes. This instruction shall highlight the limited authority of United States bankruptcy judges in Chapter 9 such as the lack of flexibility available to judges to reduce or cram down debt repayments and similar efforts not available to reorganize the operations of the city that may be available to a corporate entity.

(k) The neutral evaluator may request from the parties documentation and other information that the neutral evaluator believes may be helpful in assisting the parties to address the obligations between them. This documentation may include the

status of funds of the local public entity that clearly distinguishes between general funds and special funds, and the proposed plan of readjustment prepared by the local public entity.

(*l*) The neutral evaluator shall provide counsel and guidance to all parties, shall not be a legal representative of any party, and shall not have a fiduciary duty to any party.

(m) In the event of a settlement with all interested parties, the neutral evaluator may assist the parties in negotiating a prepetitioned, preagreed plan of readjustment in connection with a potential Chapter 9 filing.

(n) If at any time during the neutral evaluation process the local public entity and a majority of the representatives of the interested parties participating in the neutral evaluation wish to remove the neutral evaluator, the local public entity or any interested party may make a request to the other interested parties to remove the neutral evaluator. If the local public entity and the majority of the interested parties agree that the neutral evaluator should be removed, the parties shall select a new neutral evaluator.

(o) The local public entity and all interested parties participating in the neutral evaluation process shall negotiate in good faith.

(p) The local public entity and interested parties shall provide a representative of each party to attend all neutral evaluation sessions. Each representative shall have the authority to settle and resolve disputes or shall be in a position to present any proposed settlement or plan of readjustment to the parties participating in the neutral evaluation.

(q) The parties shall maintain the confidentiality of the neutral evaluation process and shall not disclose statements made, information disclosed, or documents prepared or produced, during the neutral evaluation process, at the conclusion of the neutral evaluation process or during any bankruptcy proceeding unless either of the following occur:

(1) All persons that conduct or otherwise participate in the neutral evaluation expressly agree in writing, or orally pursuant to Section 1118 of the Evidence Code, to disclosure of the communication, document, or writing.

(2) The information is deemed necessary by a judge presiding over a bankruptcy proceeding pursuant to Chapter 9 of Title 11 of the United States Code to determine eligibility of a municipality

to proceed with a bankruptcy proceeding pursuant to Section 109(c) of Title 11 of the United States Code.

(r) The neutral evaluation established by this process shall not last for more than 60 days following the date the evaluator is selected, unless the local public entity or a majority of participating interested parties elects to extend the process for up to 30 additional days. The neutral evaluation process shall not last for more than 90 days following the date the evaluator is selected unless the local public entity and a majority of the interested parties agree to an extension.

(s) The local public entity shall pay 50 percent of the costs of neutral evaluation, including, but not limited to, the fees of the evaluator, and the creditors shall pay the balance, unless otherwise agreed to by the parties.

(t) The neutral evaluation process shall end if any of the following occur:

(1) The parties execute a settlement agreement.

(2) The parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge.

(3) The neutral evaluation process has exceeded 60 days following the date the neutral evaluator was selected, the parties have not reached an agreement, and neither the local public entity or a majority of the interested parties elects to extend the neutral evaluation process past the initial 60-day time period.

(4) The local public entity initiated the neutral evaluation process pursuant to subdivision (a) and received no responses from interested parties within the time specified in subdivision (b).

(5) The fiscal condition of the local public entity deteriorates to the point that a fiscal emergency is declared pursuant to Section 53760.5 and necessitates the need to file a petition and exercise powers pursuant to applicable federal bankruptcy law.

(u) If the 60-day time period for neutral evaluation has expired, including any extension of the neutral evaluation past the initial 60-day time period pursuant to subdivision (r), and the neutral evaluation is complete with differences resolved, the neutral evaluation shall be concluded. If the neutral evaluation process does not resolve all pending disputes with creditors the local public entity may file a petition and exercise powers pursuant to applicable federal bankruptcy law if, in the opinion of the governing board of the local public entity, a bankruptcy filing is necessary.

SEC. 69. Section 53891 of the Government Code is amended to read:

53891. The officer of each local agency who has charge of the financial records shall furnish to the Controller a report of all the financial transactions of the local agency during the next preceding fiscal year. The report shall be furnished within 90 days after the close of each fiscal year and shall be in the form required by the Controller. If the report is filed in electronic format as prescribed by the Controller, the report shall be furnished within 110 days after the close of each fiscal year. However, whenever a local agency files annual financial materials with the Office of Statewide Health Planning and Development or any successor thereto pursuant to Section 128735 of the Health and Safety Code, the audited report shall be furnished within 120 days after the close of each fiscal year. Further, whenever a community redevelopment agency files an annual report with the Controller pursuant to Section 33080 of the Health and Safety Code, the report shall be furnished within six months of the end of the agency's fiscal year.

The Controller shall prescribe uniform accounting and reporting procedures that shall be applicable to all local agencies except cities, counties, and school districts, and except for local agencies that substantially follow a system of accounting prescribed by the Public Utilities Commission of the State of California or the Federal Energy Regulatory Commission. The procedures shall be adopted under the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. The Controller shall prescribe the procedures only after consultation with and approval of a local governmental advisory committee established pursuant to Section 12463.1. Approval of the procedures shall be by majority vote of the members present at a meeting of the committee called by the chairperson thereof.

SEC. 70. Section 57077 of the Government Code is amended to read:

57077. (a) If a change of organization consists of a dissolution, disincorporation, incorporation, establishment of a subsidiary district, consolidation, or merger, the commission shall do either of the following:

(1) Order the change of organization subject to confirmation of the voters, or in the case of a landowner-voter district, subject to confirmation by the landowners, unless otherwise stated in the

formation provisions of the enabling statute of the district or otherwise authorized pursuant to Section 56854.

(2) Order the change of organization without election if it is a change of organization that meets the requirements of Section 56854, 57081, 57102, or 57107; otherwise, the commission shall take the action specified in paragraph (1).

(b) Notwithstanding subdivision (a) or Section 57102, if a change of organization consists of the dissolution of a district that is consistent with a prior action of the commission pursuant to Section 56378, 56425, or 56430, the commission may do either of the following:

(1) If the dissolution is initiated by the district board, immediately order the dissolution without an election or protest proceeding pursuant to this part.

(2) If the dissolution is initiated by an affected local agency, by the commission pursuant to Section 56375, or by petition pursuant to Section 56650, order the dissolution after holding at least one noticed public hearing, and after conducting protest proceedings in accordance with this part. Notwithstanding any other provision of law, the commission shall terminate proceedings if a majority protest exists in accordance with Section 57078. If a majority protest is not found, the commission shall order the dissolution without an election.

(c) If a reorganization consists of one or more dissolutions, incorporations, formations, disincorporations, mergers, establishments of subsidiary districts, consolidations, or any combination of those proposals, the commission shall do either of the following:

(1) Order the reorganization subject to confirmation of the voters, or in the case of landowner-voter districts, subject to confirmation by the landowners, unless otherwise authorized pursuant to Section 56854.

(2) Order the reorganization without election if it is a reorganization that meets the requirements of Section 56853.5, 56853.6, 56854, 57081, 57102, 57107, or 57111; otherwise, the commission shall take the action specified in paragraph (1).

SEC. 71. Section 57150 of the Government Code is amended to read:

57150. All proper expenses incurred in conducting elections for a change of organization or reorganization pursuant to this

chapter shall be paid, unless otherwise provided by agreement between the commission and the proponents, as follows:

(a) In the case of annexation or detachment proceedings, by the local agency to or from which territory is annexed, or from which territory is detached, or was proposed to be annexed or detached.

(b) In the case of incorporation or formation proceedings, by the newly incorporated city or the newly formed district, if successful, or by the county within which the proposed city or district is located, if the incorporation or formation proceedings are terminated. In the case of a separate election for city officers held following the election for incorporation pursuant to Section 56724, by the newly incorporated city.

(c) In the case of disincorporation or dissolution proceedings, from the remaining assets of the disincorporated city or dissolved district or by the city proposed to be disincorporated or the district proposed to be dissolved if disincorporation or dissolution proceedings are terminated.

(d) In the case of consolidation proceedings, by the successor city or district or by the local agencies proposed to be consolidated, to be paid by those local agencies in proportion to their respective assessed values, if proceedings are terminated.

(e) In the case of a reorganization, by either of the following:

(1) If the reorganization is ordered, by the subject local agencies or successor local agencies, as the case may be, for any of the changes of organization specified in subdivisions (a) to (d), inclusive, that may be included in the particular reorganization, to be paid by those local agencies in proportion to their assessed value.

(2) If the reorganization proceedings are terminated or the proposal is defeated, by the county or counties within which the subject local agency is located.

SEC. 72. Section 57534 of the Government Code is amended to read:

57534. On and after the effective date of an order establishing a district as a subsidiary district of a city, the city council shall be designated, and empowered to act, ex officio as the board of directors of the district. The district shall continue in existence with all of the powers, rights, duties, obligations, and functions provided for by the principal act, except for any provisions relating

to the selection or removal of the members of the board of directors of the district.

SEC. 73. Section 61105 of the Government Code is amended to read:

61105. (a) The Legislature finds and declares that the unique circumstances that exist in certain communities justify the enactment of special statutes for specific districts. In enacting this section, the Legislature intends to provide specific districts with special statutory powers to provide special services and facilities that are not available to other districts.

(b) (1) The Los Osos Community Services District may borrow money from public or private lenders and lend those funds to property owners within the district to pay for the costs of decommissioning septic systems and constructing lateral connections on private property to facilitate the connection of those properties to the district's wastewater treatment system. The district shall lend money for this purpose at rates not to exceed its cost of borrowing and the district's cost of making the loans. The district may require that the borrower pay the district's reasonable attorney's fees and administrative costs in the event that the district is required to take legal action to enforce the provisions of the contract or note securing the loan. The district may elect to have the debt payments or any delinquency collected on the tax roll pursuant to Section 61116. To secure the loan as a lien on real property, the district shall follow the procedures for the creation of special tax liens in Section 53328.3 of this code and Section 3114.5 of the Streets and Highways Code.

(2) (A) (i) Except as otherwise provided in this paragraph, on and after January 1, 2007, the Los Osos Community Services District shall not undertake any efforts to design, construct, and operate a community wastewater collection and treatment system within, or for the benefit of, the district. The district shall resume those powers on the date specified in any resolution adopted pursuant to subdivision (*l*) of Section 25825.5.

(ii) Upon resuming the powers pursuant to subdivision (i), the Los Osos Community Services District may continue the program to offset assessments or charges for very low or low-income households with funding sources, including, but not limited to, grants, adopted pursuant to subdivision (g) of Section 25825.5. If the county has not implemented that program, the Los Osos

Community Services District may adopt a program that complies with subdivision (g) of Section 25825.5 to offset assessments or charges for very low or low-income households. The Los Osos Community Services District shall not include in an assessment or charge an amount to cover the costs to the county in carrying out the offset program.

(B) Nothing in this paragraph shall affect the district's power to do any of the following:

(i) Operate wastewater collection and treatment facilities within the district that the district was operating on January 1, 2006.

(ii) Provide facilities and services in the territory that is within the district, but outside the prohibition zone.

(iii) Provide facilities and services, other than wastewater collection and treatment, within the prohibition zone.

(C) Promptly upon the adoption of a resolution by the Board of Supervisors of the County of San Luis Obispo requesting this action pursuant to subdivision (i) of Section 25825.5, the district shall convey to the County of San Luis Obispo all retained rights-of-way, licenses, other interests in real property, funds, and other personal property previously acquired by the district in connection with construction projects for which the district awarded contracts in 2005.

(c) The Heritage Ranch Community Services District may acquire, construct, improve, maintain, and operate petroleum storage tanks and related facilities for its own use, and sell those petroleum products to the district's property owners, residents, and visitors. The authority granted by this subdivision shall expire when a private person or entity is ready, willing, and able to acquire, construct, improve, maintain, and operate petroleum storage tanks and related facilities, and sell those petroleum products to the district and its property owners, residents, and visitors. At that time, the district shall either (1) diligently transfer its title, ownership, maintenance, control, and operation of those petroleum tanks and related facilities at a fair market value to that private person or entity, or (2) lease the operation of those petroleum tanks and related facilities at a fair market value to that private person or entity.

(d) The Wallace Community Services District may acquire, own, maintain, control, or operate the underground gas distribution pipeline system located and to be located within Wallace Lake

Estates for the purpose of allowing a privately owned provider of liquefied petroleum gas to use the underground gas distribution system pursuant to a mutual agreement between the private provider and the district or the district's predecessor in interest. The district shall require and receive payment from the private provider for the use of that system. The authority granted by this subdivision shall expire when the Pacific Gas and Electric Company is ready, willing, and able to provide natural gas service to the residents of Wallace Lake Estates. At that time, the district shall diligently transfer its title, ownership, maintenance, control, and operation of the system to the Pacific Gas and Electric Company.

(e) The Cameron Park Community Services District, the El Dorado Hills Community Services District, the Golden Hills Community Services District, the Mountain House Community Services District, the Rancho Murieta Community Services District, the Salton Community Services District, the Stallion Springs Community Services District, and the Tenaja Meadows Community Services District, which enforced covenants, conditions, and restrictions prior to January 1, 2006, pursuant to former Section 61601.7 and former Section 61601.10, may continue to exercise the powers set forth in former Section 61601.7 and former Section 61601.10.

(f) The Bear Valley Community Services District, the Bell Canyon Community Services District, the Cameron Estates Community Services District, the Lake Sherwood Community Services District, the Saddle Creek Community Services District, the Wallace Community Services District, and the Santa Rita Hills Community Services District may, for roads owned by the district and that are not formally dedicated to or kept open for use by the public for the purpose of vehicular travel, by ordinance, limit access to and the use of those roads to the landowners and residents of that district.

(g) Notwithstanding any other provision of law, the transfer of the assets of the Stonehouse Mutual Water Company, including its lands, easements, rights, and obligations to act as sole agent of the stockholders in exercising the riparian rights of the stockholders, and rights relating to the ownership, operation, and maintenance of those facilities serving the customers of the company, to the Hidden Valley Lake Community Services District

is not a transfer subject to taxes imposed by Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(h) The El Dorado Hills Community Services District and the Rancho Murieta Community Services District may each acquire, construct, improve, maintain, and operate television receiving, translating, or distribution facilities, provide television and television-related services to the district and its residents, or authorize the construction and operation of a cable television system to serve the district and its residents by franchise or license. In authorizing the construction and operation of a cable television system by franchise or license, the district shall have the same powers as a city or county under Section 53066.

(i) The Mountain House Community Services District may provide facilities for television and telecommunications systems, including the installation of wires, cables, conduits, fiber optic lines, terminal panels, service space, and appurtenances required to provide television, telecommunication, and data transfer services to the district and its residents, and provide facilities for a cable television system, including the installation of wires, cables, conduits, and appurtenances to service the district and its residents by franchise or license, except that the district may not provide or install any facilities pursuant to this subdivision unless one or more cable franchises or licenses have been awarded under Section 53066 and the franchised or licensed cable television and telecommunications services providers are permitted equal access to the utility trenches, conduits, service spaces, easements, utility poles, and rights-of-way in the district necessary to construct their facilities concurrently with the construction of the district's facilities. The district shall not have the authority to operate television, cable, or telecommunications systems, except as provided in Section 61100. The district shall have the same powers as a city or county under Section 53066 in granting a franchise or license for the operation of a cable television system.

SEC. 74. Section 65863.10 of the Government Code is amended to read:

65863.10. (a) As used in this section, the following terms have the following meanings:

(1) "Affected public entities" means the mayor of the city in which the assisted housing development is located, or, if located

in an unincorporated area, the chair of the board of supervisors of the county; the appropriate local public housing authority, if any; and the Department of Housing and Community Development.

(2) "Affected tenant" means a tenant household residing in an assisted housing development, as defined in paragraph (3), at the time notice is required to be provided pursuant to this section, that benefits from the government assistance.

(3) "Assisted housing development" means a multifamily rental housing development that receives governmental assistance under any of the following programs:

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715 *l*(d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(D) Programs under Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(E) Section 42 of the Internal Revenue Code.

(F) Section 142(d) of the Internal Revenue Code (tax-exempt private activity mortgage revenue bonds).

(G) Section 147 of the Internal Revenue Code (Section 501(c)(3) bonds).

(H) Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant Program).

(I) Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (HOME Investment Partnership Program).

(J) Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987, as amended, including the Department of Housing and Urban Development's Supportive Housing Program, Shelter Plus Care Program, and surplus federal property disposition program.

(K) Grants and loans made by the Department of Housing and Community Development, including the Rental Housing Construction Program, CHRP-R, and other rental housing finance programs.

(L) Chapter 1138 of the Statutes of 1987.

(M) The following assistance provided by counties or cities in exchange for restrictions on the maximum rents that may be charged for units within a multifamily rental housing development and on the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction, as reflected by a recorded agreement with a county or city:

(i) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(ii) Local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code.

(iii) The sale or lease of public property at or below market rates.

(iv) The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Chapter 4.3 (commencing with Section 65915).

Assistance pursuant to this subparagraph shall not include the use of tenant-based Housing Choice Vouchers (Section 8(o) of the United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o), excluding subparagraph (13) relating to project-based assistance). Restrictions shall not include any rent control or rent stabilization ordinance imposed by a county, city, or city and county.

(4) "City" means a general law city, a charter city, or a city and county.

(5) "Expiration of rental restrictions" means the expiration of rental restrictions for an assisted housing development described in paragraph (3) unless the development has other recorded

agreements restricting the rent to the same or lesser levels for at least 50 percent of the units.

(6) "Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.

(7) "Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in paragraph (3) that would have the effect of removing the current rent or occupancy or rent and occupancy restrictions contained in the applicable laws and the regulatory agreement.

(8) "Termination" means an owner's decision not to extend or renew its participation in a federal, state, or local government subsidy program or private, nongovernmental subsidy program for an assisted housing development described in paragraph (3), either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

(9) "Very low income" means having an income as defined in Section 50052.5 of the Health and Safety Code.

(b) (1) At least 12 months prior to the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice. The notice shall contain all of the following:

(A) In the event of termination, a statement that the owner intends to terminate the subsidy contract or rental restrictions upon its expiration date, or the expiration date of any contract extension thereto.

(B) In the event of the expiration of rental restrictions, a statement that the restrictions will expire, and in the event of prepayment, termination, or the expiration of rental restrictions whether the owner intends to increase rents during the 12 months

following prepayment, termination, or the expiration of rental restrictions to a level greater than permitted under Section 42 of the Internal Revenue Code.

(C) In the event of prepayment, a statement that the owner intends to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date, or voluntarily cancel the mortgage insurance.

(D) The anticipated date of the termination, prepayment of the federal or other program or expiration of rental restrictions, and the identity of the federal or other program described in subdivision (a).

(E) A statement that the proposed change would have the effect of removing the current low-income affordability restrictions in the applicable contract or regulatory agreement.

(F) A statement of the possibility that the housing may remain in the federal or other program after the proposed date of termination of the subsidy contract or prepayment if the owner elects to do so under the terms of the federal government's or other program operator's offer.

(G) A statement whether other governmental assistance will be provided to tenants residing in the development at the time of the termination of the subsidy contract or prepayment.

(H) A statement that a subsequent notice of the proposed change, including anticipated changes in rents, if any, for the development, will be provided at least six months prior to the anticipated date of termination of the subsidy contract, or expiration of rental restrictions, or prepayment.

(I) A statement of notice of opportunity to submit an offer to purchase, as required in Section 65863.11.

(2) Notwithstanding paragraph (1), if an owner provides a copy of a federally required notice of termination of a subsidy contract or prepayment at least 12 months prior to the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities, the owner shall be deemed in compliance with this subdivision, if the notice is in compliance with all federal laws. However, the federally required notice does not satisfy the requirements of Section 65863.11.

(c) (1) At least six months prior to the anticipated date of termination of a subsidy contract, expiration of rental restrictions

or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice.

(2) The notice to the tenants shall contain all of the following:

(A) The anticipated date of the termination or prepayment of the federal or other program, or the expiration of rental restrictions, and the identity of the federal or other program, as described in subdivision (a).

(B) The current rent and rent anticipated for the unit during the 12 months immediately following the date of the prepayment or termination of the federal or other program, or expiration of rental restrictions.

(C) A statement that a copy of the notice will be sent to the city, county, or city and county, where the assisted housing development is located, to the appropriate local public housing authority, if any, and to the Department of Housing and Community Development.

(D) A statement of the possibility that the housing may remain in the federal or other program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government's or other program administrator's offer or that a rent increase may not take place due to the expiration of rental restrictions.

(E) A statement of the owner's intention to participate in any current replacement subsidy program made available to the affected tenants.

(F) The name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, the Department of Housing and Community Development, and a legal services organization, that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

(3) In addition to the information provided in the notice to the affected tenant, the notice to the affected public entities shall contain information regarding the number of affected tenants in

the project, the number of units that are government assisted and the type of assistance, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted, and the ages and income of the affected tenants. The notice shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The owner shall also attach a copy of any federally required notice of the termination of the subsidy contract or prepayment that was provided at least six months prior to the proposed change. The information contained in the notice shall be based on data that is reasonably available from existing written tenant and project records.

(d) The owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide additional notice of any significant changes to the notice required by subdivision (c) within seven business days to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. "Significant changes" shall include, but not be limited to, any changes to the date of termination or prepayment, or expiration of rental restrictions or the anticipated new rent.

(e) An owner who is subject to the requirements of this section shall also provide a copy of any notices issued to existing tenants pursuant to subdivision (b), (c), or (d) to any prospective tenant at the time he or she is interviewed for eligibility.

(f) This section shall not require the owner to obtain or acquire additional information that is not contained in the existing tenant and project records, or to update any information in his or her records. The owner shall not be held liable for any inaccuracies contained in these records or from other sources, nor shall the owner be liable to any party for providing this information.

(g) For purposes of this section, service of the notice to the affected tenants, the city, county, or city and county, the appropriate

local public housing authority, if any, and the Department of Housing and Community Development by the owner pursuant to subdivisions (b) to (e), inclusive, shall be made by first-class mail postage prepaid.

(h) Nothing in this section shall enlarge or diminish the authority, if any, that a city, county, city and county, affected tenant, or owner may have, independent of this section.

(i) If, prior to January 1, 2001, the owner has already accepted a bona fide offer from a qualified entity, as defined in subdivision (c) of Section 65863.11, and has complied with this section as it existed prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall be deemed in compliance with this section.

(j) Injunctive relief shall be available to any party identified in paragraph (1) or (2) of subdivision (a) who is aggrieved by a violation of this section.

(k) The Director of Housing and Community Development shall approve forms to be used by owners to comply with subdivisions (b) and (c). Once the director has approved the forms, an owner shall use the approved forms to comply with subdivisions (b) and (c).

SEC. 75. Section 65863.11 of the Government Code is amended to read:

65863.11. (a) Terms used in this section shall be defined as follows:

(1) "Assisted housing development" and "development" mean a multifamily rental housing development as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(2) "Owner" means an individual, corporation, association, partnership, joint venture, or business entity that holds title to an assisted housing development.

(3) "Tenant" means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.

(4) "Tenant association" means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development and that represents the interest of at least a majority of the tenants in the assisted housing development.

(5) “Low or moderate income” means having an income as defined in Section 50093 of the Health and Safety Code.

(6) “Very low income” means having an income as defined in Section 50105 of the Health and Safety Code.

(7) “Local nonprofit organizations” means not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community based and have a proven track record of local community service.

(8) “Local public agencies” means housing authorities, redevelopment agencies, or any other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(9) “Regional or national organizations” means not-for-profit, charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income.

(10) “Regional or national public agencies” means multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(11) “Use restriction” means any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(12) "Profit-motivated organizations and individuals" means individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Chapter 5 (commencing with Section 16100) of Title 2 of, the Corporations Code, that carry on as a business for profit.

(13) "Department" means the Department of Housing and Community Development.

(14) "Offer to purchase" means an offer from a qualified or nonqualified entity that is nonbinding on the owner.

(15) "Expiration of rental restrictions" has the meaning given in paragraph (5) of subdivision (a) of Section 65863.10.

(b) An owner of an assisted housing development shall not terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner of an assisted housing development in which there will be the expiration of rental restrictions shall also provide each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(c) An owner of an assisted housing development shall not sell, or otherwise dispose of, the development at any time within the five years prior to the expiration of rental restrictions or at any time if the owner is eligible for prepayment or termination within five years unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with this section. An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(d) The entities to whom an opportunity to purchase shall be provided include only the following:

(1) The tenant association of the development.

(2) Local nonprofit organizations and public agencies.

(3) Regional or national nonprofit organizations and regional or national public agencies.

(4) Profit-motivated organizations or individuals.

(e) For the purposes of this section, to qualify as a purchaser of an assisted housing development, an entity listed in subdivision (d) shall do all of the following:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by itself or through a management agent.

(2) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for either a 30-year period from the date that the purchaser took legal possession of the housing or the remaining term of the existing federal government assistance specified in subdivision (a) of Section 65863.10, whichever is greater. The development shall be continuously occupied in the approximate percentages that those households who have occupied that development on the date the owner gave notice of intent or the approximate percentages specified in existing use restrictions, whichever is higher. This obligation shall be recorded prior to the close of escrow in the office of the county recorder of the county in which the development is located and shall contain a legal description of the property, indexed to the name of the owner as grantor. An owner that obligates itself to an enforceable regulatory agreement that will ensure for a period of not less than 30 years that rents for units occupied by low- and very low income households or that are vacant at the time of executing a purchase agreement will conform with restrictions imposed by Section 42(f) of the Internal Revenue Code shall be deemed in compliance with this paragraph. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, should they be available, provided that assistance is at a level to maintain the project's fiscal viability.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.

(f) If an assisted housing development is not economically feasible, as defined in paragraph (3) of subdivision (h) of Section 17058 of the Revenue and Taxation Code, a purchaser shall be entitled to remove one or more units from the rent and occupancy

requirements as is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(g) (1) If an owner decides to terminate a subsidy contract, or prepay the mortgage pursuant to Section 65863.10, or sell or otherwise dispose of the assisted housing development pursuant to subdivision (b) or (c), or if the owner has an assisted housing development in which there will be the expiration of rental restrictions, the owner shall first give notice of the opportunity to offer to purchase to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (o), as well as to those qualified entities that directly contact the owner. The notice of the opportunity to offer to purchase must be given prior to or concurrently with the notice required pursuant to Section 65863.10 for a period of at least 12 months. The owner shall contact the department to obtain the list of qualified entities. The notice shall conform to the requirements of subdivision (h) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

(2) If the owner already has a bona fide offer to purchase from an entity prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall not be required to comply with this subdivision. However, the owner shall notify the department of this exemption and provide the department a copy of the offer.

(h) The initial notice of a bona fide opportunity to submit an offer to purchase shall contain all of the following:

(1) A statement addressing all of the following:

(A) Whether the owner intends to maintain the current number of affordable units and level of affordability.

(B) Whether the owner has an interest in selling the property.

(C) Whether the owner has executed a contract or agreement of at least five years' duration with a public entity to continue or replace subsidies to the property and to maintain an equal or greater number of units at an equal or deeper level of affordability and, if so, the length of the contract or agreement.

(2) A statement that each of the type of entities listed in subdivision (d) has the right to purchase the development under this section.

(3) (A) Except as provided in subparagraph (B), a statement that the owner will make available to each of the types of entities listed in subdivision (d), within 15 business days of receiving a request therefor, that includes all of the following:

(i) Itemized lists of monthly operating expenses for the property.

(ii) Capital improvements, as determined by the owner, made within each of the two preceding calendar years at the property.

(iii) The amount of project property reserves.

(iv) Copies of the two most recent financial and physical inspection reports on the property, if any, filed with a federal, state, or local agency.

(v) The most recent rent roll for the property listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date the notice of intent was made pursuant to Section 65863.10.

(vi) A statement of the vacancy rate at the property for each of the two preceding calendar years.

(vii) The terms of assumable financing, if any, the terms of the subsidy contract, if any, and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(B) Subparagraph (A) shall not apply if 25 percent or less of the units on the property are subject to affordability restrictions or a rent or mortgage subsidy contract.

(C) A corporation authorized pursuant to Section 52550 of the Health and Safety Code or a public entity may share information obtained pursuant to subparagraph (A) with other prospective purchasers, and shall not be required to sign a confidentiality agreement as a condition of receiving or sharing this information, provided that the information is used for the purpose of attempting to preserve the affordability of the property.

(4) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10, unless the notice of opportunity to submit an offer to purchase is delivered more than 12 months prior to the anticipated date of termination, prepayment, or expiration of rental restrictions.

(i) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development. A qualified entity's bona fide offer to purchase shall identify whether it is a tenant association, nonprofit organization, public agency, or profit-motivated organizations or individuals and shall certify, under penalty of perjury, that it is qualified pursuant to subdivision (e). During the first 180 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, an owner shall accept a bona fide offer to purchase only from a qualified entity. During this 180-day period, the owner shall not accept offers from any other entity.

(j) When a bona fide offer to purchase has been made to an owner, and the offer is accepted, a purchase agreement shall be executed.

(k) Either the owner or the qualified entity may request that the fair market value of the property, as a development, be determined by an independent appraiser qualified to perform multifamily housing appraisals, who shall be selected and paid by the requesting party. All appraisers shall possess qualifications equivalent to those required by the members of the Appraisers Institute. This appraisal shall be nonbinding on either party with respect to the sales price of the development offered in the bona fide offer to purchase, or the acceptance or rejection of the offer.

(*l*) During the 180-day period following the initial 180-day period required pursuant to subdivision (i), an owner may accept an offer from a person or an entity that does not qualify under subdivision (e). This acceptance shall be made subject to the owner's providing each qualified entity that made a bona fide offer to purchase the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner shall notify in writing those qualified entities of the terms and conditions of the pending offer to purchase, sent by registered or certified mail, return receipt requested. The qualified entity shall have 30 days from the date the notice is mailed to submit a bona fide offer to purchase and that offer shall be accepted by the owner. The owner shall not be required to comply with the provisions of this subdivision if the person or the entity making the offer during this time period agrees to maintain the development for persons and families of very low, low, and moderate income

in accordance with paragraph (2) of subdivision (e). The owner shall notify the department regarding how the buyer is meeting the requirements of paragraph (2) of subdivision (e).

(m) This section shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (p).

(n) Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of a development to a purchaser who does not qualify under subdivision (e) shall certify under penalty of perjury that the owner has complied with all provisions of this section and Section 65863.10. This certification shall be recorded and shall contain a legal description of the property, shall be indexed to the name of the owner as grantor, and may be relied upon by good faith purchasers and encumbrances for value and without notice of a failure to comply with the provisions of this section.

Any person or entity acting solely in the capacity of an escrow agent for the transfer of real property subject to this section shall not be liable for any failure to comply with this section unless the escrow agent either had actual knowledge of the requirements of this section or acted contrary to written escrow instructions concerning the provisions of this section.

(o) The department shall undertake the following responsibilities and duties:

(1) Maintain a form containing a summary of rights and obligations under this section and make that information available to owners of assisted housing developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

(2) Compile, maintain, and update a list of entities in subdivision (d) that have either contacted the department with an expressed interest in purchasing a development in the subject area or have been identified by the department as potentially having an interest

in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. Upon receipt of a notice of intent under Section 65863.10, the department shall make the list available to the owner proposing the termination, prepayment, or removal of government assistance or to the owner of an assisted housing development in which there will be the expiration of rental restrictions. If the department does not make the list available at any time, the owner shall only be required to send a written copy of the opportunity to submit an offer to purchase notice to the qualified entities which directly contact the owner and to post a copy of the notice in the common area pursuant to subdivision (g).

(p) (1) The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the opportunity to purchase and right of first refusal under this section that has been adversely affected by an owner's failure to comply with this section.

(2) An owner may rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (d), unless the owner has actual knowledge that the purchaser is not a qualified entity.

(3) If the person or entity is not an entity as specified in subdivision (d), that fact, in the absence of actual knowledge as described in paragraph (2), shall not give rise to any claim against the owner for a violation of this section.

(q) It is the intent of the Legislature that the provisions of this section are in addition to, but not preemptive of, applicable federal laws governing the sale or other disposition of a development that would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination or expiration of any low-income use restrictions that apply to the development.

SEC. 76. Section 66499.20¼ of the Government Code is amended and renumbered to read:

66499.20.1. A city or county may, by ordinance, authorize a parcel map to be filed under the provisions of this chapter for the purpose of reverting to acreage land previously subdivided and consisting of four or less contiguous parcels under the same ownership. Any map so submitted shall be accompanied by evidence of title and nonuse or lack of necessity of any public streets or public easements which are to be vacated or abandoned.

Any public streets or public easements to be left in effect after the reversion shall be adequately delineated on the map. After approval of the reversion by the governing body or advisory agency the map shall be delivered to the county recorder. The filing of the map shall constitute legal reversion to acreage of the land affected thereby, and shall also constitute abandonment of all public streets or public easements not shown on the map, provided however that written notation of each abandonment is listed by reference to the recording data creating those public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map. The filing of the map shall also constitute a merger of the separate parcels into one parcel for purposes of this chapter and shall thereafter be shown as such on the assessment roll subject to the provisions of Section 66445. Except as provided in subdivision (f) of Section 66445, on any parcel map used for reverting acreage, a certificate shall appear signed and acknowledged by all parties having any record title interest in the land being reverted, consenting to the preparation and filing of the parcel map.

SEC. 77. Section 66499.20½ of the Government Code is amended and renumbered to read:

66499.20.2. Subdivided lands may be merged and resubdivided without reverting to acreage by complying with all the applicable requirements for the subdivision of land as provided by this division and any local ordinances adopted pursuant thereto. The filing of the final map or parcel map shall constitute legal merging of the separate parcels into one parcel and the resubdivision of such parcel, and the real property shall thereafter be shown with the new lot or parcel boundaries on the assessment roll. Any unused fees or deposits previously made pursuant to this division pertaining to the property shall be credited pro rata towards any requirements for the same purposes which are applicable at the time of resubdivision. Any public streets or public easements to be left in effect after the resubdivision shall be adequately delineated on the map. After approval of the merger and resubdivision by the governing body or advisory agency the map shall be delivered to the county recorder. The filing of the map shall constitute legal merger and resubdivision of the land affected thereby, and shall also constitute abandonment of all public streets and public easements not shown on the map, provided that a written

notation of each abandonment is listed by reference to the recording data creating these public streets or public easements, and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map.

SEC. 78. Section 66499.20¾ of the Government Code is amended and renumbered to read:

66499.20.3. A city or county may, by ordinance, authorize the merger of contiguous parcels under common ownership without reverting to acreage. The ordinance shall require the recordation of an instrument evidencing the merger.

SEC. 79. Section 76000.10 of the Government Code is amended to read:

76000.10. (a) This section shall be known, and may be cited, as the Emergency Medical Air Transportation Act.

(b) For purposes of this section:

(1) "Department" means the State Department of Health Care Services.

(2) "Director" means the Director of Health Care Services.

(3) "Provider" means a provider of emergency medical air transportation services.

(4) "Rotary wing" means a type of aircraft, commonly referred to as a helicopter, that generates lift through the use of wings, known as rotor blades, that revolve around a mast.

(5) "Fixed wing" means a type of aircraft, commonly referred to as an airplane, that generates lift through the use of the forward motion of the aircraft and wings that do not revolve around a mast but are fixed in relation to the fuselage of the aircraft.

(6) "Air mileage rate" means the per-mileage reimbursement rate paid for services rendered by rotary-wing and fixed-wing providers.

(c) (1) For purposes of implementing this section, a penalty of four dollars ($4) shall be imposed upon every conviction for a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code, except parking offenses subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

(2) The penalty described in this subdivision shall be in addition to the state penalty assessed pursuant to Section 1464 of the Penal Code. However, this penalty shall not be included in the base fine used to calculate the state penalty assessment pursuant to

subdivision (a) of Section 1464 of the Penal Code, the state surcharge levied pursuant to Section 1465.7 of the Penal Code, and the state court construction penalty pursuant to Section 70372 of this code, and to calculate the other additional penalties levied pursuant to this chapter.

(d) The county or the court that imposed the fine shall, in accordance with the procedures set out in Section 68101, transfer moneys collected pursuant to this section to the Treasurer for deposit into the Emergency Medical Air Transportation Act Fund, which is hereby established in the State Treasury. Notwithstanding Section 16305.7, the Emergency Medical Air Transportation Act Fund shall include interest and dividends earned on money in the fund.

(e) (1) The Emergency Medical Air Transportation Act Fund shall be administered by the State Department of Health Care Services. Moneys in the Emergency Medical Air Transportation Act Fund shall be made available, upon appropriation by the Legislature, to the department to be used as follows:

(A) For payment of the administrative costs of the department in administering this section.

(B) Twenty percent of the fund remaining after payment of administrative costs pursuant to subparagraph (A) shall be used to offset the state portion of the Medi-Cal reimbursement rate for emergency medical air transportation services.

(C) Eighty percent of the fund remaining after payment of administrative costs pursuant to subparagraph (A) shall be used to augment emergency medical air transportation reimbursement payments made through the Medi-Cal program, as set forth in paragraphs (2) and (3).

(2) (A) The department shall seek to obtain federal matching funds by using the moneys in the Emergency Medical Air Transportation Act Fund for the purpose of augmenting Medi-Cal reimbursement paid to emergency medical air transportation providers.

(B) The director shall do all of the following:

(i) By March 1, 2011, meet with medical air transportation providers to determine the most appropriate methodology to distribute the funds for medical air services.

(ii) Implement the methodology determined most appropriate in a timely manner.

(iii) Develop the methodology in collaboration with the medical air providers.

(iv) Submit any state plan amendments or waiver requests that may be necessary to implement this section.

(v) Submit any state plan amendment or waiver request that may be necessary to implement this section.

(vi) Seek federal approvals or waivers as may be necessary to implement this section and to obtain federal financial participation to the maximum extent possible for the payments under this section. If federal approvals are not received, moneys in the fund may be distributed pursuant to this section until federal approvals are received.

(C) The director may give great weight to the needs of the emergency medical air services providers, as discussed through the development of the methodology.

(3) (A) Upon appropriation by the Legislature, the department shall use moneys in the Emergency Medical Air Transportation Act Fund and any federal matching funds to increase the Medi-Cal reimbursement for emergency medical air transportation services in an amount not to exceed normal and customary charges charged by the providers.

(B) Notwithstanding any other provision of law, and pursuant to this section, the department shall increase the Medi-Cal reimbursement for emergency medical air transportation services provided that both of the following conditions are met:

(i) Moneys in the Emergency Medical Air Transportation Act Fund will cover the cost of increased payments pursuant to subparagraph (A).

(ii) The state does not incur any General Fund expense to pay for the Medi-Cal emergency medical air transportation services increase.

(f) The assessment of penalties pursuant to this section shall terminate commencing January 1, 2016. Penalties assessed prior to January 1, 2016, shall continue to be collected, administered, and distributed pursuant to this section until exhausted or until June 30, 2017, whichever occurs first. On June 30, 2017, moneys remaining unexpended and unencumbered in the Emergency Medical Air Transportation Act Fund shall be transferred to the General Fund, to be available, upon appropriation by the Legislature, for the purposes of augmenting Medi-Cal

reimbursement for emergency medical air transportation and related costs, generally.

(g) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, the department may implement, interpret, or make specific this section and any applicable federal waivers and state plan amendments by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions without taking regulatory action.

(h) This section shall remain in effect until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 80. Section 1156.6 of the Harbors and Navigation Code is amended to read:

1156.6. (a) If suspected safety standard violations concerning pilot hoists, pilot ladders, or the proper rigging of pilot hoists or pilot ladders are reported to the board, the executive director shall investigate the report. The executive director may personally inspect or assign a commission investigator to personally inspect the equipment for its compliance with the relevant safety standards promulgated by the United States Coast Guard and the International Maritime Organization. If, in the preliminary investigation, the equipment is found to be in violation, or in likely violation in the opinion of the executive director, of the relevant safety standards, the executive director shall immediately alert the appropriate United States Coast Guard office. The executive director shall report his or her findings and recommendations, if any, to the board. The board shall receive the executive director's findings, which may include other reports, information, or statements from interested parties. The board shall specify, by regulation, the information that shall be contained in the report.

(b) This section applies to the pilotage grounds, as defined in Section 1114.5. If a vessel passes outside of the pilotage grounds, the executive director's report shall include that fact along with a description of the incident.

(c) The record of the investigation and the board's findings and recommendations, if any, shall be a public record maintained by the board.

SEC. 81. Section 1367.241 of the Health and Safety Code is amended to read:

1367.241. (a) Notwithstanding any other provision of law, on and after January 1, 2013, a health care service plan that provides prescription drug benefits shall accept only the prior authorization form developed pursuant to subdivision (c) when requiring prior authorization for prescription drug benefits. This section does not apply in the event that a physician or physician group has been delegated the financial risk for prescription drugs by a health care service plan and does not use a prior authorization process. This section does not apply to a health care service plan, or to its affiliated providers, if the health care service plan owns and operates its pharmacies and does not use a prior authorization process for prescription drugs.

(b) If a health care service plan fails to utilize or accept the prior authorization form, or fails to respond within two business days upon receipt of a completed prior authorization request from a prescribing provider, pursuant to the submission of the prior authorization form developed as described in subdivision (c), the prior authorization request shall be deemed to have been granted. The requirements of this subdivision shall not apply to contracts entered into pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.81 (commencing with Section 14087.96), or Article 2.91 (commencing with Section 14089) of Chapter 7 of, or Chapter 8 (commencing with Section 14200) of, Part 3 of Division 9 of the Welfare and Institutions Code.

(c) On or before July 1, 2012, the department and the Department of Insurance shall jointly develop a uniform prior authorization form. Notwithstanding any other provision of law, on and after January 1, 2013, or six months after the form is developed, whichever is later, every prescribing provider shall use that uniform prior authorization form to request prior authorization for coverage of prescription drug benefits and every health care service plan shall accept that form as sufficient to request prior authorization for prescription drug benefits.

(d) The prior authorization form developed pursuant to subdivision (c) shall meet the following criteria:

(1) The form shall not exceed two pages.

(2) The form shall be made electronically available by the department and the health care service plan.

(3) The completed form may also be electronically submitted from the prescribing provider to the health care service plan.

(4) The department and the Department of Insurance shall develop the form with input from interested parties from at least one public meeting.

(5) The department and the Department of Insurance, in development of the standardized form, shall take into consideration the following:

(A) Existing prior authorization forms established by the federal Centers for Medicare and Medicaid Services and the State Department of Health Care Services.

(B) National standards pertaining to electronic prior authorization.

(e) For purposes of this section, a "prescribing provider" shall include a provider authorized to write a prescription, pursuant to subdivision (a) of Section 4040 of the Business and Professions Code, to treat a medical condition of an enrollee.

SEC. 82. Section 1374.74 of the Health and Safety Code is amended to read:

1374.74. (a) The department, in consultation with the Department of Insurance, shall convene an Autism Advisory Task Force by February 1, 2012, in collaboration with other agencies, departments, advocates, autism experts, health plan and health insurer representatives, and other entities and stakeholders that it deems appropriate. The Autism Advisory Task Force shall develop recommendations regarding behavioral health treatment that is medically necessary for the treatment of individuals with autism or pervasive developmental disorder. The Autism Advisory Task Force shall address all of the following:

(1) Interventions that have been scientifically validated and have demonstrated clinical efficacy.

(2) Interventions that have measurable treatment outcomes.

(3) Patient selection, monitoring, and duration of therapy.

(4) Qualifications, training, and supervision of providers.

(5) Adequate networks of providers.

(b) The Autism Advisory Task Force shall also develop recommendations regarding the education, training, and experience requirements that unlicensed individuals providing autism services shall meet in order to secure a license from the state.

(c) The department shall submit a report of the Autism Advisory Task Force to the Governor, the President pro Tempore of the Senate, the Speaker of the Assembly, and the Senate and Assembly Committees on Health by December 31, 2012, on which date the task force shall cease to exist.

SEC. 83. Section 1461 of the Health and Safety Code, as added by Section 21 of Chapter 1136 of the Statutes of 1993, is repealed.

SEC. 84. Section 1527.3 of the Health and Safety Code is amended to read:

1527.3. The fund shall not be liable for any of the following:

(a) Any loss arising out of a dishonest, fraudulent, criminal, or intentional act.

(b) Any occurrence which does not arise from the foster-care relationship.

(c) Any bodily injury arising out of the operation or use of any motor vehicle, aircraft, or watercraft owned or operated by, or rented or loaned to, any foster parent.

(d) Any loss arising out of licentious, immoral, or sexual behavior on the part of a foster parent intended to lead to, or culminating in, any sexual act.

(e) Any allegation of alienation of affection against a foster parent.

(f) Any loss or damage arising out of occurrences prior to October 1, 1986.

(g) Exemplary damages.

(h) Any liability of a foster parent which is uninsured due solely to the foster parent's failure to obtain insurance specified in Section 676.7 of the Insurance Code. Nothing in this subdivision shall be construed to expand the liability of the fund with respect to insured foster parents.

SEC. 85. Section 11357.5 of the Health and Safety Code is amended to read:

11357.5. (a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, or possesses for sale any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, to any person, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) As used in this section, the term "synthetic cannabinoid compound" refers to any of the following substances:

(1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018).

(2) 1-butyl-3-(1-naphthoyl)indole (JWH-073).

(3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200).

(4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497).

(5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue).

SEC. 86. Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a container that meets state and federal standards for disposal of sharps waste.

(c) Pursuant to authorization by a county, with respect to all of the territory within the county, or a city, with respect to the territory within the city, for the period commencing January 1, 2005, and ending December 31, 2018, subdivision (a) shall not apply to the possession solely for personal use of 10 or fewer hypodermic needles or syringes if acquired from an authorized source.

(d) This section shall be inoperative until January 1, 2015.

SEC. 87. Section 25160 of the Health and Safety Code is amended to read:

25160. (a) For purposes of this chapter, the following definitions apply:

(1) "Manifest" means a shipping document originated and signed by a generator of hazardous waste that contains all of the information required by the department and that complies with all applicable federal and state regulations.

(2) "California Uniform Hazardous Waste Manifest" means either of the following:

(A) A manifest document printed and supplied by the state for a shipment initiated on or before September 4, 2006.

(B) The Uniform Hazardous Waste Manifest printed by a source registered with the United States Environmental Protection Agency for a shipment initiated on or after September 5, 2006.

(3) For purposes of this section and Section 25205.15, a shipment is initiated on the date when the manifest is signed by the first transporter and the hazardous waste leaves the site where it is generated.

(b) (1) Except as provided in Section 25160.2 or 25160.8, or as otherwise authorized by a variance issued by the department, a person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, shall complete a manifest prior to the time the waste is transported or offered for transportation, and shall designate on that manifest the facility to which the waste is to be shipped for the handling, treatment, storage, disposal, or combination thereof. The manifest shall be completed as required by the department. The generator shall provide the manifest to the person who will transport the hazardous waste, who is the driver, if the hazardous waste will be transported by vehicle, or the person designated by the railroad corporation or vessel operator, if the hazardous waste will be transported by rail or vessel.

(A) The generator shall use the standard California Uniform Hazardous Waste Manifest supplied by the department for all shipments of hazardous waste initiated on and before September 4, 2006, for which a manifest is required, except as provided in paragraph (2).

(B) The generator shall use the Uniform Hazardous Waste Manifest printed by a source registered with the United States Environmental Protection Agency for all shipments of hazardous waste initiated on and after September 5, 2006, for which a manifest is required.

(C) A manifest shall only be used for the purposes specified in this chapter, including, but not limited to, identifying materials that the person completing the manifest reasonably believes are hazardous waste.

(D) Within 30 days from the date of transport, or submission for transport, of hazardous waste, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy submitted to the department shall contain the signatures of the generator and the transporter.

(E) In lieu of submitting a copy of each manifest used, a generator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(2) Except as provided in Section 25160.2 or 25160.8 or as otherwise authorized by a variance issued by the department, a person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, outside of the state, shall complete, whether or not the waste is determined to be hazardous by the importing country or state, a manifest in accordance with the following conditions:

(A) The generator shall use the standard California Uniform Hazardous Waste Manifest or the manifest required by the receiving state for all shipments of hazardous waste initiated on and before September 4, 2006, for which a manifest is required.

(B) The generator shall use the Uniform Hazardous Waste Manifest printed by a source registered with the United States Environmental Protection Agency for all shipments of hazardous waste initiated on and after September 5, 2006, for which a manifest is required.

(C) The generator shall submit a copy of the manifest specified in subparagraph (A) or (B), as applicable, to the department within 30 days from the date of the transport, or submission for transport, of the hazardous waste. In lieu of submitting a copy of each manifest used, a generator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(3) Within 30 days from the date of transport, or submission for transport, of hazardous waste out of state, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy submitted to the department shall contain the signatures of the generator, all transporters, excepting intermediate rail transporters, and the out-of-state facility operator. If within 35 days from the date of the initial shipment, or for exports by water to foreign countries 60 days after the initial shipment, the generator has not received a copy of the manifest

signed by all transporters and the facility operator, the generator shall contact the owner or operator of the designated facility to determine the status of the hazardous waste and to request that the owner or operator immediately provide a signed copy of the manifest to the generator. Except as provided otherwise in paragraph (2) of subdivision (h) of Section 25123.3, if within 45 days from the date of the initial shipment or, for exports by water to foreign countries, 90 days from the date of the initial shipment, the generator has not received a copy of the signed manifest from the facility owner or operator, the generator shall submit an exception report to the department.

(4) For shipments of waste that do not require a manifest pursuant to Title 40 of the Code of Federal Regulations, the department, by regulation, may establish manifest requirements that differ from the requirements of this section. The requirements for an alternative form of manifest shall ensure that the hazardous waste is transported by a registered hazardous waste transporter, that the hazardous waste is tracked, and that human health and safety and the environment are protected.

(5) (A) Notwithstanding any other provision of this section, except as provided in subparagraph (B), the generator copy of the manifest is not required to be submitted to the department for any waste transported in compliance with the consolidated manifest procedures in Section 25160.2 or with the procedures specified in Section 25160.8, or when the transporter is operating pursuant to a variance issued by the department pursuant to Section 25143 authorizing the use of a consolidated manifest for waste not listed in Section 25160.2, if the generator, transporter, and facility are all identified as the same company on the hazardous waste manifest. If multiple identification numbers are used by a single company, all of the company's identification numbers shall be included in its annual transporter registration application, if those numbers will be used with the consolidated manifest procedure. Nothing in this paragraph affects the obligation of a facility operator to submit to the department a copy of a manifest pursuant to this section.

(B) If the waste subject to subparagraph (A) is transported out of state, the generator shall either ensure that the facility operator submits to the department a copy of the manifest or the generator shall submit a copy to the department that contains the signatures

of the generator, all transporters, excepting intermediate rail transporters, and the out-of-state facility operator pursuant to paragraph (3).

(c) (1) The department shall determine the form and manner in which a manifest shall be completed and the information that the manifest shall contain. The information requested on the manifest shall serve as the data dictionary for purposes of the developing of an electronic reporting format pursuant to Section 71062 of the Public Resources Code. The form of each manifest and the information requested on each manifest shall be the same for all hazardous wastes, regardless of whether the hazardous wastes are also regulated pursuant to the federal act or by regulations adopted by the United States Department of Transportation. However, the form of the manifest and the information required shall be consistent with federal regulations.

(2) Pursuant to federal regulations, the department may require information on the manifest in addition to the information required by federal regulations.

(d) (1) A person who transports hazardous waste in a vehicle shall have a manifest in his or her possession while transporting the hazardous waste. The manifest shall be shown upon demand to any representative of the department, any officer of the Department of the California Highway Patrol, any local health officer, any certified unified program agency, or any local public officer designated by the director. If the hazardous waste is transported by rail or vessel, the railroad corporation or vessel operator shall comply with Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations and shall also enter on the shipping papers any information concerning the hazardous waste that the department may require.

(2) Any person who transports a waste, as defined by Section 25124, and who is provided with a manifest for that waste shall, while transporting that waste, comply with all requirements of this chapter, and the regulations adopted pursuant thereto, concerning the transportation of hazardous waste.

(3) A person who transports hazardous waste shall transfer a copy of the manifest to the facility operator at the time of delivery, or to the person who will subsequently transport the hazardous waste in a vehicle. A person who transports hazardous waste and

then transfers custody of that hazardous waste to a person who will subsequently transport that waste by rail or vessel shall transfer a copy of the manifest to the person designated by the railroad corporation or vessel operator, as specified by Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations.

(4) A person transporting hazardous waste by motor vehicle, rail, or water shall certify to the department, at the time of initial registration and at the time of renewal of that registration pursuant to this article, that the transporter is familiar with the requirements of this section, the department regulations, and federal laws and regulations governing the use of manifests.

(e) (1) A facility operator in the state who receives hazardous waste for handling, treatment, storage, disposal, or any combination thereof, which was transported with a manifest pursuant to this section, shall submit a copy of the manifest to the department within 30 days from the date of receipt of the hazardous waste. The copy submitted to the department shall contain the signatures of the generator, all transporters, excepting intermediate rail transporters, and the facility operator. In instances in which the generator or transporter is not required by the generator's state or federal law to sign the manifest, the facility operator shall require the generator and all transporters, excepting intermediate rail transporters, to sign the manifest before receiving the waste at any facility in this state. In lieu of submitting a copy of each manifest used, a facility operator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(2) Any treatment, storage, or disposal facility receiving hazardous waste generated outside this state may only accept the hazardous waste for treatment, storage, disposal, or any combination thereof, if the hazardous waste is accompanied by a completed standard California Uniform Hazardous Waste Manifest.

(3) A facility operator may accept hazardous waste generated offsite that is not accompanied by a properly completed and signed standard California Uniform Hazardous Waste Manifest if the facility operator meets both of the following conditions:

(A) The facility operator is authorized to accept the hazardous waste pursuant to a hazardous waste facilities permit or other grant of authorization from the department.

(B) The facility operator is in compliance with the regulations adopted by the department specifying the conditions and procedures applicable to the receipt of hazardous waste under these circumstances.

(4) This subdivision applies only to shipments of hazardous waste for which a manifest is required pursuant to this section and the regulations adopted pursuant to this section.

(f) A generator, transporter, or facility operator may comply with the requirements of Sections 66262.40, 66263.22, 66264.71, and 66265.71 of Title 22 of the California Code of Regulations by storing manifest information electronically. A generator, transporter, or facility operator who stores manifest information electronically shall use the standardized electronic format and protocol for the exchange of electronic data established by the Secretary for Environmental Protection pursuant to Part 2 (commencing with Section 71050) of Division 34 of the Public Resources Code and the stored information shall include all the information required to be retained by the department, including all signatures required by this section.

(g) The department shall make available for review, by any interested party, the department's plans for revising and enhancing its system for tracking hazardous waste for the purposes of protecting human health and the environment, enforcing laws, collecting revenue, and generating necessary reports.

SEC. 88. Section 34163 of the Health and Safety Code is amended to read:

34163. Notwithstanding Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100), or any other law, commencing on the effective date of this part, an agency shall not have the authority to, and shall not, do any of the following:

(a) Make loans or advances or grant or enter into agreements to provide funds or provide financial assistance of any sort to any entity or person for any purpose, including, but not limited to, all of the following:

(1) Loans of moneys or any other thing of value or commitments to provide financing to nonprofit organizations to provide those organizations with financing for the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental

housing or the acquisition of commercial property for lease, each pursuant to Chapter 7.5 (commencing with Section 33741) of Part 1.

(2) Loans of moneys or any other thing of value for residential construction, improvement, or rehabilitation pursuant to Chapter 8 (commencing with Section 33750) of Part 1. These include, but are not limited to, construction loans to purchasers of residential housing, mortgage loans to purchasers of residential housing, and loans to mortgage lenders, or any other entity, to aid in financing pursuant to Chapter 8 (commencing with Section 33750).

(3) The purchase, by an agency, of mortgage or construction loans from mortgage lenders or from any other entities.

(b) Enter into contracts with, incur obligations, or make commitments to, any entity, whether governmental, tribal, or private, or any individual or groups of individuals for any purpose, including, but not limited to, loan agreements, passthrough agreements, regulatory agreements, services contracts, leases, disposition and development agreements, joint exercise of powers agreements, contracts for the purchase of capital equipment, and agreements for redevelopment activities, including, but not limited to, agreements for planning, design, redesign, development, demolition, alteration, construction, reconstruction, rehabilitation, site remediation, site development or improvement, removal of graffiti, land clearance, and seismic retrofits.

(c) Amend or modify existing agreements, obligations, or commitments with any entity, for any purpose, including, but not limited to, any of the following:

(1) Renewing or extending the term of leases or other agreements, except that the agency may extend lease space for its own use to a date not to exceed six months after the effective date of the act adding this part and for a rate no more than 5 percent above the rate the agency currently pays on a monthly basis.

(2) Modifying terms and conditions of existing agreements, obligations, or commitments.

(3) Forgiving all or any part of the balance owed to the agency on existing loans or extend the term or change the terms and conditions of existing loans.

(4) Increasing its deposits to the Low and Moderate Income Housing Fund created pursuant to Section 33334.3 beyond the minimum level that applied to it as of January 1, 2011.

(5) Transferring funds out of the Low and Moderate Income Housing Fund, except to meet the minimum housing-related obligations that existed as of January 1, 2011, to make required payments under Sections 33690 and 33690.5, and to borrow funds pursuant to Section 34168.5.

(d) Dispose of assets by sale, long-term lease, gift, grant, exchange, transfer, assignment, or otherwise, for any purpose, including, but not limited to, any of the following:

(1) Assets, including, but not limited to, real property, deeds of trust, and mortgages held by the agency, moneys, accounts receivable, contract rights, proceeds of insurance claims, grant proceeds, settlement payments, rights to receive rents, and any other rights to payment of whatever kind.

(2) Real property, including, but not limited to, land, land under water and waterfront property, buildings, structures, fixtures, and improvements on the land, any property appurtenant to, or used in connection with, the land, every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise, and the indebtedness secured by the liens.

(e) Acquire real property by any means for any purpose, including, but not limited to, the purchase, lease, or exercising of an option to purchase or lease, exchange, subdivide, transfer, assume, obtain option upon, acquire by gift, grant, bequest, devise, or otherwise acquire any real property, any interest in real property, and any improvements on it, including the repurchase of developed property previously owned by the agency and the acquisition of real property by eminent domain, provided, however, that nothing in this subdivision is intended to prohibit the acceptance or transfer of title for real property acquired prior to the effective date of this part.

(f) Transfer, assign, vest, or delegate any of its assets, funds, rights, powers, ownership interests, or obligations for any purpose to any entity, including, but not limited to, the community, the legislative body, another member of a joint powers authority, a trustee, a receiver, a partner entity, another agency, a nonprofit corporation, a contractual counterparty, a public body, a limited-equity housing cooperative, the state, a political subdivision

of the state, the federal government, any private entity, or an individual or group of individuals.

(g) Accept financial or other assistance from the state or federal government or any public or private source if the acceptance necessitates or is conditioned upon the agency incurring indebtedness as that term is described in this part.

SEC. 89. Section 34167.5 of the Health and Safety Code is amended to read:

34167.5. Commencing on the effective date of the act adding this part, the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency. If such an asset transfer did occur during that period and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the redevelopment agency or, on or after October 1, 2011, to the successor agency, if a successor agency is established pursuant to Part 1.85 (commencing with Section 34170). Upon receiving that order from the Controller, an affected local agency shall, as soon as practicable, reverse the transfer and return the applicable assets to the redevelopment agency or, on or after October 1, 2011, to the successor agency, if a successor agency is established pursuant to Part 1.85 (commencing with Section 34170). The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in the furtherance of the Community Redevelopment Law and is thereby unauthorized.

SEC. 90. Section 34173 of the Health and Safety Code is amended to read:

34173. (a) Successor agencies, as defined in this part, are hereby designated as successor entities to the former redevelopment agencies.

(b) Except for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to the act adding this part, all authority, rights, powers, duties, and obligations previously vested with the former

redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.

(c) (1) Where the redevelopment agency was in the form of a joint powers authority, and where the joint powers agreement governing the formation of the joint powers authority addresses the allocation of assets and liabilities upon dissolution of the joint powers authority, then each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part and each shall have a share of assets and liabilities based on the provisions of the joint powers agreement.

(2) Where the redevelopment agency was in the form of a joint powers authority, and where the joint powers agreement governing the formation of the joint powers authority does not address the allocation of assets and liabilities upon dissolution of the joint powers authority, each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part, a proportionate share of the assets and liabilities shall be based on the assessed value in the project areas within each entity's jurisdiction, as determined by the county assessor, in its jurisdiction as compared to the assessed value of land within the boundaries of the project areas of the former redevelopment agency.

(d) (1) A city, county, city and county, or the entities forming the joint powers authority that authorized the creation of each redevelopment agency may elect not to serve as a successor agency under this part. A city, county, city and county, or any member of a joint powers authority that elects not to serve as a successor agency under this part must file a copy of a duly authorized resolution of its governing board to that effect with the county auditor-controller no later than one month prior to the operative date of this part.

(2) The determination of the first local agency that elects to become the successor agency shall be made by the county auditor-controller based on the earliest receipt by the county auditor-controller of a copy of a duly adopted resolution of the local agency's governing board authorizing such an election. As used in this section, "local agency" means any city, county, city and county, or special district in the county of the former redevelopment agency.

(3) If no local agency elects to serve as a successor agency for a dissolved redevelopment agency, a public body, referred to herein as a "designated local authority" shall be immediately formed, pursuant to this part, in the county and shall be vested with all the powers and duties of a successor agency as described in this part. The Governor shall appoint three residents of the county to serve as the governing board of the authority. The designated local authority shall serve as successor agency until a local agency elects to become the successor agency in accordance with this section.

(e) The liability of any successor agency, acting pursuant to the powers granted under the act adding this part, shall be limited to the extent of the total sum of property tax revenues it receives pursuant to this part and the value of assets transferred to it as a successor agency for a dissolved redevelopment agency.

SEC. 91. Section 34176 of the Health and Safety Code is amended to read:

34176. (a) The city, county, or city and county that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. If a city, county, or city and county elects to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, duties, and obligations, excluding any amounts on deposit in the Low and Moderate Income Housing Fund, shall be transferred to the city, county, or city and county.

(b) If a city, county, or city and county does not elect to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of the agency, excluding any amounts in the Low and Moderate Income Housing Fund, shall be transferred as follows:

(1) Where there is no local housing authority in the territorial jurisdiction of the former redevelopment agency, to the Department of Housing and Community Development.

(2) Where there is one local housing authority in the territorial jurisdiction of the former redevelopment agency, to that local housing authority.

(3) Where there is more than one local housing authority in the territorial jurisdiction of the former redevelopment agency, to the

local housing authority selected by the city, county, or city and county that authorized the creation of the redevelopment agency.

(c) Commencing on the operative date of this part, the entity assuming the housing functions formerly performed by the redevelopment agency may enforce affordability covenants and perform related activities pursuant to applicable provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000)), including, but not limited to, Section 33418.

SEC. 92. Section 34188.8 of the Health and Safety Code is amended to read:

34188.8. For purposes of a redevelopment agency that becomes subject to this part pursuant to Section 34195, a date certain identified in this chapter shall not be subject to Section 34191, except for dates certain in Section 34182 and references to "October 1, 2011," or to the "operative date of this part." However, for purposes of those redevelopment agencies, a date certain identified in this chapter shall be appropriately modified, as necessary to reflect the appropriate fiscal year or portion of a fiscal year.

SEC. 93. Section 34189 of the Health and Safety Code is amended to read:

34189. (a) Commencing on the operative date of this part, all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies, including, but not limited to, Sections 33445, 33640, 33641, 33645, and subdivision (b) of Section 33670, shall be inoperative, except as those sections apply to a redevelopment agency operating pursuant to Part 1.9 (commencing with Section 34192).

(b) The California Law Revision Commission shall draft a Community Redevelopment Law cleanup bill for consideration by the Legislature no later than January 1, 2013.

(c) To the extent that a provision of Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100) conflicts with this part, the provisions of this part shall control. Further, if a provision of Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), or Part 1.7 (commencing with Section 34100) provides an authority that the

act adding this part is restricting or eliminating, the restriction and elimination provisions of the act adding this part shall control.

(d) It is intended that the provisions of this part shall be read in a manner as to avoid duplication of payments.

SEC. 94. Section 34194.4 of the Health and Safety Code is amended to read:

34194.4. (a) The county auditor-controller in each county in which a redevelopment agency exists shall establish in the county treasury a Special District Allocation Fund. The county auditor-controller shall deposit the following amounts into the fund out of each annual remittance by a city or county that includes a special district under this section paid pursuant to Section 34194 as follows:

(1) For the 2011–12 fiscal year, the amount shall be the city's or county's remittance amount multiplied by the ratio of four million three hundred thousand dollars ($4,300,000) to one billion seven hundred million dollars ($1,700,000,000).

(2) For the 2012–13 fiscal year and each fiscal year thereafter, the amount shall be the city's or county's remittance amount multiplied by the ratio of sixty million dollars ($60,000,000) to four hundred million dollars ($400,000,000).

(3) Amounts derived from the remittance payments of each city or county shall be maintained in separate accounts in the fund.

(b) On or before May 15 each year, the county auditor-controller shall make payments out of each account in the Special District Allocation Fund to each special district the boundaries of which include all or any portion of a redevelopment project area of the city's or county's redevelopment agency for special district services that the district determines further redevelopment purposes. Each special district shall receive a proportionate share of the total annual deposit in the account, determined as follows:

(1) For each special district, the auditor-controller shall determine the annual amount of tax increment revenue of the city's or county's redevelopment agency that is attributable to the special district. This amount shall be the amount of additional property tax revenue that the special district would have received in that year had property tax collected on incremental assessed value within the redevelopment project areas been allocated to the district under the property tax allocation laws then in effect. From this amount, the auditor-controller shall subtract any passthrough

payments received in that year by the special district from the redevelopment agency.

(2) The county auditor-controller shall sum all of the annual amounts for individual special districts determined in paragraph (1).

(3) For each special district, the county auditor-controller shall calculate the ratio of the amount determined for that special district under paragraph (1) to the total amount determined in paragraph (2). This ratio shall be each special district's proportion of the total payment from the account.

(c) For the purposes of this section, "special district" means a district that provides fire protection services and transit districts. A special district that has both excluded and nonexcluded functions and that serves nonexcluded functions within a redevelopment project area shall receive a prorated share proportionate to the special district's overall share of countywide property tax that is received for its nonexcluded functions.

(d) The auditor-controller shall report the payments made to special districts pursuant to this section to the Controller by June 30 each year in a form and manner as specified by the Controller.

(e) The county auditor-controller may require special districts to provide, as a condition of receiving payments from the Special District Allocation Fund, any relevant information necessary to the determination of the payments made pursuant to this section.

SEC. 95. Section 34195 of the Health and Safety Code is amended to read:

34195. In the event that a city or county fails to make the remittance required pursuant to the agreement specified in Section 34194 or 34194.5 and the Director of Finance makes the determination described in subdivision (d) of Section 34194, the following shall apply:

(a) The city or county shall no longer be authorized to engage in voluntary redevelopment pursuant to this part and the redevelopment agency shall become immediately subject to the provisions of Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170).

(b) The state shall be entitled to an assignment of any rights of a city or county, as applicable, to any payments from the redevelopment agency to which the city or county is entitled, as described in subdivision (b) of Section 34193.2, for purposes of

mitigating the fiscal impact to the state related to the failure of the city or county to make the required remittance payment.

SEC. 96. Section 100425 of the Health and Safety Code, as amended by Section 2 of Chapter 402 of the Statutes of 2011, is amended to read:

100425. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 1639.5, 1676, 1677, 2805, 11839.25, 106700, 106890, 106925, 107080, 107090, 107095, 107160, 110210, 110470, 111130, 111140, 111630, 112405, 112510, 112750, 112755, 113060, 113065, 115035, 115065, 115080, 116200, 117923, 117995, 118045, 118210, and 118245 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section.

(c) This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 97. Section 100425 of the Health and Safety Code, as added by Section 3 of Chapter 402 of the Statutes of 2011, is amended to read:

100425. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 1639.5, 1676, 1677, 2805, 11839.25, 103625, 106700, 106890, 106925, 107080, 107090, 107095, 107160, 110210, 110470, 111130, 111140, 111630, 112405, 112510, 112750,

112755, 113060, 113065, 114065, 115035, 115065, 115080, 117923, 117995, 118045, 118210, and 118245 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section.

(c) This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) With respect to the fees or charges pursuant to Section 103625, the actual dollar fee or charge shall be rounded to the nearest whole dollar.

(e) This section shall become operative on January 1, 2014.

SEC. 98. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, in compliance with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in subdivision (k) of Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in subdivision (j) of Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, in compliance with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

SEC. 99. Section 116565 of the Health and Safety Code is amended to read:

116565. (a) Each public water system serving 1,000 or more service connections, and any public water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption, shall reimburse the department for the actual cost incurred by the department for conducting those activities mandated by this chapter relating to the issuance of domestic water supply permits, inspections, monitoring, surveillance, and water quality evaluation that relate to that specific public water system. The amount of reimbursement shall be sufficient to pay, but in no event shall exceed, the department's actual cost in conducting these activities.

(b) Each public water system serving fewer than 1,000 service connections shall pay an annual drinking water operating fee to the department as set forth in this subdivision for costs incurred by the department for conducting those activities mandated by this chapter relating to inspections, monitoring, surveillance, and water quality evaluation relating to public water systems. The total amount of fees shall be sufficient to pay, but in no event shall exceed, the department's actual cost in conducting these activities. Notwithstanding adjustment of actual fees collected pursuant to Section 100425 as authorized pursuant to subdivision (d) of Section 106590, the amount that shall be paid annually by a public water system pursuant to this section shall be as follows:

(1) Community water systems, six dollars ($6) per service connection, but not less than two hundred fifty dollars ($250) per water system, which may be increased by the department, as provided for in subdivision (f), to ten dollars ($10) per service

connection, but not less than two hundred fifty dollars ($250) per water system.

(2) Nontransient noncommunity water systems pursuant to subdivision (k) of Section 116275, two dollars ($2) per person served, but not less than four hundred fifty-six dollars ($456) per water system, which may be increased by the department, as provided for in subdivision (f), to three dollars ($3) per person served, but not less than four hundred fifty-six dollars ($456) per water system.

(3) Transient noncommunity water systems pursuant to subdivision (o) of Section 116275, eight hundred dollars ($800) per water system, which may be increased by the department, as provided for in subdivision (f), to one thousand three hundred thirty-five dollars ($1,335) per water system.

(4) Noncommunity water systems in possession of a current exemption pursuant to former Section 116282 on January 1, 2012, one hundred two dollars ($102) per water system.

(c) For purposes of determining the fees provided for in subdivision (a), the department shall maintain a record of its actual costs for pursuing the activities specified in subdivision (a) relative to each system required to pay the fees. The fee charged each system shall reflect the department's actual cost, or in the case of a local primacy agency the local primacy agency's actual cost, of conducting the specified activities.

(d) The department shall submit an invoice for cost reimbursement for the activities specified in subdivision (a) to the public water systems no more than twice a year.

(1) The department shall submit one estimated cost invoice to public water systems serving 1,000 or more service connections and any public water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. This invoice shall include the actual hours expended during the first six months of the fiscal year. The hourly cost rate used to determine the amount of the estimated cost invoice shall be the rate for the previous fiscal year.

(2) The department shall submit a final invoice to the public water system prior to October 1 following the fiscal year that the costs were incurred. The invoice shall indicate the total hours expended during the fiscal year, the reasons for the expenditure, the hourly cost rate of the department for the fiscal year, the

estimated cost invoice, and payments received. The amount of the final invoice shall be determined using the total hours expended during the fiscal year and the actual hourly cost rate of the department for the fiscal year. The payment of the estimated invoice, exclusive of late penalty, if any, shall be credited toward the final invoice amount.

(3) Payment of the invoice issued pursuant to paragraphs (1) and (2) shall be made within 90 days of the date of the invoice. Failure to pay the amount of the invoice within 90 days shall result in a 10-percent late penalty that shall be paid in addition to the invoiced amount.

(e) Any public water system under the jurisdiction of a local primacy agency shall pay the fees specified in this section to the local primacy agency in lieu of the department. This section shall not preclude a local health officer from imposing additional fees pursuant to Section 101325.

(f) The department may increase the fees established in subdivision (b) as follows:

(1) By February 1 of the fiscal year prior to the fiscal year for which fees are proposed to be increased, the department shall publish a list of fees for the following fiscal year and a report showing the calculation of the amount of the fees.

(2) The department shall make the report and the list of fees available to the public by submitting them to the Legislature and posting them on the department's Internet Web site.

(3) The department shall establish the amount of fee increases subject to the approval and appropriation by the Legislature.

SEC. 100. Section 121690 of the Health and Safety Code is amended to read:

121690. In rabies areas, all of the following shall apply:

(a) Every dog owner, after his or her dog attains the age of four months, shall no less than once every two years secure a license for the dog as provided by ordinance of the responsible city, city and county, or county. License fees shall be fixed by the responsible city, city and county, or county, at an amount not to exceed limitations otherwise prescribed by state law or city, city and county, or county charter.

(b) (1) Every dog owner, after his or her dog attains the age of four months, shall, at intervals of time not more often than once a year, as may be prescribed by the department, procure its

vaccination by a licensed veterinarian with a canine antirabies vaccine approved by, and in a manner prescribed by, the department, unless a licensed veterinarian determines, on an annual basis, that a rabies vaccination would endanger the dog's life due to disease or other considerations that the veterinarian can verify and document. The responsible city, county, or city and county may specify the means by which the dog owner is required to provide proof of his or her dog's rabies vaccination, including, but not limited to, by electronic transmission or facsimile.

(2) A request for an exemption from the requirements of this subdivision shall be submitted on an approved form developed by the department and shall include a signed statement by the veterinarian explaining the inadvisability of the vaccination and a signed statement by the dog owner affirming that the owner understands the consequences and accepts all liability associated with owning a dog that has not received the canine antirabies vaccine. The request shall be submitted to the local health officer, who may issue an exemption from the canine antirabies vaccine.

(3) The local health officer shall report exemptions issued pursuant to this subdivision to the department.

(4) A dog that is exempt from the vaccination requirements of this section shall be considered unvaccinated.

(5) A dog that is exempt from the vaccination requirements of this section shall, at the discretion of the local health officer or the officer's designee, be confined to the premises of the owner, keeper, or harborer and, when off the premises, shall be on a leash the length of which shall not exceed six feet and shall be under the direct physical control of an adult. A dog that is exempt from the provisions of this section shall not have contact with a dog or cat that is not currently vaccinated against rabies.

(c) All dogs under four months of age shall be confined to the premises of, or kept under physical restraint by, the owner, keeper, or harborer. Nothing in this chapter and Section 120435 shall be construed to prevent the sale or transportation of a puppy four months old or younger.

(d) Any dog in violation of this chapter and any additional provisions that may be prescribed by any local governing body shall be impounded, as provided by local ordinance.

(e) The governing body of each city, city and county, or county shall maintain or provide for the maintenance of a pound system

and a rabies control program for the purpose of carrying out and enforcing this section.

(f) Each city, county, or city and county shall provide dog vaccination clinics, or arrange for dog vaccination at clinics operated by veterinary groups or associations, held at strategic locations throughout each city, city and county, or county. The vaccination and licensing procedures may be combined as a single operation in the clinics. No charge in excess of the actual cost shall be made for any one vaccination at a clinic. No owner of a dog shall be required to have his or her dog vaccinated at a public clinic if the owner elects to have the dog vaccinated by a licensed veterinarian of the owner's choice.

All public clinics shall be required to operate under antiseptic immunization conditions comparable to those used in the vaccination of human beings.

(g) In addition to the authority provided in subdivision (a), the ordinance of the responsible city, city and county, or county may provide for the issuance of a license for a period not to exceed three years for dogs that have attained the age of 12 months or older and have been vaccinated against rabies or one year for dogs exempted from the vaccination requirement pursuant to subdivision (b). The person to whom the license is issued pursuant to this subdivision may choose a license period as established by the governing body of up to one, two, or three years. However, when issuing a license pursuant to this subdivision, the license period shall not extend beyond the remaining period of validity for the current rabies vaccination and, if a dog is exempted from the vaccination requirement pursuant to subdivision (b), the license period shall not extend beyond one year. A dog owner who complies with this subdivision shall be deemed to have complied with the requirements of subdivision (a).

(h) All information obtained from a dog owner by compliance with this chapter is confidential to the dog owner and proprietary to the veterinarian. This information shall not be used, distributed, or released for any purpose, except to ensure compliance with existing federal, state, county, or city laws or regulations.

SEC. 101. Section 127405 of the Health and Safety Code is amended to read:

127405. (a) (1) (A) Each hospital shall maintain an understandable written policy regarding discount payments for

financially qualified patients as well as an understandable written charity care policy. Uninsured patients or patients with high medical costs who are at or below 350 percent of the federal poverty level, as defined in subdivision (b) of Section 127400, shall be eligible to apply for participation under a hospital's charity care policy or discount payment policy. Notwithstanding any other provision of this article, a hospital may choose to grant eligibility for its discount payment policy or charity care policies to patients with incomes over 350 percent of the federal poverty level. Both the charity care policy and the discount payment policy shall state the process used by the hospital to determine whether a patient is eligible for charity care or discounted payment. In the event of a dispute, a patient may seek review from the business manager, chief financial officer, or other appropriate manager as designated in the charity care policy and the discount payment policy.

(B) The written policy regarding discount payments shall also include a statement that an emergency physician, as defined in Section 127450, who provides emergency medical services in a hospital that provides emergency care is also required by law to provide discounts to uninsured patients or patients with high medical costs who are at or below 350 percent of the federal poverty level. This statement shall not be construed to impose any additional responsibilities upon the hospital.

(2) Rural hospitals, as defined in Section 124840, may establish eligibility levels for financial assistance and charity care at less than 350 percent of the federal poverty level as appropriate to maintain their financial and operational integrity.

(b) A hospital's discount payment policy shall clearly state eligibility criteria based upon income consistent with the application of the federal poverty level. The discount payment policy shall also include an extended payment plan to allow payment of the discounted price over time. The policy shall provide that the hospital and the patient may negotiate the terms of the payment plan.

(c) The charity care policy shall state clearly the eligibility criteria for charity care. In determining eligibility under its charity care policy, a hospital may consider income and monetary assets of the patient. For purposes of this determination, monetary assets shall not include retirement or deferred compensation plans qualified under the Internal Revenue Code, or nonqualified deferred

compensation plans. Furthermore, the first ten thousand dollars ($10,000) of a patient's monetary assets shall not be counted in determining eligibility, nor shall 50 percent of a patient's monetary assets over the first ten thousand dollars ($10,000) be counted in determining eligibility.

(d) A hospital shall limit expected payment for services it provides to a patient at or below 350 percent of the federal poverty level, as defined in subdivision (b) of Section 127400, eligible under its discount payment policy to the amount of payment the hospital would expect, in good faith, to receive for providing services from Medicare, Medi-Cal, the Healthy Families Program, or another government-sponsored health program of health benefits in which the hospital participates, whichever is greater. If the hospital provides a service for which there is no established payment by Medicare or any other government-sponsored program of health benefits in which the hospital participates, the hospital shall establish an appropriate discounted payment.

(e) A patient, or patient's legal representative, who requests a discounted payment, charity care, or other assistance in meeting his or her financial obligation to the hospital shall make every reasonable effort to provide the hospital with documentation of income and health benefits coverage. If the person requests charity care or a discounted payment and fails to provide information that is reasonable and necessary for the hospital to make a determination, the hospital may consider that failure in making its determination.

(1) For purposes of determining eligibility for discounted payment, documentation of income shall be limited to recent pay stubs or income tax returns.

(2) For purposes of determining eligibility for charity care, documentation of assets may include information on all monetary assets, but shall not include statements on retirement or deferred compensation plans qualified under the Internal Revenue Code, or nonqualified deferred compensation plans. A hospital may require waivers or releases from the patient or the patient's family, authorizing the hospital to obtain account information from financial or commercial institutions, or other entities that hold or maintain the monetary assets, to verify their value.

(3) Information obtained pursuant to paragraph (1) or (2) shall not be used for collections activities. This paragraph does not

prohibit the use of information obtained by the hospital, collection agency, or assignee independently of the eligibility process for charity care or discounted payment.

(4) Eligibility for discounted payments or charity care may be determined at any time the hospital is in receipt of information specified in paragraph (1) or (2), respectively.

SEC. 102. Section 136000 of the Health and Safety Code is amended to read:

136000. (a) (1) Effective July 1, 2012, there is hereby transferred from the Department of Managed Health Care the Office of Patient Advocate to be established within the California Health and Human Services Agency, to provide assistance to, and advocate on behalf of, individuals served by health care service plans regulated by the Department of Managed Health Care, insureds covered by health insurers regulated by the Department of Insurance, and individuals who receive or are eligible for other health care coverage in California, including coverage available through the Medi-Cal program, the California Health Benefit Exchange, the Healthy Families Program, or any other county or state health care program. The goal of the office shall be to help those individuals secure the health care services to which they are entitled or for which they are eligible under the law. Notwithstanding any provision of this division, each regulator and health coverage program shall retain its respective authority, including its authority to resolve complaints, grievances, and appeals.

(2) The office shall be headed by a patient advocate appointed by the Governor. The patient advocate shall serve at the pleasure of the Governor.

(3) The provisions of this division affecting insureds covered by health insurers regulated by the Department of Insurance and individuals who receive or are eligible for coverage available through the Medi-Cal program, the California Health Benefit Exchange, the Healthy Families Program, or any other county or state health care program shall commence on January 1, 2013, except that for the period July 1, 2012, to January 1, 2013, the office shall continue with any duties, responsibilities, or activities of the office authorized as of July 1, 2011, shall continue to be authorized.

(b) (1) The duties of the office shall include, but not be limited to, all of the following:

(A) Developing, in consultation with the Managed Risk Medical Insurance Board, the State Department of Health Care Services, the California Health Benefit Exchange, the Department of Managed Health Care, and the Department of Insurance, educational and informational guides for consumers describing their rights and responsibilities, and informing them on effective ways to exercise their rights to secure health care coverage. The guides shall be easy to read and understand and shall be made available in English and other threshold languages, using an appropriate literacy level, and in a culturally competent manner. The informational guides shall be made available to the public by the office, including being made accessible on the office's Internet Web site and through public outreach and educational programs.

(B) Compiling an annual publication, to be made available on the office's Internet Web site, of a quality of care report card, including, but not limited to, health care service plans.

(C) Rendering assistance to consumers regarding procedures, rights, and responsibilities related to the filing of complaints, grievances, and appeals, including appeals of coverage denials and information about any external appeal process.

(D) Making referrals to the appropriate state agency regarding studies, investigations, audits, or enforcement that may be appropriate to protect the interests of consumers.

(E) Coordinating and working with other government and nongovernment patient assistance programs and health care ombudsperson programs.

(2) The office shall employ necessary staff. The office may employ or contract with experts when necessary to carry out the functions of the office. The patient advocate shall make an annual budget request for the office which shall be identified in the annual Budget Act.

(3) Until January 1, 2013, the office shall have access to records of the Department of Managed Health Care, including, but not limited to, information related to health care service plan or health insurer audits, surveys, and enrollee or insured grievances.

(4) The patient advocate shall annually issue a public report on the activities of the office, and shall appear before the appropriate policy and fiscal committees of the Senate and Assembly, if

requested, to report and make recommendations on the activities of the office.

(5) The office shall adopt standards for the organizations with which it contracts pursuant to this section to ensure compliance with the privacy and confidentiality laws of this state, including, but not limited to, the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Division 3 of the Civil Code). The office shall conduct privacy trainings as necessary, and regularly verify that the organizations have measures in place to ensure compliance with this provision.

(c) In enacting this act, the Legislature recognizes that, because of the enactment of federal health care reform on March 23, 2010, and the implementation of various provisions by January 1, 2014, it is appropriate to transfer the Office of Patient Advocate and to confer new responsibilities on the Office of Patient Advocate, including assisting consumers in obtaining health care coverage and obtaining health care through health coverage that is regulated by multiple regulators, both state and federal. The new responsibilities include assisting consumers in navigating both public and private health care coverage and assisting consumers in determining which regulator regulates the health care coverage of a particular consumer. In order to assist in implementing federal health care reform in California, commencing January 1, 2013, the office, in addition to the duties set forth in subdivision (b), shall also do all of the following:

(1) Receive and respond to all inquiries, complaints, and requests for assistance from individuals concerning health care coverage available in California.

(2) Provide, and assist in the provision of, outreach and education about health care coverage options as set forth in subparagraph (A) of paragraph (1) of subdivision (b), including, but not limited to:

(A) Information regarding applying for coverage; the cost of coverage; and renewal in, and transitions between, health coverage programs.

(B) Information and assistance regarding public programs, such as Medi-Cal, the Healthy Families Program, and Medicare; private coverage, including employer-sponsored coverage, Exchange coverage, and other sources of care if the consumer is not eligible

for coverage, such as county services, community clinics, discounted hospital care, or charity care.

(3) Coordinate with other state and federal agencies engaged in outreach and education regarding the implementation of federal health care reform.

(4) Render assistance to, and advocate on behalf of, consumers with problems related to health care services, including care and service problems and claims or payment problems.

(5) Refer consumers to the appropriate regulator of their health coverage programs for filing complaints, grievances, or claims, or for payment problems.

(d) (1) Commencing January 1, 2013, the office shall track and analyze data on problems and complaints by, and questions from, consumers about health care coverage for the purpose of providing public information about problems faced and information needed by consumers in obtaining coverage and care. The data collected shall include demographic data, source of coverage, regulator, and resolution of complaints, including timeliness of resolution.

(2) The Department of Managed Health Care, the State Department of Health Care Services, the Department of Insurance, the Managed Risk Medical Insurance Board, the California Health Benefit Exchange, and other public coverage programs shall provide to the office data in the aggregate concerning consumer complaints and grievances. For the purpose of publicly reporting information about the problems faced by consumers in obtaining care and coverage, the office shall analyze data on consumer complaints and grievances resolved by these agencies, including demographic data, source of coverage, insurer or plan, resolution of complaints, and other information intended to improve health care and coverage for consumers. The office shall develop and provide comprehensive and timely data and analysis based on the information provided by other agencies.

(3) The office shall collect and report data to the United States Secretary of Health and Human Services on complaints and consumer assistance as required to comply with requirements of the federal Patient Protection and Affordable Care Act (P.L. 111-148).

(e) Commencing on January 1, 2013, in order to assist consumers in understanding the impact of federal health care reform as well as navigating and resolving questions and problems

with health care coverage and programs, the office shall ensure that either the office or a state agency contracting with the office shall do the following:

(1) Operate a toll-free telephone hotline number that can route callers to the proper regulating body or public program for their question, their health plan, or the consumer assistance program in their area.

(2) Operate an Internet Web site, other social media, and up-to-date communication systems to give information regarding the consumer assistance programs.

(f) (1) The office may contract with community-based consumer assistance organizations to assist in any or all of the duties of subdivision (c) in accordance with Section 19130 of the Government Code or provide grants to community-based consumer assistance organizations for portions of these purposes.

(2) Commencing on January 1, 2013, any local community-based nonprofit consumer assistance program with which the office contracts shall include in its mission the assistance of, and duty to, health care consumers. Contracting consumer assistance programs shall have experience in the following areas:

(A) Assisting consumers in navigating the local health care system.

(B) Advising consumers regarding their health care coverage options and helping consumers enroll in and retain health care coverage.

(C) Assisting consumers with problems in accessing health care services.

(D) Serving consumers with special needs, including, but not limited to, consumers with limited-English language proficiency, consumers requiring culturally competent services, low-income consumers, consumers with disabilities, consumers with low literacy rates, and consumers with multiple health conditions, including behavioral health.

(E) Collecting and reporting data, including demographic data, source of coverage, regulator, and resolution of complaints, including timeliness of resolution.

(3) Commencing on January 1, 2013, the office shall develop protocols, procedures, and training modules for organizations with which it contracts.

(4) Commencing on January 1, 2013, the office shall adopt standards for organizations with which it contracts regarding confidentiality and conduct.

(5) Commencing on January 1, 2013, the office may contract with consumer assistance programs to develop a series of appropriate literacy level and culturally and linguistically appropriate educational materials in all threshold languages for consumers regarding health care coverage options and how to resolve problems.

(g) Commencing on January 1, 2013, the office shall develop protocols and procedures for assisting in the resolution of consumer complaints, including both of the following:

(1) A procedure for referral of complaints and grievances to the appropriate regulator or health coverage program for resolution by the relevant regulator or public program.

(2) A protocol or procedure for reporting to the appropriate regulator and health coverage program regarding complaints and grievances relevant to that agency that the office received and was able to resolve without further action or referral.

(h) For purposes of this section, the following definitions shall apply:

(1) "Consumer" or "individual" includes the individual or his or her parent, guardian, conservator, or authorized representative.

(2) "Exchange" means the California Health Benefit Exchange established pursuant to Title 22 (commencing with Section 100500) of the Government Code.

(3) "Health care" includes behavioral health, including both mental health and substance abuse treatment.

(4) "Health care service plan" has the same meaning as that set forth in subdivision (f) of Section 1345. Health care service plan includes "specialized health care service plans," including behavioral health plans.

(5) "Health coverage program" includes the Medi-Cal program, Healthy Families Program, tax subsidies and premium credits under the Exchange, the Basic Health Program, if enacted, county health coverage programs, and the Access for Infants and Mothers Program.

(6) "Health insurance" has the same meaning as set forth in Section 106 of the Insurance Code.

(7) "Health insurer" means an insurer that issues policies of health insurance.

(8) "Office" means the Office of Patient Advocate.

(9) "Threshold languages" shall have the same meaning as for Medi-Cal managed care.

SEC. 103. Section 1760.1 of the Insurance Code is amended to read:

1760.1. For the purposes of this chapter, the following terms have the following definitions:

(a) "Certified" means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(b) "Commercial insured" means any person purchasing commercial insurance that, at the time of placement, meets all of the following requirements:

(1) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(2) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars ($100,000) in the immediately preceding 12 months.

(3) (A) The person meets at least one of the following criteria:

(i) The person possesses a net worth in excess of twenty million dollars ($20,000,000), as that amount is adjusted pursuant to subparagraph (B).

(ii) The person generates annual revenues in excess of fifty million dollars ($50,000,000), as that amount is adjusted pursuant to subparagraph (B).

(iii) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(iv) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars ($30,000,000), as that amount is adjusted pursuant to subparagraph (B).

(v) The person is a municipality with a population in excess of 50,000 persons.

(B) Effective on January 1, 2015, and each fifth January 1 occurring thereafter, the dollar amounts in subparagraph (A) shall be adjusted to reflect the percentage change for that five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The commissioner shall issue a bulletin to all surplus line brokers advising of any adjustments and may adopt the calculations of the NAIC or other entity in doing so.

(c) "Domiciliary jurisdiction" means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(d) "Domiciliary state of the syndicate's trust" means the state in which the syndicate's trust fund is principally maintained and administered for the benefit of the syndicate's policyholders in the United States.

(e) "Home state" means, except as provided in paragraphs (2) to (4), inclusive, any of the following, with respect to an insured or applicant:

(1) (A) The state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence.

(B) If 100 percent of the insured risk is located outside the state referred to in subparagraph (A), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(2) "Principal place of business" means, with respect to subparagraph (A) of paragraph (1) determining the home state of the insured, (A) the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities; or (B) if the insured's high-level officers direct, control, and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or (C) if the insured maintains its headquarters or the insured's high-level officers direct, control, and coordinate the business activities outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(3) "Principal residence" means, with respect to determining the home state of the insured, (A) the state where the insured

resides for the greatest number of days during a calendar year; or (B) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(4) Affiliated groups. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subparagraph (A) of paragraph (1), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(f) "Home state insured" or "home state insured applicant" means a person whose home state is California and who has received a certificate or evidence of coverage as set forth in Section 1764 or a policy as issued by an eligible surplus line insurer, or a person who is an applicant therefor.

(g) "IID" means the International Insurers Department of the National Association of Insurance Commissioners.

(h) "Insurer" means, unless the context indicates otherwise, "nonadmitted" insurers that are either "foreign" or "alien" insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator. The term "insurer" includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1991 (Chapter 1.5 (commencing with Section 125) of Part 1), except insurers that are risk retention groups as defined by those acts.

(i) "ISI" means Insurance Solvency International.

(j) "Licensee" means a surplus line broker as defined in Section 47.

(k) "Multistate risk" means a risk covered by a nonadmitted insurer with insured exposures in more than one state.

(*l*) "NAIC" means the National Association of Insurance Commissioners or its successor organization.

(m) "Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus line broker with a nonadmitted insurer eligible to accept such insurance.

(n) "Nonadmitted insurer" means an insurer not licensed or admitted to engage in the business of insurance in this state in conformity with Section 700; but does not include a risk retention group, as that term is defined in Sections 130(k) and 2(a)(4) of the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901(a)(4)).

(o) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(1) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(2) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(3) The person has any of the following:

(A) A bachelor's degree or higher degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management and satisfies either of the following:

(i) Has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance.

(ii) Has one of the following:

(I) A designation as a Chartered Property and Casualty Underwriter (CPCU) issued by the American Institute for CPCU and Insurance Institute of America.

(II) A designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU and Insurance Institute of America.

(III) A designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education and Research.

(IV) A designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute.

(V) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management.

(B) At least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance, and has any one of the designations specified in subclauses (I) to (V), inclusive, of clause (ii) of subparagraph (A).

(C) At least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.

(D) A graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

(p) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(q) "Verified" means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under the penalty of perjury under California law, that the assertions made in the document are true.

SEC. 104. Section 1763 of the Insurance Code is amended to read:

1763. (a) A surplus line broker may solicit and place insurance for a home state insured, other than as excepted in Section 1761, with nonadmitted insurers only if that insurance cannot be procured from insurers admitted for the particular class or classes of insurance and that actually write the particular type of insurance in this state. Each surplus line broker shall be responsible to ensure that a diligent search is made among insurers that are admitted to transact and are actually writing the particular type of insurance in this state before procuring the insurance for a home state insured from a nonadmitted insurer. Each surplus line broker shall file with the commissioner or his or her designee, within 60 days of placing any insurance for a home state insured with a nonadmitted insurer, a written report that shall be kept confidential, regarding the insurance. This report shall include the name and address of the insured, verification that the insured is a home state insured, the identity of the insurer or insurers, a description of the subject

and location of the risk, the amount of premium charged for the insurance, a copy of the declarations page of the policy or a copy of the surplus line broker's certificate or binder evidencing the placement of insurance, and other pertinent information that the commissioner may reasonably require. In addition, each surplus line broker shall file a standardized form to be prescribed by the commissioner setting forth the diligent efforts to place the coverage with admitted insurers and the results of these efforts. The form shall be signed by a person licensed under this code who has made the diligent search required by this section or who supervised an unlicensed person or persons who actually conducted the search. The insurance shall not be placed with a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate that will be accepted by any admitted insurer except as provided by subdivision (c). The commissioner may make and publish reasonable rules and regulations, consistent with this chapter, in respect to transactions governed thereby and the basis or bases for his or her determinations hereunder.

(b) It shall be prima facie evidence that a diligent search among admitted insurers has been made if the standardized form filed as required by subdivision (a) establishes that three admitted insurers that actually write the particular type of insurance in this state have declined the risk, or that fewer than three admitted insurers actually write the particular type of insurance. The commissioner, or his or her designee, may review the form for the accuracy of the information provided on it, including, but not limited to, whether the listed insurers actually write that type of insurance, and whether the three insurers declined the risk. The commissioner may take disciplinary action against the person signing the form for any misrepresentation made in the form due to the negligence of or the result of an intentional act by that person or the person or persons who actually conducted the search. Those actions may include any action authorized to be taken against a licensed person by this code. Nothing in this subdivision shall preclude the commissioner or his or her designee from directing the surplus line broker to conduct a further or additional search among admitted insurers for similar placements in the future.

(c) It shall be conclusively presumed that insurance is placed in violation of this section if the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium

than the lowest rate of premium or the lowest premium that could be obtained from an admitted insurer unless, at the time the insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest procurable rates from admitted insurers. The statement shall include an explanation of the reasons that the insurance must be placed with a nonadmitted insurer even though it is available from an admitted insurer. Unless the commissioner, or his or her designee, within five days after that filing notifies the filing broker that in his or her opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect that insurance. If within that five-day period the commissioner notifies the surplus line broker that the insurance is in violation of this section and orders the broker to effect termination of that insurance within 10 days from the notice, and the broker fails or refuses to effect that termination, that failure or refusal is a violation of this section.

(d) Statements filed under this section are not subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made public.

(e) For purposes of this section, “type of insurance” means the hazard or combination of hazards covered by a contract of insurance.

(f) Notwithstanding subdivision (a), this section shall not apply to insurance issued or delivered in this state to a home state insured by a nonadmitted Mexican insurer by and through a surplus line broker affording coverage exclusively in the Republic of Mexico on property located temporarily or permanently in, or operations conducted temporarily or permanently within, the Republic of Mexico.

(g) This section does not apply to the extension of coverage by a nonadmitted insurer, of or for the same risks, and to the same insured under an existing surplus lines policy. Such an extension may not exceed 90 days in the aggregate during any 12-month period. The extension may not include a change in coverage, terms, and conditions, or limits. Any additional premium charged for the extension shall be determined pro rata, based on the same rate of premium as the existing surplus lines policy.

(h) (1) The diligent search requirement set forth in subdivision (a) shall not apply to a commercial insured as defined in subdivision (b) of Section 1760.1 when both of the following occur:

(A) The surplus line broker procuring or placing the surplus line insurance has disclosed in writing to the commercial insured that surplus insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight.

(B) The commercial insured has subsequently requested in writing that the surplus line broker procure or place surplus insurance from a nonadmitted insurer.

(2) The surplus line broker shall be responsible to ensure that the applicant is a commercial insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through a producer, shall be deemed to be in compliance with this requirement.

SEC. 105. Section 1764.1 of the Insurance Code is amended to read:

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a home state insured pursuant to Section 1760, and surplus line broker, in the case of any insurance with a nonadmitted carrier for a home state insured to be transacted by the surplus line broker, shall be responsible to ensure that, at the time of accepting an application for an insurance policy, other than a renewal of that policy, issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. In fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may rely, if it is reasonable under all the circumstances to do so, on the disclosure statement received from a licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be signed by the applicant, and is not subject to a limited power of attorney agreement between the applicant and an agent or broker or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a

nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

(2) In a case in which the applicant has not received and completed the signed disclosure form required by this section, he or she may cancel the insurance so placed. The cancellation shall be on a pro rata basis as to premium, and the applicant shall be entitled to the return of any broker's fees charged for the placement.

(b) The following notice shall be provided to home state insureds and home state insured applicants for insurance as provided by subdivision (a), and shall be printed in English and in the language principally used by the surplus line broker and nonadmitted insurer to advertise, solicit, or negotiate the sale and purchase of surplus line insurance. The surplus line broker and nonadmitted insurer shall use the appropriate bracketed language for application and issued policy disclosures:

"NOTICE:

1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS.

3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. THE INSURER SHOULD BE LICENSED EITHER AS A FOREIGN INSURER IN ANOTHER STATE IN THE UNITED STATES OR AS A NON-UNITED STATES (ALIEN) INSURER. YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF

INSURANCE AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER ____. ASK WHETHER OR NOT THE INSURER IS LICENSED AS A FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND FOR ADDITIONAL INFORMATION ABOUT THE INSURER. YOU MAY ALSO CONTACT THE NAIC'S INTERNET WEB SITE AT WWW.NAIC.ORG.

5. FOREIGN INSURERS SHOULD BE LICENSED BY A STATE IN THE UNITED STATES AND YOU MAY CONTACT THAT STATE'S DEPARTMENT OF INSURANCE TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.

6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE OF THE UNITED STATES AND SHOULD BE ON THE NAIC'S INTERNATIONAL INSURERS DEPARTMENT (IID) LISTING OF APPROVED NONADMITTED NON-UNITED STATES INSURERS. ASK YOUR AGENT, BROKER, OR "SURPLUS LINE" BROKER TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.

7. CALIFORNIA MAINTAINS A LIST OF APPROVED SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST AT THE INTERNET WEB SITE OF THE CALIFORNIA DEPARTMENT OF INSURANCE: WWW.INSURANCE.CA.GOV.

8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER'S FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU."

(c) When a contract is issued to an industrial insured, neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature. The producer shall ensure that the notice affixed to the confirmation of insurance, certificate of placement, or the policy is provided to the insured. The producer shall insert the current toll-free telephone number of the Department of Insurance as provided in paragraph 4 of the notice.

(1) An industrial insured is an insured that does both of the following:

(A) Employs at least 25 employees on average during the prior 12 months.

(B) Has aggregate annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than twenty-five thousand dollars ($25,000) or obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A "continuously retained insurance consultant" does not include: (i) an agent or broker through whom the insurance is being placed, (ii) a subagent or subproducer involved in the transaction, or (iii) an agent or broker that is a business organization employing or contracting with a person mentioned in clauses (i) and (ii).

(2) The surplus line broker shall be responsible for ensuring that the applicant is an industrial insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through the producer, shall be deemed to be in compliance with this requirement.

(d) For purposes of compliance with the requirement of subdivision (a) that the signature of the applicant be obtained, the following shall apply:

(1) If the insurance transaction is not conducted at an in-person, face-to-face meeting, the applicant's signature on the disclosure form may be transmitted by the applicant to the agent or broker via facsimile or comparable electronic transmittal.

(2) In the case of commercial lines coverage, or personal insurance coverage subject to Section 675 and any umbrella

coverage associated therewith, where an applicant requires that insurance coverage be bound immediately, either because existing coverage will lapse within two business days of the time the insurance is bound or because the applicant is required to have coverage in place within two business days, and the applicant cannot meet in person with the agent or broker to sign the disclosure form, the agent or broker may obtain the signature of the applicant within five days of binding coverage, provided that the applicant may cancel the insurance so placed within five days of receiving the disclosure form from the agent or broker. The cancellation shall be on a pro rata basis, and the applicant shall be entitled to the rescission or return of any broker's fees charged for the placement. When a policy is canceled, the broker shall inform the applicant that the broker's fee must be returned and that the premium must be prorated.

(e) Notwithstanding subdivision (a), this section shall not apply to insurance issued or delivered in this state by a nonadmitted Mexican insurer by and through a surplus line broker affording coverage exclusively in the Republic of Mexico on property located temporarily or permanently in, or operations conducted temporarily or permanently within, the Republic of Mexico.

SEC. 106. Section 1765.1 of the Insurance Code is amended to read:

1765.1. No surplus line broker shall place any coverage with a nonadmitted insurer for a home state insured unless the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at the time of placement, the nonadmitted insurer meets the requirements of either subdivision (a) or (b):

(a) If the insurer is domiciled in one of the states of the United States or its territories as defined in subdivision (p) of Section 1760.1:

(1) Is licensed to write the type of insurance in its domiciliary jurisdiction; and

(2) (A) Has capital and surplus that together total forty-five million dollars ($45,000,000).

(B) The requirements of subparagraph (A) may be satisfied by an insurer possessing less than forty-five million dollars ($45,000,000) upon an affirmative finding of acceptability by the

commissioner. The finding shall be based upon factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The commissioner is prohibited from making an affirmative finding of acceptability when the foreign insurer's capital and surplus are less than four million five hundred thousand dollars ($4,500,000); or

(C) If a foreign insurer that was listed as an eligible surplus line insurer as of January 1, 2011, and did not have the forty-five million dollars ($45,000,000) of capital and surplus as of January 1, 2011, that insurer shall have at least thirty million dollars ($30,000,000) of capital and surplus as of December 31, 2011, and at least forty-five million dollars ($45,000,000) of capital and surplus as of December 31, 2013.

(b) If the insurer is not domiciled in one of the states of the United States or its territories as defined in subdivision (p) of Section 1760.1, the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC International Insurers Department (IID) and is licensed as an insurer in its domiciliary jurisdiction.

(c) The commissioner shall not recognize that a nonadmitted insurer is eligible pursuant to subdivision (a) or (b) unless and until the nonadmitted insurer, or a surplus line broker on its behalf, has submitted for filing the following:

(1) A certificate of capital and surplus issued by the insurer's domiciliary jurisdiction.

(2) A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either that jurisdiction or, if the jurisdiction does not issue those certificates, from any state where it is licensed.

(3) Information on the insurer's agent in California for service of process, including the agent's full name and address. The agent's address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) Notice, if applicable, that the insurer or licensee is currently known to be the subject of any order or proceeding regarding

conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The notice shall identify the proceeding by date, jurisdiction, and relief or sanction sought, and shall attach a copy of the relevant order.

(6) A list of all California surplus line brokers authorized by the insurer to issue policies on its behalf, and any additions to or deletions from that list.

(7) Any additional information or documentation required by the commissioner that pertains to the requirements of this section or the NAIC review of the insurer including for purposes of inclusion on or exclusion from the list of authorized nonadmitted insurers maintained by the NAIC.

(d) The commissioner shall not recognize that a nonadmitted insurer is eligible pursuant to subdivision (a) or (b) unless and until the nonadmitted insurer, or a surplus line broker on its behalf, has established, in addition to the requirements prescribed in subdivision (c), that:

(1) All documents required by subdivision (c) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents confirm that the insurer holds a license to issue insurance policies, other than reinsurance, to residents of the jurisdiction that granted the license.

(4) The information available to the commissioner shall not indicate that the insurer offers to a home state insured products or rates that violate any provision of this code.

(e) If at any time the commissioner determines that an insurer is no longer eligible pursuant to subdivision (a) or (b), the commissioner may issue an order without prior notice and hearing. At the time an order is issued pursuant to this subdivision to an insurer, the commissioner shall notify all surplus line brokers of the order.

(f) The commissioner may require, at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained.

(g) The commissioner shall establish by regulation a schedule of fees to cover costs of administering and enforcing this chapter.

(h) (1) Insurance may be placed on a limited basis with insurers not eligible pursuant to this section if all of the following conditions are met:

(A) The use of multiple insurers is necessary to obtain coverage for 100 percent of the risk.

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that are eligible nonadmitted insurers.

(C) The placing surplus line broker submits to the commissioner, or his or her designee, copies of all documentation relied upon by the surplus line broker to make the broker's determination that the financial stability, reputation, and integrity of the ineligible insurer or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the ineligible insurer requested by the commissioner, shall be submitted no more than 30 days after the insurance is placed with the unlisted insurer for the initial placement by that broker with the particular ineligible insurer, and annually thereafter for as long as the broker continues to make placements with the ineligible insurer pursuant to this paragraph.

(D) The insured has aggregate annual premiums for all risks other than workers' compensation or health coverage totaling no less than one hundred thousand dollars ($100,000).

(2) Insurance may not be placed pursuant to paragraph (1) if any of the following applies:

(A) The ineligible insurer has for any reason been objected to by the commissioner pursuant to this section or become ineligible.

(B) The insurance includes coverage for employer-sponsored medical, surgical, hospital, or other health or medical expense benefits payable to the employee by the insurer.

(C) The insurance is mandatory under the laws of the federal government, this state, or any political subdivision thereof, and includes any portion of limits of coverage mandated by those laws.

(D) The insured is a multiple employer welfare arrangement, as defined in Section 1002(40)(A) of Title 29 of the United States Code, or any other arrangement among two or more employers

that are not under common ownership or control, which is established or maintained for the primary purpose of providing insurance benefits to the employees of two or more employers.

(E) Ineligible insurers represent a disproportionate portion of the lower layers of the coverage.

(3) Nothing in this section is intended to alter any duties of a surplus line broker pursuant to subdivision (b) of Section 1765 or other laws of this state to safeguard the interests of the insured under the policy in recommending or placing insurance with a nonadmitted insurer.

(4) Placements authorized by this subdivision are intended to provide sophisticated insurance purchasers with a means to obtain necessary commercial insurance coverage from nonadmitted insurers that are not eligible in situations where it is not commercially possible to fully obtain that coverage from either admitted or eligible insurers. This subdivision shall not be deemed to permit surplus line brokers to place with nonadmitted insurers common commercial or personal line coverages for insureds that can be placed with insurers that are admitted or eligible pursuant to this section, whether the insured is an individual insured, or a group created primarily for the purpose of purchasing insurance.

(i) With respect to a nonadmitted insurer that is listed as an eligible surplus line insurer as of July 21, 2011, pursuant to the former Section 1765.1 as it read prior to July 21, 2011, this section shall not be effective until the subsequent expiration of the policies of that insurer in effect on July 21, 2011. Nothing in the bill that amended this section during the 2011 portion of the 2011–12 Regular Session is intended to repeal or imply there is not authority to adopt, or to have adopted, or to continue in force, any regulation, or part thereof, with respect to surplus line insurance which is not clearly inconsistent with it.

SEC. 107. Section 1765.2 of the Insurance Code is amended to read:

1765.2. A surplus line broker may place any coverage with a California-approved nonadmitted insurer if the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or if, at the time of placement, the nonadmitted insurer meets the following requirements:

(a) (1) Has established its financial stability, reputation, and integrity, for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the commissioner through a surplus line broker.

(2) Meets one of the following requirements with respect to its financial stability:

(A) Has capital and surplus that together total at least forty-five million dollars ($45,000,000). "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least twenty-five million dollars ($25,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by the limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow an asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Letters of credit shall not qualify as assets in the calculation of surplus. If capital and surplus together total less than forty-five million dollars ($45,000,000), the commissioner has affirmatively found that the capital and surplus are adequate to protect California policyholders. The commissioner shall consider, on determining whether to make this finding, factors such as quality of management, the capital and surplus of a parent company, the

underwriting profit and investment income trends, and the record of claims payment and claims handling practices of the nonadmitted insurer.

(B) In the case of an "Insurance Exchange" created and authorized under the laws of individual states, maintains capital and surplus of not less than fifty million dollars ($50,000,000) in the aggregate. "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least twenty-five million dollars ($25,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by the limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow an asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Letters of credit shall not qualify as assets in the calculation of surplus. Each individual syndicate seeking to accept surplus line placements of risks resident, located, or to be performed in this state shall maintain minimum capital and surplus of not less than six million four hundred thousand dollars ($6,400,000). Each individual syndicate shall increase the capital and surplus required by this paragraph by one million dollars ($1,000,000) each year until it attains a capital and surplus of forty-five million dollars ($45,000,000).

(C) In the case of a syndicate that is part of a group consisting of incorporated individual insurers, or a combination of both incorporated and unincorporated insurers, that at all times maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution as security to the full amount thereof for the United States surplus line policyholders and beneficiaries of direct policies of the group, including all policyholders and beneficiaries of direct policies of the syndicate, and the full balance in the trust fund is available to satisfy the liabilities of each member of the group of those syndicates, incorporated individual insurers or other unincorporated insurers, without regard to their individual contributions to that trust fund, and the trust complies with the terms of and conditions specified in paragraph (1) of subdivision (b), the syndicate is excepted from the capital and surplus requirements of subparagraph (A). The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(b) (1) In addition, to be approved as a surplus line insurer, an insurer not domiciled in one of the United States or its territories shall have in force in the United States an irrevocable trust account in a qualified United States financial institution, for the protection of United States policyholders, of not less than five million four hundred thousand dollars ($5,400,000) and consisting of cash, securities acceptable to the commissioner that are authorized pursuant to Sections 1170 to 1182, inclusive, readily marketable securities acceptable to the commissioner that are listed on a regulated United States national or principal regional security exchange, or clean and irrevocable letters of credit acceptable to the commissioner and issued by a qualified United States financial institution. The trust agreement shall be in a form acceptable to the commissioner. The funds in the trust account may be included in any calculation of capital and surplus, except letters of credit, which shall not be included in the calculation.

(2) In the case of a syndicate seeking approval under subparagraph (C) of paragraph (2) of subdivision (a), the syndicate shall, in addition to the requirements of that subparagraph, at a minimum, maintain in the United States a trust account in an

amount satisfactory to the commissioner that is not less than the amount required by the domiciliary state of the syndicate's trust. The trust account shall comply with the terms and conditions specified in paragraph (1).

(3) In the case of a group of incorporated insurers under common administration that maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution for the payment of claims of its United States policyholders, their assigns, or successors in interest and that complies with the terms and conditions of paragraph (1) that has continuously transacted an insurance business outside the United States for at least three years, that is in good standing with its domiciliary regulator, whose individual insurer members maintain standards and a financial condition reasonably comparable to admitted insurers, that submits to this state's authority to examine its books and bears the expense of examination, and that has an aggregate policyholder surplus of ten billion dollars ($10,000,000,000), the group is excepted from the capital and surplus requirements of subdivision (a).

(c) Unless available from the NAIC or other public source, has caused to be provided to the commissioner the following documents:

(1) The financial documents as specified below, each showing the insurer's condition as of a date not more than 12 months prior to submission:

(A) A copy of an annual statement, prepared in the form prescribed by the NAIC. For an alien insurer, in lieu of an annual statement, a licensee may submit a form as set forth by regulation and as prepared by the insurer, and, if listed by the IID, a copy of the complete information as required in the application for listing by the IID.

(B) A copy of an audited financial report on the insurer's condition that meets the standards of subparagraph (D) for foreign insurers or subparagraph (E) for alien insurers.

(C) If the insurer is an alien:

(i) A certified copy of the trust agreement referenced in subdivision (b).

(ii) A verified copy of the most recent quarterly statement or list of the assets in the trust.

(D) Financial reports filed pursuant to this section by foreign insurers shall conform to the following standards:

(i) Financial documents shall be certified.

(ii) An audited financial report shall constitute a supplement to the insurer's annual statement, as required by the annual statement instructions issued by the NAIC.

(iii) An audited financial report shall be prepared by an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states where licensed to practice; and be prepared in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulator of the insurer's domiciliary jurisdiction.

(iv) An audited financial report shall include information on the insurer's financial position as of the end of the most recent calendar year, and the results of its operations, cashflows, and changes in capital and surplus for the year then ended.

(v) An audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with its domiciliary jurisdiction, and presenting comparatively the amounts as of December 31 of the most recent calendar year and the amounts as of December 31 of the preceding year.

(E) Financial reports filed pursuant to this section by alien insurers shall conform to the following standards:

(i) Except as provided in clause (ii) of subparagraph (C), financial documents should be certified. If certification of a financial document is not available, the document shall be verified.

(ii) Financial documents should be expressed in United States dollars, but may be expressed in another currency, if the exchange rate for the other currency as of the date of the document is also provided.

(iii) The responses provided pursuant to subparagraph (A) on the form submitted in lieu of an annual statement should follow the most recent Insurance Solvency International Guide to Alien Reporting Format, "Standard Definitions of Accounting Items." Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent licensed auditor in the insurer's domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted Accounting Principles, or (II) International Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants, and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, a certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The supplement must meet the same requirements that apply to the supplemented document and must update the outdated document to a date within the prescribed time period, preferably to the same date as the nonsupplemented document.

(2) A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either that jurisdiction or, if the jurisdiction does not issue those certificates, from a state where it is licensed.

(3) Information on the insurer's agent in California for service of process, including the agent's full name and address. The agent's address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) A certified or verified explanation, report, or other statement from the insurance regulatory office or official of the insurer's domiciliary jurisdiction concerning the insurer's record regarding market conduct and consumer complaints, or, if that information

cannot be obtained from that jurisdiction, then any other information that the licensee can procure to demonstrate a good reputation for payment of claims and treatment of policyholders.

(6) A verified statement, from the insurer or licensee, on whether the insurer or an affiliated entity is currently known to be the subject of an order or proceeding regarding conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The statement shall identify the proceeding by date, jurisdiction, and relief or sanction sought, and shall attach a copy of the relevant order.

(7) A certified copy of the most recent report of examination or an explanation if the report is not available.

(8) A list of all California surplus line brokers authorized by the insurer to issue policies on its behalf, and any additions to or deletions from that list.

(d) (1) Has provided additional information or documentation required by the commissioner that is relevant to the financial stability, reputation, and integrity of the nonadmitted insurer. In making a determination concerning financial stability, reputation, and integrity of the nonadmitted insurer, the commissioner shall consider any analyses, findings, or conclusions made by the NAIC in its review of the insurer for purposes of inclusion on or exclusion from the list of authorized nonadmitted insurers maintained by the NAIC. The commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of the NAIC, as the commissioner deems appropriate. In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of a state, as the commissioner deems appropriate, as long as that state, in its method of regulation and review, meets the requirements of paragraph (2).

(2) The regulatory body of the state shall regularly receive and review the following: (A) an audited financial statement of the syndicate, prepared by a certified or chartered public accountant; (B) an opinion of a qualified actuary with regard to the syndicate's aggregate reserves for payment of losses or claims and payment of expenses of adjustment or settlement of losses or claims; (C) a

certification from the qualified United States financial institution that acts as the syndicate's trustee, respecting the existence and value of the syndicate's trust fund; and (D) information concerning the syndicate's or its manager's operating history, business plan, ownership and control, experience, and ability, together with any other pertinent factors, and any information indicating that the syndicate or its manager make reasonably prompt payment of claims in this state or elsewhere. The regulatory body of the state shall have the authority, either by law or through the operation of a valid and enforceable agreement, to review the syndicate's assets and liabilities and audit the syndicate's trust account, and shall exercise that authority with a frequency and in a manner satisfactory to the commissioner.

(e) Has established that:

(1) All documents required by subdivisions (c) and (d) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents affirm that the insurer has actively transacted insurance for the three years immediately preceding the filing made under this section, unless an exemption is granted. As used in this paragraph, "insurer" does not include a syndicate of underwriting entities. The commissioner may grant an exemption if the licensee has applied for exemption and demonstrates either of the following:

(A) The insurer meets the condition for any exception set forth in subdivision (a), (b), or (c) of Section 716.

(B) If the insurer has been actively transacting insurance for at least 12 months, and the licensee demonstrates that the exemption is warranted because the insurer's current financial strength, operating history, business plan, ownership and control, management experience, and ability, together with any other pertinent factors, make three years of active insurance transaction unnecessary to establish sufficient reputation.

(4) The documents confirm that the insurer holds a license to issue insurance policies, other than reinsurance, to residents of the

jurisdiction that granted the license unless an exemption is granted. The commissioner may grant an exemption if the licensee has applied for an exemption and demonstrates that the exemption is warranted because the insurer proposes to issue in California only commercial coverage, and is wholly owned and actually controlled by substantial and knowledgeable business enterprises that are its policyholders and that effectively govern the insurer's destiny in furtherance of their own business objectives.

(5) The information filed pursuant to paragraph (5) of subdivision (c) or otherwise filed with or available to the commissioner, including reports received from California policyholders, shall indicate that the insurer makes reasonably prompt payment of claims in this state or elsewhere.

(6) The information available to the commissioner shall not indicate that the insurer offers in California a licensee products or rates that violate any provision of this code.

(f) Has been placed on the list of approved surplus line insurers by the commissioner. The commissioner shall establish a list of all surplus line insurers that have met the requirements of subdivisions (a) to (e), inclusive, and shall publish a master list at least semiannually. An insurer receiving approval as an approved surplus line insurer shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. If an insurer appears on the most recent list, it shall be presumed that the insurer is an approved surplus line insurer, unless the commissioner or his or her designee has mailed or causes to be mailed notice to all surplus line brokers that the commissioner has withdrawn the insurer's approval. Upon receipt of notice, the surplus line broker shall no longer advertise that the insurer is approved. Nothing in this subdivision shall limit the commissioner's discretion to withdraw an insurer's approval.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that an insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the approval requirements under subdivisions (a) to (e), inclusive, (C) has violated the laws of this state, or (D) without justification, or with a frequency so as to indicate a general business practice, delays the payment of just claims, the commissioner may issue an order removing the insurer from the

list. Notice of hearing shall be served upon the insurer or its agent for service of process stating the time and place of the hearing and the conduct, condition, or ground upon which the commissioner would make his or her order. The hearing shall occur not less than 20 days, nor more than 30 days, after notice is served upon the insurer or its agent for service of process.

(2) If the commissioner determines that an insurer's immediate removal from the list is necessary to protect the public or a home state insured or home state insured applicant of the insurer, or, in the case of an application by an insurer to be placed on the list that is being denied by the commissioner, the commissioner may issue an order pursuant to paragraph (1) without prior notice and hearing. At the time an order is served pursuant to this paragraph to an insurer on the list, the commissioner shall also issue and serve upon the insurer a statement of the reasons that immediate removal is necessary. An order issued pursuant to this paragraph shall include a notice stating the time and place of a hearing on the order, which shall be not less than 20 days, nor more than 30 days, after the notice is served.

(3) Notwithstanding paragraphs (1) and (2), in a case where the commissioner is basing a decision to remove an insurer from the list, or deny an application to be placed on the list, on the failure of the insurer or applicant to comply with, meet, or maintain any of the objective criteria established by this section, or by regulation adopted pursuant to this section, the commissioner may specify this fact in the order, and no hearing shall be required to be held on the order.

(4) Notwithstanding paragraphs (1) and (2), the commissioner may, without prior notice or hearing, remove from the list established pursuant to subdivision (f) an insurer that has failed or refused to timely provide documents required by this section, or regulations adopted to implement this section. In the case of removal pursuant to this paragraph, the commissioner shall notify all surplus line brokers of the action.

(h) In addition to other statements or reports required by this chapter, the commissioner may also address to a licensee a written request for full and complete information respecting the financial stability, reputation, and integrity of a nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance business with a home state insured. The licensee so

addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce, together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, advise the licensee in writing that the insurer does not qualify as an approved insurer. Any placement in the nonadmitted insurer made by a licensee after receipt of that advisement shall be accompanied by a copy of the advisement. The commissioner may issue an advisement when documents submitted pursuant to subdivisions (c) and (d) do not meet the criteria of subdivisions (a) to (e), inclusive, or when the commissioner obtains documents on an insurer and the insurer does not meet the criteria of subdivisions (a) to (e), inclusive, and shall be authorized to not include or remove that insurer from the List of Approved Surplus Line Insurers.

(i) The commissioner shall require, at least annually, the submission of records and statements reasonably necessary to ensure that the requirements of this section are maintained.

(j) The commissioner shall establish, by regulation, a schedule of fees to cover costs of administering and enforcing this chapter.

SEC. 108. Section 1768 of the Insurance Code is amended to read:

1768. A resident surplus line broker shall keep in this state complete records of the business transacted by him or her for California home state insureds with nonadmitted insurers under his or her license as a surplus line broker including all of the following documentation for each policy:

(a) Verification that the insured is a California home state insured.

(b) Verification that the commercial insured or industrial insured qualifies for the provisions of this code.

(c) Whether or not it is a single state policy or multistate policy.

(d) Where allocation of premium to the states is required, data necessary to make that allocation. A nonresident surplus line broker shall keep in the state where he or she is licensed as a resident surplus line broker complete records of the business transacted by him or her for California home state insureds with nonadmitted insurers under his or her California nonresident surplus line broker

license, including subdivisions (a) to (d), inclusive. The commissioner may waive or modify any of the foregoing requirements by issuance of a notice published on the department's Internet Web site.

SEC. 109. Section 1774 of the Insurance Code is amended to read:

1774. (a) (1) On or before the first day of March of each year the surplus line broker, placing business for a home state insured, shall file with the commissioner a sworn statement of all business transacted under his or her surplus line license during the last preceding calendar year. The statement shall contain an account of the business done by the surplus line broker placing business for a home state insured for the prior year, and shall include (A) the total amount of gross premium, (B) the total gross premium for single state risks where 100 percent of the premium is attributable to risks in California, and (C) for multistate risks, the percentage of gross premium allocated to California and each other state. The commissioner may waive or modify any of the foregoing requirements by issuance of a notice published on the department's Internet Web site.

(2) On or before the first day of March of each year, the home state insured that directly procures insurance pursuant to Section 1760 shall file with the commissioner a sworn statement of all business done during the last preceding calendar year. That statement shall contain an account of the insurance directly procured by the home state insured pursuant to Section 1760 for the prior year, and shall include (A) the total amount of premium, (B) the total premium for single state risks where 100 percent of the premium is attributable to risks in California, and (C) for multistate risks, the percentage of premium allocated to California and each other state. The commissioner may waive or modify any of the foregoing requirements by issuance of a notice published on the department's Internet Web site.

(b) For purposes of this chapter, "business done" or "business transacted" means all insurance business conducted by the surplus line broker for a home state insured or directly procured by the home state insured. If two or more persons licensed as surplus line brokers are involved in placing a policy, only the one who is responsible for filing the confidential written report pursuant to subdivision (a) of Section 1763, shall be considered transacting

business for tax purposes and then only one licensed surplus line broker shall include the policy in his or her sworn statement. The surplus line broker who is required to include the policy in his or her own statement is either (1) the one who is responsible for negotiating, effecting the placement, remitting the premium to the nonadmitted insurer or its representatives, and filing the confidential written report pursuant to subdivision (a) of Section 1763, or (2) the one surplus line broker who is delegated the responsibility for the filing of the confidential written report pursuant to subdivision (a) of Section 1763 pursuant to a written agreement that is (A) by and among the surplus line brokers referenced in paragraph (1) and this paragraph involved in the transaction, (B) signed by the surplus line brokers referenced in paragraph (1) and this paragraph involved in the transaction, and (C) provides by its terms that the agreement shall be made available to the commissioner or his or her designee, upon request.

(c) The date on which the surplus line broker transacting a policy prepares a bill or invoice for payment of all or part of the premiums due, shall be considered the date on which that business was done or transacted, subject to subdivision (d). This date shall be shown on the face of the bill or invoice and shall be referred to as the "invoice date."

(d) (1) The invoice date shall be no more than 60 days after the policy effective date and no more than 60 days after the insurance was placed with a nonadmitted insurer, except as provided in paragraph (2).

(2) For purposes of this chapter, the amount of gross premium to be reported, if premiums are billed and payable in installments, shall be the amount of the installment premium, provided the amount and due date of each installment, or the basis for determining each installment, is identifiable in the policy or an endorsement, and either of the following conditions is satisfied:

(A) Installments under the policy are not billed more frequently than once per month.

(B) If more than one installment is billed in any month, the commissioner determines, in his or her discretion, that the installment billing method used does not unduly burden the commissioner's ability to accurately determine the amount of premium paid by the insured.

(3) If a new or renewal policy has an effective date between January 1, 2011, to July 20, 2011, inclusive, and is placed on or before July 20, 2011, then the policy shall be considered to be business done by the surplus line broker as of the effective date. If a new or renewal policy has an effective date between January 1, 2011, to July 20, 2011, inclusive, then the policy shall be considered to be business done by the home state insured who directly procures policies as of the effective date. Cancellations or endorsements shall be business done on the same date as the policy that is being canceled or endorsed, if that policy effective date is on or before July 20, 2011. Installment premiums, as referenced in paragraph (2), shall be business done on the date of the most recent invoice issued on or before July 20, 2011, that included premium tax charges. This paragraph is enacted to address the July 21, 2011, effective date of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), and shall remain in effect only until October 18, 2012.

SEC. 110. Section 1775.5 of the Insurance Code is amended to read:

1775.5. (a) Every surplus line broker shall annually, on or before the first day of March of each year, pay to the Insurance Commissioner for the use of the State of California a tax of 3 percent of the gross premiums charged less return premiums upon business done by him or her under the authority of his or her license during the preceding calendar year, excluding any portions of premiums upon business done involving the risk finance portion of any blended finite risk product used in the financing element of state or federal Superfund environmental settlements involving remediation of soil or groundwater contamination or by the provisions of Section 1760.5. If during any calendar year 3 percent of the return premiums upon business done by a surplus line broker exceed 3 percent of the gross premiums upon that business done by him or her in that year, then he or she may either carry forward that excess to the next succeeding year and apply it as a credit against 3 percent of gross premiums on the business done by him or her in the succeeding year, or he or she may elect to receive, and thereupon be paid a refund equal to the amount of taxes theretofore paid by him or her on that excess of return premiums paid over gross premiums received.

(b) For the purpose of determining that tax, the total premium charged for all that nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be the entire premium charged on all nonadmitted insurance for the California home state insured. This provision shall not apply to interstate motor transit operations conducted between this and other states. With respect to those operations surplus line tax shall be payable on the entire premium charged on all nonadmitted insurance, less the following:

(1) The portion of the premium as is determined, as herein provided, to have been charged for operations in other states taxing the premium on operations in those states of an insured maintaining its headquarters office in this state.

(2) The premium for any operations outside of this state of an insured who maintains a headquarters operating office outside of this state and a branch office in this state.

(c) (1) A penalty of 10 percent of the amount of the payment due pursuant to this section shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required, plus interest at the rate of 1 percent per calendar month or fraction thereof, from March 1, the due date of the annual tax, until the date the payment is received by the commissioner. The penalty and interest shall be applied as prescribed in Section 12636.5 of the Revenue and Taxation Code. The commissioner, upon a showing of good cause, may extend for a period not to exceed 30 days, the time for filing a tax return or paying any amount required to be paid with the return. The extension may be granted at any time, provided that a request therefor is filed with the commissioner within, or prior to, the period for which the extension may be granted.

(2) Any surplus line broker to whom an extension is granted shall, in addition to the tax, pay interest at the rate of 1 percent per month or fraction thereof from March 1, until the date of payment. The commissioner may remit the penalty in a case where the commissioner finds, as a result of examination or otherwise, that the failure of or delay in payment arose out of excusable mistake or excusable inadvertence.

(d) For any part of a payment required by this section or by Section 1775.4 which was not made within the time required by law, when the nonpayment or late payment was due to fraud on

the part of the broker, a penalty of 25 percent of the amount unpaid shall be added thereto, in addition to all other penalties otherwise imposed.

(e) For the purposes of this section, these terms shall have the following meanings:

(1) "Blended finite risk product" means a contractual arrangement combining risk finance with traditional risk transfer, where a distinct portion of the program cost represents the funding of a known, existing, nonfortuitous future cost, obligation, responsibility, or liability at its discounted net present value, and another portion of the program cost represents risk transfer for losses that have yet to occur related to the cost, obligation, responsibility, or liability that is the subject of the program.

(2) "Risk financing" means that portion of any blended finite risk product that represents the funding of a known, existing, nonfortuitous future cost, obligation, responsibility, or liability.

(3) "Risk finance" or "financing element" means a method of funding for a known future cost over a long time horizon in current-value dollars using the principle of net present value discounting.

SEC. 111. Section 10123.191 of the Insurance Code is amended to read:

10123.191. (a) Notwithstanding any other provision of law, on and after January 1, 2013, a health insurer that provides prescription drug benefits shall utilize and accept only the prior authorization form developed pursuant to subdivision (c) when requiring prior authorization for prescription drug benefits.

(b) If a health insurer fails to utilize or accept the prior authorization form, or fails to respond within two business days upon receipt of a completed prior authorization request from a prescribing provider, pursuant to the submission of the prior authorization form developed as described in subdivision (c), the prior authorization request shall be deemed to have been granted. The requirements of this subdivision shall not apply to contracts entered into pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.81 (commencing with Section 14087.96), or Article 2.91 (commencing with Section 14089) of Chapter 7 of, or Chapter 8 (commencing with Section 14200) of, Part 3 of Division 9 of the Welfare and Institutions Code.

(c) On or before July 1, 2012, the department and the Department of Managed Health Care shall jointly develop a uniform prior authorization form. Notwithstanding any other provision of law, on and after January 1, 2013, or six months after the form is developed, whichever is later, every prescribing provider shall use that uniform prior authorization form to request prior authorization for coverage of prescription drug benefits and every health insurer shall accept that form as sufficient to request prior authorization for prescription drug benefits.

(d) The prior authorization form developed pursuant to subdivision (c) shall meet the following criteria:

(1) The form shall not exceed two pages.

(2) The form shall be made electronically available by the department and the health insurer.

(3) The completed form may also be electronically submitted from the prescribing provider to the health insurer.

(4) The department and the Department of Managed Health Care shall develop the form with input from interested parties from at least one public meeting.

(5) The department and the Department of Managed Health Care, in development of the standardized form, shall take into consideration the following:

(A) Existing prior authorization forms established by the federal Centers for Medicare and Medicaid Services and the State Department of Health Care Services.

(B) National standards pertaining to electronic prior authorization.

(e) For purposes of this section, a "prescribing provider" shall include a provider authorized to write a prescription, pursuant to subdivision (a) of Section 4040 of the Business and Professions Code, to treat a medical condition of an insured.

SEC. 112. Section 10144.51 of the Insurance Code is amended to read:

10144.51. (a) (1) Every health insurance policy shall also provide coverage for behavioral health treatment for pervasive developmental disorder or autism no later than July 1, 2012. The coverage shall be provided in the same manner and shall be subject to the same requirements as provided in Section 10144.5.

(2) Notwithstanding paragraph (1), as of the date that proposed final rulemaking for essential health benefits is issued, this section

does not require any benefits to be provided that exceed the essential health benefits that all health insurers will be required by federal regulations to provide under Section 1302(b) of the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

(3) This section shall not affect services for which an individual is eligible pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.

(4) This section shall not affect or reduce any obligation to provide services under an individualized education program, as defined in Section 56032 of the Education Code, or an individualized service plan, as described in Section 5600.4 of the Welfare and Institutions Code, or under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing regulations.

(b) Pursuant to Article 6 (commencing with Section 2240) of Title 10 of the California Code of Regulations, every health insurer subject to this section shall maintain an adequate network that includes qualified autism service providers who supervise and employ qualified autism service professionals or paraprofessionals who provide and administer behavioral health treatment. Nothing shall prevent a health insurer from selectively contracting with providers within these requirements.

(c) For the purposes of this section, the following definitions shall apply:

(1) "Behavioral health treatment" means professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, that develop or restore, to the maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism, and that meet all of the following criteria:

(A) The treatment is prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of, or is developed by a psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of, Division 2 of the Business and Professions Code.

(B) The treatment is provided under a treatment plan prescribed by a qualified autism service provider and is administered by one of the following:

(i) A qualified autism service provider.

(ii) A qualified autism service professional supervised and employed by the qualified autism service provider.

(iii) A qualified autism service paraprofessional supervised and employed by a qualified autism service provider.

(C) The treatment plan has measurable goals over a specific timeline that is developed and approved by the qualified autism service provider for the specific patient being treated. The treatment plan shall be reviewed no less than once every six months by the qualified autism service provider and modified whenever appropriate, and shall be consistent with Section 4686.2 of the Welfare and Institutions Code pursuant to which the qualified autism service provider does all of the following:

(i) Describes the patient's behavioral health impairments to be treated.

(ii) Designs an intervention plan that includes the service type, number of hours, and parent participation needed to achieve the plan's goal and objectives, and the frequency at which the patient's progress is evaluated and reported.

(iii) Provides intervention plans that utilize evidence-based practices, with demonstrated clinical efficacy in treating pervasive developmental disorder or autism.

(iv) Discontinues intensive behavioral intervention services when the treatment goals and objectives are achieved or no longer appropriate.

(D) The treatment plan is not used for purposes of providing or for the reimbursement of respite, day care, or educational services and is not used to reimburse a parent for participating in the treatment program. The treatment plan shall be made available to the insurer upon request.

(2) "Pervasive developmental disorder or autism" shall have the same meaning and interpretation as used in Section 10144.5.

(3) "Qualified autism service provider" means either of the following:

(A) A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited by the National Commission for Certifying Agencies,

and who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the person, entity, or group that is nationally certified.

(B) A person licensed as a physician and surgeon, physical therapist, occupational therapist, psychologist, marriage and family therapist, educational psychologist, clinical social worker, professional clinical counselor, speech-language pathologist, or audiologist pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the licensee.

(4) "Qualified autism service professional" means an individual who meets all of the following criteria:

(A) Provides behavioral health treatment.

(B) Is employed and supervised by a qualified autism service provider.

(C) Provides treatment pursuant to a treatment plan developed and approved by the qualified autism service provider.

(D) Is a behavioral service provider approved as a vendor by a California regional center to provide services as an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Title 17 of the California Code of Regulations.

(E) Has training and experience in providing services for pervasive developmental disorder or autism pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.

(5) "Qualified autism service paraprofessional" means an unlicensed and uncertified individual who meets all of the following criteria:

(A) Is employed and supervised by a qualified autism service provider.

(B) Provides treatment and implements services pursuant to a treatment plan developed and approved by the qualified autism service provider.

(C) Meets the criteria set forth in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code.

(D) Has adequate education, training, and experience, as certified by a qualified autism service provider.

(d) This section shall not apply to the following:

(1) A specialized health insurance policy that does not cover mental health or behavioral health services or an accident only, specified disease, hospital indemnity, or Medicare supplement policy.

(2) A health insurance policy in the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(3) A health insurance policy in the Healthy Families Program (Part 6.2 (commencing with Section 12693)).

(4) A health care benefit plan or policy entered into with the Board of Administration of the Public Employees' Retirement System pursuant to the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code).

(e) Nothing in this section shall be construed to limit the obligation to provide services under Section 10144.5.

(f) As provided in Section 10144.5 and in paragraph (1) of subdivision (a), in the provision of benefits required by this section, a health insurer may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing.

(g) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 113. Section 10192.12 of the Insurance Code is amended to read:

10192.12. (a) (1) With respect to the guaranteed issue of a Medicare supplement policy, eligible persons are those individuals described in subdivision (b) who seek to enroll under the policy during the period specified in subdivision (c), and who submit evidence of the date of termination or disenrollment or enrollment in Medicare Part D with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not take any of the following actions:

(A) Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subdivision (e) that is offered and is available for issuance to new enrollees by the issuer.

(B) Discriminate in the pricing of that Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition.

(C) Impose an exclusion of benefits based on a preexisting condition under that Medicare supplement policy.

(b) An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare and either of the following applies:

(A) The plan either terminates or ceases to provide all of those supplemental health benefits to the individual.

(B) The employer no longer provides the individual with insurance that covers all of the payment for the 20-percent coinsurance.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Medicare Part C, and any of the following circumstances apply:

(A) The certification of the organization or plan has been terminated.

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides.

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary. Those changes in circumstances shall not include termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856 of the federal Social Security Act, or the plan is terminated for all individuals within a residence area.

(D) (i) The Medicare Advantage plan in which the individual is enrolled reduces any of its benefits or increases the amount of cost sharing or premium or discontinues for other than good cause

relating to quality of care its relationship or contract under the plan with a provider who is currently furnishing services to the individual. An individual shall be eligible under this subparagraph for a Medicare supplement policy issued by the same issuer through which the individual was enrolled at the time the reduction, increase, or discontinuance described above occurs or, commencing January 1, 2007, for one issued by a subsidiary of the parent company of that issuer or by a network that contracts with the parent company of that issuer. If no Medicare supplement policy is available to the individual from the same issuer, a subsidiary of the parent company of the issuer, or a network that contracts with the parent company of the issuer, the individual shall be eligible for a Medicare supplement policy pursuant to paragraph (1) of subdivision (e) issued by any issuer, if the Medicare Advantage plan in which the individual is enrolled does any of the following:

(I) Increases the premium by 15 percent or more.

(II) Increases physician, hospital, or drug copayments by 15 percent or more.

(III) Reduces any benefits under the plan.

(IV) Discontinues, for other than good cause relating to quality of care, its relationship or contract under the plan with a provider who is currently furnishing services to the individual.

(ii) Enrollment in a Medicare supplement policy from an issuer unaffiliated with the issuer of the Medicare Advantage plan in which the individual is enrolled shall be permitted only during the annual election period for a Medicare Advantage plan, except where the Medicare Advantage plan has discontinued its relationship with a provider currently furnishing services to the individual. Nothing in this section shall be construed to authorize an individual to enroll in a group Medicare supplement policy if the individual does not meet the eligibility requirements for the group.

(E) The individual demonstrates, in accordance with guidelines established by the secretary, either of the following:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this article in relation to the individual, including the failure to provide on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards.

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual.

(F) The individual meets other exceptional conditions as the secretary may provide.

(3) The individual is 65 years of age or older, is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the federal Social Security Act, and circumstances similar to those described in paragraph (2) exist that would permit discontinuance of the individual's enrollment with the provider, if the individual were enrolled in a Medicare Advantage plan.

(4) The individual meets both of the following conditions:

(A) The individual is enrolled with any of the following:

(i) An eligible organization under a contract under Section 1876 of the federal Social Security Act (Medicare cost).

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999.

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the federal Social Security Act (health care prepayment plan).

(iv) An organization under a Medicare Select policy.

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (2) or (3).

(5) The individual is enrolled under a Medicare supplement policy, and the enrollment ceases because of any of the following circumstances:

(A) The insolvency of the issuer or bankruptcy of the nonissuer organization, or other involuntary termination of coverage or enrollment under the policy.

(B) The issuer of the policy substantially violated a material provision of the policy.

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(6) The individual meets both of the following conditions:

(A) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a

Medicare Advantage plan under Medicare Part C, any eligible organization under a contract under Section 1876 of the federal Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the federal Social Security Act, or a Medicare Select policy.

(B) The subsequent enrollment under subparagraph (A) is terminated by the individual during any period within the first 12 months of the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act).

(7) The individual upon first becoming eligible for benefits under Medicare Part A at 65 years of age enrolls in a Medicare Advantage plan under Medicare Part C or with a PACE provider under Section 1894 of the federal Social Security Act, and disenrolls from the plan or program not later than 12 months after the effective date of enrollment.

(8) The individual while enrolled under a Medicare supplement policy that covers outpatient prescription drugs enrolls in a Medicare Part D plan during the initial enrollment period terminates enrollment in the Medicare supplement policy, and submits evidence of enrollment in Medicare Part D along with the application for a policy described in paragraph (4) of subdivision (e).

(c) (1) In the case of an individual described in paragraph (1) of subdivision (b), the guaranteed issue period begins on the later of the following two dates and ends on the date that is 63 days after the date the applicable coverage terminates:

(A) The date the individual receives a notice of termination or cessation of all supplemental health benefits or, if no notice is received, the date of the notice denying a claim because of a termination or cessation of benefits.

(B) The date that the applicable coverage terminates or ceases.

(2) In the case of an individual described in paragraphs (2), (3), (4), (6), and (7) of subdivision (b) whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.

(3) In the case of an individual described in subparagraph (A) of paragraph (5) of subdivision (b), the guaranteed issue period

begins on the earlier of the following two dates and ends on the date that is 63 days after the date the coverage is terminated:

(A) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other similar notice if any.

(B) The date that the applicable coverage is terminated.

(4) In the case of an individual described in paragraph (2), (3), (6), or (7) of, or in subparagraph (B) or (C) of paragraph (5) of, subdivision (b) who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date of the disenrollment.

(5) In the case of an individual described in paragraph (8) of subdivision (b), the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the federal Social Security Act from the Medicare supplement issuer during the 60-day period immediately preceding the initial enrollment period for Medicare Part D and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D.

(6) In the case of an individual described in subdivision (b) who is not included in this subdivision, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date of disenrollment.

(d) (1) In the case of an individual described in paragraph (6) of subdivision (b), or deemed to be so described pursuant to this paragraph, whose enrollment with an organization or provider described in subparagraph (A) of paragraph (6) of subdivision (b) is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in paragraph (6) of subdivision (b).

(2) In the case of an individual described in paragraph (7) of subdivision (b), or deemed to be so described pursuant to this paragraph, whose enrollment with a plan or in a program described in paragraph (7) of subdivision (b) is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls in another such plan or program,

the subsequent enrollment shall be deemed to be an initial enrollment described in paragraph (7) of subdivision (b).

(3) For purposes of paragraphs (6) and (7) of subdivision (b), an enrollment of an individual with an organization or provider described in subparagraph (A) of paragraph (6) of subdivision (b), or with a plan or in a program described in paragraph (7) of subdivision (b) shall not be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

(e) (1) Under paragraphs (1), (2), (3), (4), and (5) of subdivision (b), an eligible individual is entitled to a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, L, M, or N offered by any issuer.

(2) (A) Under paragraph (6) of subdivision (b), an eligible individual is entitled to the same Medicare supplement policy in which he or she was most recently enrolled, if available from the same issuer. If that policy is not available, the eligible individual is entitled to a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, L, M, or N offered by any issuer.

(B) On and after January 1, 2006, an eligible individual described in this paragraph who was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit is entitled to a Medicare supplement policy that is available from the same issuer but without an outpatient prescription drug benefit or, at the election of the individual, has a benefit package classified as a Plan A, B, C, F (including high deductible Plan F), K, L, M, or N that is offered by any issuer.

(3) Under paragraph (7) of subdivision (b), an eligible individual is entitled to any Medicare supplement policy offered by any issuer.

(4) Under paragraph (8) of subdivision (b), an eligible individual is entitled to a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, L, M, or N and that is offered and is available for issuance to a new enrollee by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(f) (1) At the time of an event described in subdivision (b) by which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section and of the obligations of issuers of Medicare supplement policies under subdivision (a). The notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in subdivision (b) by which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under subdivision (a). The notice shall be communicated within 10 working days of the date the issuer received notification of disenrollment.

(g) An issuer shall refund any unearned premium that an insured paid in advance and shall terminate coverage upon the request of an insured.

SEC. 114. Section 10509.912 of the Insurance Code is amended to read:

10509.912. Unless otherwise specifically included, this article shall not apply to transactions involving any of the following:

(a) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this article.

(b) Contracts used to fund any of the following:

(1) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. Sec. 1001 et seq.).

(2) A plan described by Section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer.

(3) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred

compensation plan of a state or local government or tax-exempt organization under Section 457 of the IRC.

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.

(6) Formal prepaid funeral contracts.

SEC. 115. Section 11780.5 of the Insurance Code is amended to read:

11780.5. (a) The fund may also insure a California employer against his or her liability for workers' compensation benefits, under the law of any other state, for California employees temporarily working outside of California on a specific assignment if the fund insures the employer's other employees who work within California.

(b) (1) The fund is only authorized under this subdivision to insure an employer whose principal place of business is in California, provided the majority of the employer's operations and employees are located within California, against his or her liability for workers' compensation benefits, under the law of any other state, if the fund insures the employer's employees who work within California.

(2) The fund is only authorized pursuant to this subdivision to contract as a reinsurer with a ceding insurer that has responded to a request for proposal from the fund and is admitted to transact workers' compensation insurance in California and in the out-of-state jurisdiction where the non-California employees are located. The fund may only contract for purposes of this subdivision if the ceding insurer meets all of the following criteria:

(A) The insurer has an A minus (A-) rating or better from A.M. Best Company.

(B) The insurer has substantial prior experience in transacting workers' compensation business on another insurer's behalf.

(C) The insurer has a minimum surplus of one hundred million dollars ($100,000,000).

(c) On or before March 1, 2015, the Department of Insurance shall provide to the Secretary of the Senate and Chief Clerk of the Assembly, pursuant to Section 9795 of the Government Code, a report assessing the experience of the fund that is authorized pursuant to subdivision (b) and shall make recommendations

concerning its continuation, limitation, or expansion with special attention to the extent of advantages this practice offers California employers, the California workers' compensation marketplace, and the impact of this class of insurance, whether pro or con, on the fund, its management, and the California marketplace. The report shall be posted on the Department of Insurance Internet Web site upon completion. The costs incurred by the Department of Insurance in the assessment, writing, and publication of this report shall be provided by the fund.

(d) The fund shall not initiate paid advertising or solicit sponsorship of advertising campaigns to market or promote to prospective insureds the ability to insure qualified employers under the law of any other state.

(e) Subdivisions (b), (c), and (d) shall be operative only until December 31, 2016.

SEC. 116. Section 226.8 of the Labor Code is amended to read:

226.8. (a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and

not more than twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law.

(d) (1) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer that is a licensed contractor pursuant to the Contractors' State License Law has violated subdivision (a), the agency, in addition to any other remedy that has been ordered, shall transmit a certified copy of the order to the Contractors' State License Board.

(2) The registrar of the Contractors' State License Board shall initiate disciplinary action against a licensee within 30 days of receiving a certified copy of an agency or court order that resulted in disbarment pursuant to paragraph (1).

(e) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has violated subdivision (a), the agency or court, in addition to any other remedy that has been ordered, shall order the person or employer to display prominently on its Internet Web site, in an area which is accessible to all employees and the general public, or, if the person or employer does not have an Internet Web site, to display prominently in an area that is accessible to all employees and the general public at each location where a violation of subdivision (a) occurred, a notice that sets forth all of the following:

(1) That the Labor and Workforce Development Agency or a court, as applicable, has found that the person or employer has committed a serious violation of the law by engaging in the willful misclassification of employees.

(2) That the person or employer has changed its business practices in order to avoid committing further violations of this section.

(3) That any employee who believes that he or she is being misclassified as an independent contractor may contact the Labor and Workforce Development Agency. The notice shall include the mailing address, email address, and telephone number of the agency.

(4) That the notice is being posted pursuant to a state order.

(f) In addition to including the information specified in subdivision (e), a person or employer also shall satisfy the following requirements in preparing the notice:

(1) An officer shall sign the notice.

(2) It shall post the notice for one year commencing with the date of the final decision and order.

(g) (1) In accordance with the procedures specified in Sections 98 to 98.2, inclusive, the Labor Commissioner may issue a determination that a person or employer has violated subdivision (a).

(2) If, upon inspection or investigation, the Labor Commissioner determines that a person or employer has violated subdivision (a), the Labor Commissioner may issue a citation to assess penalties set forth in subdivisions (b) and (c) in addition to any other penalties or damages that are otherwise available at law. The procedures for issuing, contesting, and enforcing judgments shall be the same as those set forth in Section 1197.1.

(3) The Labor Commissioner may enforce this section pursuant to Section 98 or in a civil suit.

(h) Any administrative or civil penalty pursuant to subdivision (b) or (c) or disciplinary action pursuant to subdivision (d) or (e) shall remain in effect against any successor corporation, owner, or business entity that satisfies both of the following:

(1) Has one or more of the same principals or officers as the person or employer subject to the penalty or action.

(2) Is engaged in the same or a similar business as the person or employer subject to the penalty or action.

(i) For purposes of this section, the following definitions apply:

(1) "Determination" means an order, decision, award, or citation issued by an agency or a court of competent jurisdiction for which the time to appeal has expired and for which no appeal is pending.

(2) "Labor and Workforce Development Agency" means the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, or agencies.

(3) "Officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, or any other officer of the corporation who performs a policymaking function. If the employer is a partnership, "officer" means a partner. If the employer is a sole proprietor, "officer" means the owner.

(4) "Willful misclassification" means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.

(j) Nothing in this section is intended to limit any rights or remedies otherwise available at law.

SEC. 117. Section 1308.10 of the Labor Code is amended to read:

1308.10. (a) Prior to the employment of a minor under the age of 16 years in any of the circumstances listed in subdivision (a) of Section 1308.5, the Labor Commissioner may issue a temporary permit authorizing employment of the minor to enable a parent or guardian of the minor to meet the requirement for a permit under subdivision (a) of Section 1308.5 and to establish a trust account for the minor or to produce the documentation required by the Labor Commissioner for the issuance of a permit under Section 1308.5, subject to all of the following conditions:

(1) A temporary permit shall be valid for a period not to exceed 10 days from the date of issuance.

(2) A temporary permit shall not be issued for the employment of a minor if the minor's parent or guardian has previously applied for or been issued a permit by the Labor Commissioner pursuant to Section 1308.5 or a temporary permit pursuant to this section for employment of the minor.

(3) The Division of Labor Standards Enforcement shall prepare and make available on its Internet Web site the application form for a temporary permit. An applicant for a temporary permit shall submit a completed application and application fee online to the division. Upon receipt of the completed application and fee, the division shall immediately issue a temporary permit.

(b) The Labor Commissioner shall deposit all fees for temporary permits received into the Entertainment Work Permit Fund, which is hereby created in the State Treasury. The funds deposited in the Entertainment Work Permit Fund shall be available to the Labor Commissioner, upon appropriation by the Legislature, to pay for the costs of administration of the online temporary minor's entertainment work permit program and to repay any loan from the Labor Enforcement and Compliance Fund made pursuant to subdivision (c).

(c) The Labor Commissioner is authorized on a one-time basis to borrow up to two hundred fifty thousand dollars ($250,000) from the Labor Enforcement and Compliance Fund, as established by subdivision (e) of Section 62.5, for deposit in the Entertainment and Compliance Fund to cover the one-time startup costs related

to the temporary permit program. The loan shall be repaid to the Labor Enforcement and Compliance Fund as soon as sufficient funds exist in the Entertainment Work Permit Fund to repay the loan without compromising the operations of the temporary work permit program.

(d) The Labor Commissioner shall set forth the fee in an amount sufficient to pay for these costs, but not to exceed fifty dollars ($50).

SEC. 118. Section 21 of the Penal Code is amended and renumbered to read:

29.2. (a) The intent or intention is manifested by the circumstances connected with the offense.

(b) In the guilt phase of a criminal action or a juvenile adjudication hearing, evidence that the accused lacked the capacity or ability to control his or her conduct for any reason shall not be admissible on the issue of whether the accused actually had any mental state with respect to the commission of any crime. This subdivision is not applicable to Section 26.

SEC. 119. Section 22 of the Penal Code is amended and renumbered to read:

29.4. (a) No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his or her having been in that condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act.

(b) Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, or, when charged with murder, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

(c) Voluntary intoxication includes the voluntary ingestion, injection, or taking by any other means of any intoxicating liquor, drug, or other substance.

SEC. 120. Section 25.5 of the Penal Code is amended and renumbered to read:

29.8. In any criminal proceeding in which a plea of not guilty by reason of insanity is entered, this defense shall not be found by the trier of fact solely on the basis of a personality or adjustment

disorder, a seizure disorder, or an addiction to, or abuse of, intoxicating substances. This section shall apply only to persons who utilize this defense on or after the operative date of the section.

SEC. 121. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) (A) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

(B) For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this

paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to Section 29825.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall

be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of this code shall have precedence in enforcement over any other restraining or protective order, provided that the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

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

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to Section 29825.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of this code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided that the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties,

and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) In any case in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, and the information provided to the court pursuant to Section 273.75.

(i) In all cases in which a criminal defendant has been convicted of a crime of domestic violence as defined in Section 13700, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

SEC. 122. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic

officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars ($2,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170 for 16 months or two or three years, or by both that fine and imprisonment.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as described in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

(4) The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.

(5) "Injury" means any physical injury which requires professional medical treatment.

(6) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(7) "Lifeguard" means a person defined in paragraph (5) of subdivision (d) of Section 241.

(8) "Traffic officer" means any person employed by a city, county, or city and county to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(9) "Animal control officer" means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(10) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(11) (A) "Code enforcement officer" means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations or file formal complaints.

(B) "Code enforcement officer" also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the

Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(12) "Custody assistant" means any person who has the responsibilities and duties described in Section 831.7 and who is employed by a law enforcement agency of any city, county, or city and county.

(13) "Search and rescue member" means any person who is part of an organized search and rescue team managed by a government agency.

(14) "Security officer" means any person who has the responsibilities and duties described in Section 831.4 and who is employed by a law enforcement agency of any city, county, or city and county.

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as People v. Corey (1978) 21 Cal.3d 738 and Cervantez v. J.C. Penney Co. (1979) 24 Cal.3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 123. Section 336.5 of the Penal Code is amended to read:

336.5. Gaming chips may be used on the gaming floor by a patron of a gambling establishment, as defined in subdivision (o) of Section 19805 of the Business and Professions Code, to pay for food and beverage items that are served at the table.

SEC. 124. Section 429 of the Penal Code is amended to read:

429. Any provider of telecommunications services in this state that intentionally fails to collect or remit, as may be required, the annual fee imposed pursuant to Section 431 of the Public Utilities Code, the universal telephone service surcharge imposed pursuant

to Section 879 or 879.5 of the Public Utilities Code, the fee for filing an application for a certificate of public convenience and necessity as provided in Section 1904 of the Public Utilities Code, or the surcharge imposed pursuant to subdivision (g) of Section 2881 of the Public Utilities Code, whether imposed on the provider or measured by the provider's service charges, is guilty of a misdemeanor.

SEC. 125. Section 597.4 of the Penal Code is amended to read:

597.4. (a) It shall be unlawful for any person to willfully do either of the following:

(1) Sell or give away as part of a commercial transaction a live animal on any street, highway, public right-of-way, parking lot, carnival, or boardwalk.

(2) Display or offer for sale, or display or offer to give away as part of a commercial transaction, a live animal, if the act of selling or giving away the live animal is to occur on any street, highway, public right-of-way, parking lot, carnival, or boardwalk.

(b) (1) A person who violates this section for the first time shall be guilty of an infraction punishable by a fine not to exceed two hundred fifty dollars ($250).

(2) A person who violates this section for the first time and by that violation either causes or permits any animal to suffer or be injured, or causes or permits any animal to be placed in a situation in which its life or health may be endangered, shall be guilty of a misdemeanor.

(3) A person who violates this section for a second or subsequent time shall be guilty of a misdemeanor.

(c) A person who is guilty of a misdemeanor violation of this section shall be punishable by a fine not to exceed one thousand dollars ($1,000) per violation. The court shall weigh the gravity of the violation in setting the fine.

(d) A notice describing the charge and the penalty for a violation of this section may be issued by any peace officer, animal control officer, as defined in Section 830.9, or humane officer qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(e) This section shall not apply to the following:

(1) Events held by 4-H Clubs, Junior Farmers Clubs, or Future Farmers Clubs.

(2) The California Exposition and State Fair, district agricultural association fairs, or county fairs.

(3) Stockyards with respect to which the Secretary of the United States Department of Agriculture has posted notice that the stockyards are regulated by the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181 et seq.).

(4) The sale of cattle on consignment at any public cattle sales market, the sale of sheep on consignment at any public sheep sales market, the sale of swine on consignment at any public swine sales market, the sale of goats on consignment at any public goat sales market, and the sale of equines on consignment at any public equine sales market.

(5) Live animal markets regulated under Section 597.3.

(6) A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group regulated under Division 14 (commencing with Section 30501) of the Food and Agricultural Code. For purposes of this section, "rescue group" is a not-for-profit entity whose primary purpose is the placement of dogs, cats, or other animals that have been removed from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter, or that have been surrendered or relinquished to the entity by the previous owner.

(7) The sale of fish or shellfish, live or dead, from a fishing vessel or registered aquaculture facility, at a pier or wharf, or at a farmer's market by any licensed commercial fisherman or an owner or employee of a registered aquaculture facility to the public for human consumption.

(8) A cat show, dog show, or bird show, provided that all of the following circumstances exist:

(A) The show is validly permitted by the city or county in which the show is held.

(B) The show's sponsor or permittee ensures compliance with all federal, state, and local animal welfare and animal control laws.

(C) The participant has written documentation of the payment of a fee for the entry of his or her cat, dog, or bird in the show.

(D) The sale of a cat, dog, or bird occurs only on the premises and within the confines of the show.

(E) The show is a competitive event where the cats, dogs, or birds are exhibited and judged by an established standard or set of ideals established for each breed or species.

(9) A pet store as defined in subdivision (i) of Section 122350 of the Health and Safety Code.

(f) Nothing in this section shall be construed to in any way limit or affect the application or enforcement of any other law that protects animals or the rights of consumers, including, but not limited to, the Lockyer-Polanco-Farr Pet Protection Act contained in Article 2 (commencing with Section 122125) of Chapter 5 of Part 6 of Division 105 of the Health and Safety Code, or Sections 597 and 597l of this code.

(g) Nothing in this section limits or authorizes any act or omission that violates Section 597 or 597l, or any other local, state, or federal law. The procedures set forth in this section shall not apply to any civil violation of any other local, state, or federal law that protects animals or the rights of consumers, or to a violation of Section 597 or 597l, which is cited or prosecuted pursuant to one or both of those sections, or to a violation of any other local, state, or federal law that is cited or prosecuted pursuant to that law.

SEC. 126. Section 629.62 of the Penal Code is amended to read:

629.62. (a) The Attorney General shall prepare and submit an annual report to the Legislature, the Judicial Council, and the Director of the Administrative Office of the United States Courts on interceptions conducted under the authority of this chapter during the preceding year. Information for this report shall be provided to the Attorney General by any prosecutorial agency seeking an order pursuant to this chapter.

(b) The report shall include all of the following data:

(1) The number of orders or extensions applied for.

(2) The kinds of orders or extensions applied for.

(3) The fact that the order or extension was granted as applied for, was modified, or was denied.

(4) The number of wire or electronic communication devices that are the subject of each order granted.

(5) The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

(6) The offense specified in the order or application, or extension of an order.

(7) The identity of the applying law enforcement officer and agency making the application and the person authorizing the application.

(8) The nature of the facilities from which or the place where communications were to be intercepted.

(9) A general description of the interceptions made under the order or extension, including (A) the number of persons whose communications were intercepted, (B) the number of communications intercepted, (C) the percentage of incriminating communications intercepted and the percentage of other communications intercepted, and (D) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions.

(10) The number of arrests resulting from interceptions made under the order or extension, and the offenses for which arrests were made.

(11) The number of trials resulting from the interceptions.

(12) The number of motions to suppress made with respect to the interceptions, and the number granted or denied.

(13) The number of convictions resulting from the interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.

(14) Except with regard to the initial report required by this section, the information required by paragraphs (9) to (13), inclusive, with respect to orders or extensions obtained in a preceding calendar year.

(15) The date of the order for service of inventory made pursuant to Section 629.68, confirmation of compliance with the order, and the number of notices sent.

(16) Other data that the Legislature, the Judicial Council, or the Director of the Administrative Office of the United States Courts shall require.

(c) The annual report shall be filed no later than April of each year, and shall also include a summary analysis of the data reported pursuant to subdivision (b). The Attorney General may issue regulations prescribing the content and form of the reports required to be filed pursuant to this section by any prosecutorial agency seeking an order to intercept wire or electronic communications.

(d) The Attorney General shall, upon the request of an individual making an application, provide any information known to him or her as a result of these reporting requirements that would enable the individual making an application to comply with paragraph (6) of subdivision (a) of Section 629.50.

SEC. 127. Section 830.5 of the Penal Code is amended to read:

830.5. The following persons are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment or as required under Sections 8597, 8598, and 8617 of the Government Code, as amended by Section 44 of Chapter 1124 of the Statutes of 2002. Except as specified in this section, these peace officers may carry firearms only if authorized and under those terms and conditions specified by their employing agency:

(a) A parole officer of the Department of Corrections and Rehabilitation, or the Department of Corrections and Rehabilitation, Division of Juvenile Parole Operations, probation officer, deputy probation officer, or a board coordinating parole agent employed by the Juvenile Parole Board. Except as otherwise provided in this subdivision, the authority of these parole or probation officers shall extend only as follows:

(1) To conditions of parole, probation, or postrelease community supervision by any person in this state on parole, probation, or postrelease community supervision.

(2) To the escape of any inmate or ward from a state or local institution.

(3) To the transportation of persons on parole, probation, or postrelease community supervision.

(4) To violations of any penal provisions of law which are discovered while performing the usual or authorized duties of his or her employment.

(5) (A) To the rendering of mutual aid to any other law enforcement agency.

(B) For the purposes of this subdivision, "parole agent" shall have the same meaning as parole officer of the Department of Corrections and Rehabilitation or of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

(C) Any parole officer of the Department of Corrections and Rehabilitation, or the Department of Corrections and Rehabilitation, Division of Juvenile Parole Operations, is authorized to carry firearms, but only as determined by the director on a case-by-case or unit-by-unit basis and only under those terms and conditions specified by the director or chairperson. The Department of Corrections and Rehabilitation, Division of Juvenile

Facilities, shall develop a policy for arming peace officers of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, who comprise "high-risk transportation details" or "high-risk escape details" no later than June 30, 1995. This policy shall be implemented no later than December 31, 1995.

(D) The Department of Corrections and Rehabilitation, Division of Juvenile Facilities, shall train and arm those peace officers who comprise tactical teams at each facility for use during "high-risk escape details."

(b) A correctional officer employed by the Department of Corrections and Rehabilitation, or of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, having custody of wards or any employee of the Department of Corrections and Rehabilitation designated by the secretary or any correctional counselor series employee of the Department of Corrections and Rehabilitation or any medical technical assistant series employee designated by the secretary or designated by the secretary and employed by the State Department of Mental Health or any employee of the Board of Parole Hearings designated by the secretary or employee of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, designated by the secretary or any superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department, or any transportation officer of a probation department.

(c) The following persons may carry a firearm while not on duty: a parole officer of the Department of Corrections and Rehabilitation, or the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, a correctional officer or correctional counselor employed by the Department of Corrections and Rehabilitation, or an employee of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, having custody of wards or any employee of the Department of Corrections and Rehabilitation designated by the secretary. A parole officer of the Juvenile Parole Board may carry a firearm while not on duty only when so authorized by the chairperson of the board and only under the terms and conditions specified by the chairperson. Nothing in this section shall be interpreted to require licensure pursuant to Section 25400. The director or chairperson may deny, suspend, or revoke for good cause a person's right to carry a firearm under this subdivision. That person

shall, upon request, receive a hearing, as provided for in the negotiated grievance procedure between the exclusive employee representative and the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or the Juvenile Parole Board, to review the director's or the chairperson's decision.

(d) Persons permitted to carry firearms pursuant to this section, either on or off duty, shall meet the training requirements of Section 832 and shall qualify with the firearm at least quarterly. It is the responsibility of the individual officer or designee to maintain his or her eligibility to carry concealable firearms off duty. Failure to maintain quarterly qualifications by an officer or designee with any concealable firearms carried off duty shall constitute good cause to suspend or revoke that person's right to carry firearms off duty.

(e) The Department of Corrections and Rehabilitation shall allow reasonable access to its ranges for officers and designees of either department to qualify to carry concealable firearms off duty. The time spent on the range for purposes of meeting the qualification requirements shall be the person's own time during the person's off-duty hours.

(f) The secretary shall promulgate regulations consistent with this section.

(g) "High-risk transportation details" and "high-risk escape details" as used in this section shall be determined by the secretary, or his or her designee. The secretary, or his or her designee, shall consider at least the following in determining "high-risk transportation details" and "high-risk escape details": protection of the public, protection of officers, flight risk, and violence potential of the wards.

(h) "Transportation detail" as used in this section shall include transportation of wards outside the facility, including, but not limited to, court appearances, medical trips, and interfacility transfers.

(i) This section is operative January 1, 2012.

SEC. 128. Section 1370 of the Penal Code, as added by Section 2 of Chapter 654 of the Statutes of 2011, is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court must serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be placed and the district attorney for the county in which the violent felony charges are pending against the defendant.

(2) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a state hospital or to any other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee.

(B) The court shall hear and determine whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:

(i) The court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property, involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(ii) If the court finds any of the conditions described in clause (i) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (i) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (i) and does not meet the criteria under subclause (II) of clause (i).

(iii) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(iv) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication, and if the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(v) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication and if the defendant, with advice from his or her counsel, does not consent, the court order for commitment shall indicate that, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vi) Any report made pursuant to paragraph (1) of subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects,

including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the patients' rights advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (iv) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (v) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication based on the conditions described in subclause (I) or (II) of clause (i) of subparagraph (B), the treating psychiatrist shall certify whether the lack of capacity and any applicable conditions described above exist. That certification shall contain an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet

with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for his or her interests at the hearing, review the panel's final determination following the hearing, advise the defendant of his or her right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To being given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant meets the criteria specified in either subclause (I) or (II) of clause (i) of subparagraph (B), then antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21-day certification period. For purposes of this subparagraph, the treating psychiatrist shall not be required to pay or deposit any fee for the filing of the petition or other document or paper related to the petition.

(iii) If the administrative law judge disagrees with the certification, medication may not be administered involuntarily until the court determines that antipsychotic medication should be administered pursuant to this section.

(iv) The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant, and shall hold a hearing, no later than 18 days from the date of the certification, to

determine whether antipsychotic medication should be ordered beyond the certification period.

(v) If, as a result of the hearing, the court determines that antipsychotic medication should be administered beyond the certification period, the court shall issue an order authorizing the administration of that medication.

(vi) The court shall render its decision on the petition and issue its order no later than three calendar days after the hearing and, in any event, no later than the expiration of the 21-day certification period.

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court-ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local

jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a state hospital pursuant to this subdivision, the court shall select the hospital in accordance with the policies established by the State Department of Mental Health.

(6) (A) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to a state hospital or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). Where either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility

to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(7) An order by the court authorizing involuntary medication of the defendant shall be valid for no more than one year. The court shall review the order six months after the order was made to determine if the grounds for the authorization remain. In the review, the court shall consider the reports of the treating psychiatrist or psychiatrists and the defendant's patients' rights advocate or attorney. The court may require testimony from the treating psychiatrist or psychiatrists and the patients' rights advocate or attorney, if necessary. The court may continue the order authorizing involuntary medication for up to another six months, or vacate the order, or make any other appropriate order.

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the state hospital or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery,

and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the community program director or a designee.

(2) Where the court has issued an order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant, the reports made at six-month intervals concerning the defendant's progress toward regaining competency shall also consider the issue of involuntary medication. Each report shall include, but is not limited to, all of the following:

(A) Whether or not the defendant has the capacity to make decisions concerning antipsychotic medication.

(B) If the defendant lacks capacity to make decisions concerning antipsychotic medication, whether the defendant risks serious harm to his or her physical or mental health if not treated with antipsychotic medication.

(C) Whether or not the defendant presents a danger to others if he or she is not treated with antipsychotic medication.

(D) Whether the defendant has a mental illness for which medications are the only effective treatment.

(E) Whether there are any side effects from the medication currently being experienced by the defendant that would interfere with the defendant's ability to collaborate with counsel.

(F) Whether there are any effective alternatives to medication.

(G) How quickly the medication is likely to bring the defendant to competency.

(H) Whether the treatment plan includes methods other than medication to restore the defendant to competency.

(I) A statement, if applicable, that no medication is likely to restore the defendant to competency.

(3) After reviewing the reports, the court shall determine whether or not grounds for the order authorizing involuntary administration of antipsychotic medication still exist and shall do one of the following:

(A) If the original grounds for involuntary medication still exist, the order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant shall remain in effect.

(B) If the original grounds for involuntary medication no longer exist, and there is no other basis for involuntary administration of antipsychotic medication, the order for the involuntary administration of antipsychotic medication shall be vacated.

(C) If the original grounds for involuntary medication no longer exist, and the report states that there is another basis for involuntary administration of antipsychotic medication, the court shall set a hearing within 21 days to determine whether the order for the involuntary administration of antipsychotic medication shall be vacated or whether a new order for the involuntary administration of antipsychotic medication shall be issued. The hearing shall proceed as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(4) Any defendant who has been committed or has been on outpatient status for 18 months and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the community program director or a designee.

(5) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. The court shall transmit a copy of its order to the community program director or a designee.

(6) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination. If the court determines that the defendant shall continue to be treated in the state hospital or on an outpatient basis, the court shall determine issues concerning administration of antipsychotic medication, as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(c) (1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental

competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(3) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which criminal charges are pending.

(4) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) Nothing in this section shall preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

(i) This section shall become operative on July 1, 2012.

SEC. 129. Section 2602 of the Penal Code is amended to read:

2602. (a) Except as provided in subdivision (b), no person sentenced to imprisonment in a state prison shall be administered any psychotropic medication without his or her prior informed consent.

(b) If a psychiatrist determines that an inmate should be treated with psychotropic medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication. Treatment may be given on either a nonemergency basis as provided in subdivision (c), or on an emergency basis as provided in subdivision (d).

(c) The Department of Corrections and Rehabilitation may seek to initiate involuntary medication on a nonemergency basis only if all of the following conditions have been met:

(1) A psychiatrist has determined that the inmate has a serious mental disorder.

(2) A psychiatrist has determined that, as a result of that mental disorder, the inmate is gravely disabled or a danger to self or others and does not have the capacity to refuse treatment with psychotropic medications.

(3) A psychiatrist has prescribed one or more psychotropic medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient.

(4) The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychotropic medication and refuses or is unable to consent to the administration of the medication.

(5) The inmate is provided a hearing before an administrative law judge.

(6) The inmate is provided counsel at least 21 days prior to the hearing. The hearing shall be held not more than 30 days after the filing of the notice with the Office of Administrative Hearings, unless counsel for the inmate agrees to extend the date of the hearing.

(7) The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing. The written notice shall do all of the following:

(A) Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychotropic medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication.

(B) Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel for the inmate shall have access to all medical records and files of the inmate, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to medical treatment.

(C) Inform the prisoner of his or her right to contest the finding of an administrative law judge authorizing treatment with involuntary medication by filing a petition for writ of administrative mandamus pursuant to Section 1094.5 of the Code

of Civil Procedure, and his or her right to file a petition for writ of habeas corpus with respect to any decision of the Department of Corrections and Rehabilitation to continue treatment with involuntary medication after the administrative law judge has authorized treatment with involuntary medication.

(8) An administrative law judge determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychotropic medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest.

(9) The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder.

(10) An inmate is entitled to file one motion for reconsideration following a determination that he or she may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown.

(d) Nothing in this section is intended to prohibit a physician from taking appropriate action in an emergency. An emergency exists when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. If psychotropic medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency continues to exist, but in no event longer than five days after the written notice and counsel are provided pursuant to subdivision (c), unless the department first obtains an order from an administrative law judge authorizing the continuance of medication beyond five days. The order may be issued ex parte upon a showing that in the absence of the medication the emergency is likely to recur. The request for an order shall be supported by an affidavit

showing specific facts. The inmate may present facts supported by an affidavit in opposition to the request. If an order is issued, the psychiatrist may continue the administration of the medication until the hearing described in paragraph (5) of subdivision (c) is held.

(1) The Department of Corrections and Rehabilitation shall file with the Office of Administrative Hearings, and serve on the inmate and his or her counsel the written notice described in paragraph (7) of subdivision (c) within 72 hours of commencing medication pursuant to this subdivision, unless either of the following occurs:

(A) The inmate gives informed consent to continue the medication.

(B) A psychiatrist determines that the psychotropic medication is not necessary and administration of the medication is discontinued.

(2) If medication is being administered pursuant to this subdivision, the hearing described in paragraph (5) of subdivision (c) shall commence within 21 days of the filing and service of the notice, unless counsel for an inmate agrees to a longer period of time.

(3) With the exception of the timeline provisions specified in paragraphs (1) and (2) for providing notice and commencement of the hearing in emergency situations, the inmate shall be entitled to and be given the same due process protections as specified in subdivision (c). The department shall prove the same elements supporting the involuntary administration of psychotropic medication and the administrative law judge shall be required to make the same findings described in subdivision (c).

(e) The determination that an inmate may receive involuntary medication shall be valid for one year from the date of the determination, regardless of whether the inmate subsequently gives his or her informed consent.

(f) If a determination has been made to involuntarily medicate an inmate pursuant to subdivision (c) or (d), the medication shall be discontinued one year after the date of that determination, unless the inmate gives his or her informed consent to the administration of the medication, or unless a new determination is made pursuant to the procedures set forth in subdivision (g).

(g) To renew an existing order allowing involuntary medication, the department shall file with the Office of Administrative

Hearings, and shall serve on the inmate and his or her counsel, the written notice described in paragraph (7) of subdivision (c). The notice shall specify that the request is for a renewal.

(1) The request to renew the order shall be filed and served no later than 21 days prior to the expiration of the current order authorizing involuntary medication.

(2) To obtain a renewal order, the department shall provide the same due process protections as specified in subdivision (c). The department shall prove the same elements supporting the involuntary administration of psychotropic medication and the administrative law judge shall be required to make the same findings described in subdivision (c).

(3) Renewal orders shall be valid for one year from the date of the hearing.

(4) An order renewing a prior order may be granted based on clear and convincing evidence that, but for the medication, the inmate would revert to the behavior that was the basis for the prior order authorizing involuntary medication, coupled with evidence that the inmate lacks insight regarding his or her need for the medication, such that it is unlikely that the inmate would be able to manage his or her own medication and treatment regimen. No new acts need be alleged or proven.

(5) The hearing on any petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.

(h) In the event of a conflict between the provisions of this section and the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code), this section shall control.

SEC. 130. Section 2932 of the Penal Code is amended to read:

2932. (a) (1) For any time credit accumulated pursuant to Section 2931 or 2933, not more than 360 days of credit may be denied or lost for a single act of murder, attempted murder, solicitation of murder, manslaughter, rape, sodomy, or oral copulation accomplished against the victim's will, attempted rape, attempted sodomy, or attempted oral copulation accomplished against the victim's will, assault or battery causing serious bodily injury, assault with a deadly weapon or caustic substance, taking of a hostage, escape with force or violence, or possession or

manufacture of a deadly weapon or explosive device, whether or not prosecution is undertaken for purposes of this paragraph. Solicitation of murder shall be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Not more than 180 days of credit may be denied or lost for a single act of misconduct, except as specified in paragraph (1), which could be prosecuted as a felony whether or not prosecution is undertaken.

(3) Not more than 90 days of credit may be denied or lost for a single act of misconduct which could be prosecuted as a misdemeanor, whether or not prosecution is undertaken.

(4) Not more than 30 days of credit may be denied or lost for a single act of misconduct defined by regulation as a serious disciplinary offense by the Department of Corrections and Rehabilitation. Any person confined due to a change in custodial classification following the commission of any serious disciplinary infraction shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for the act of misconduct or 180 days, whichever is less. Any person confined in a secure housing unit for having committed any misconduct specified in paragraph (1) in which great bodily injury is inflicted upon a nonprisoner shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for that act of misconduct. In unusual cases, an inmate may be denied the opportunity to participate in a credit qualifying assignment for up to six months beyond the period specified in this subdivision if the Secretary of the Department of Corrections and Rehabilitation finds, after a hearing, that no credit qualifying program may be assigned to the inmate without creating a substantial risk of physical harm to staff or other inmates. At the end of the six-month period and of successive six-month periods, the denial of the opportunity to participate in a credit qualifying assignment may be renewed upon a hearing and finding by the director.

(5) The prisoner may appeal the decision through the department's review procedure, which shall include a review by an individual independent of the institution who has supervisorial authority over the institution.

(b) For any credit accumulated pursuant to Section 2931, not more than 30 days of participation credit may be denied or lost for a single failure or refusal to participate. Any act of misconduct described by the Department of Corrections and Rehabilitation as a serious disciplinary infraction if committed while participating in work, educational, vocational, therapeutic, or other prison activity shall be deemed a failure to participate.

(c) Any procedure not provided for by this section, but necessary to carry out the purposes of this section, shall be those procedures provided for by the Department of Corrections and Rehabilitation for serious disciplinary infractions if those procedures are not in conflict with this section.

(1) (A) The Department of Corrections and Rehabilitation shall, using reasonable diligence to investigate, provide written notice to the prisoner. The written notice shall be given within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, except that if the prisoner has escaped, the notice shall be given within 15 days of the prisoner's return to the custody of the secretary. The written notice shall include the specific charge, the date, the time, the place that the alleged misbehavior took place, the evidence relied upon, a written explanation of the procedures that will be employed at the proceedings and the prisoner's rights at the hearing. The hearing shall be conducted by an individual who shall be independent of the case and shall take place within 30 days of the written notice.

(B) The Department of Corrections and Rehabilitation may delay written notice beyond 15 days when all of the following factors are true:

(i) An act of misconduct is involved which could be prosecuted as murder, attempted murder, or assault on a prison employee, whether or not prosecution is undertaken.

(ii) Further investigation is being undertaken for the purpose of identifying other prisoners involved in the misconduct.

(iii) Within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, the investigating officer makes a written request to delay notifying that prisoner and states the reasons for the delay.

(iv) The warden of the institution approves of the delay in writing.

The period of delay under this paragraph shall not exceed 30 days. The prisoner's hearing shall take place within 30 days of the written notice.

(2) The prisoner may elect to be assigned an employee to assist in the investigation, preparation, or presentation of a defense at the disciplinary hearing if it is determined by the department that either of the following circumstances exist:

(A) The prisoner is illiterate.

(B) The complexity of the issues or the prisoner's confinement status makes it unlikely that the prisoner can collect and present the evidence necessary for an adequate comprehension of the case.

(3) The prisoner may request witnesses to attend the hearing and they shall be called unless the person conducting the hearing has specific reasons to deny this request. The specific reasons shall be set forth in writing and a copy of the document shall be presented to the prisoner.

(4) The prisoner has the right, under the direction of the person conducting the hearing, to question all witnesses.

(5) At the conclusion of the hearing the charge shall be dismissed if the facts do not support the charge, or the prisoner may be found guilty on the basis of a preponderance of the evidence.

(d) If found guilty the prisoner shall be advised in writing of the guilty finding and the specific evidence relied upon to reach this conclusion and the amount of time-credit loss. The prisoner may appeal the decision through the department's review procedure, and may, upon final notification of appeal denial, within 15 days of the notification demand review of the department's denial of credit to the Board of Parole Hearings, and the board may affirm, reverse, or modify the department's decision or grant a hearing before the board at which hearing the prisoner shall have the rights specified in Section 3041.5.

(e) Each prisoner subject to Section 2931 shall be notified of the total amount of good behavior and participation credit which may be credited pursuant to Section 2931, and his or her anticipated time-credit release date. The prisoner shall be notified of any change in the anticipated release date due to denial or loss of credits, award of worktime credit, under Section 2933, or the restoration of any credits previously forfeited.

(f) (1) If the conduct the prisoner is charged with also constitutes a crime, the department may refer the case to criminal authorities for possible prosecution. The department shall notify the prisoner, who may request postponement of the disciplinary proceedings pending the referral.

(2) The prisoner may revoke his or her request for postponement of the disciplinary proceedings up until the filing of the accusatory pleading. In the event of the revocation of the request for postponement of the proceeding, the department shall hold the hearing within 30 days of the revocation.

(3) Notwithstanding the notification requirements in this paragraph and subparagraphs (A) and (B) of paragraph (1) of subdivision (c), in the event the case is referred to criminal authorities for prosecution and the authority requests that the prisoner not be notified so as to protect the confidentiality of its investigation, no notice to the prisoner shall be required until an accusatory pleading is filed with the court, or the authority notifies the warden, in writing, that it will not prosecute or it authorizes the notification of the prisoner. The notice exceptions provided for in this paragraph shall only apply if the criminal authority requests of the warden, in writing, and within the 15 days provided in subparagraph (A) of paragraph (1) of subdivision (c), that the prisoner not be notified. Any period of delay of notice to the prisoner shall not exceed 30 days beyond the 15 days referred to in subdivision (c). In the event that no prosecution is undertaken, the procedures in subdivision (c) shall apply, and the time periods set forth in that subdivision shall commence to run from the date the warden is notified in writing of the decision not to prosecute. In the event the authority either cancels its requests that the prisoner not be notified before it makes a decision on prosecution or files an accusatory pleading, the provisions of this paragraph shall apply as if no request had been received, beginning from the date of the cancellation or filing.

(4) In the case where the prisoner is prosecuted by the district attorney, the Department of Corrections and Rehabilitation shall not deny time credit where the prisoner is found not guilty and may deny credit if the prisoner is found guilty, in which case the procedures in subdivision (c) shall not apply.

(g) If time credit denial proceedings or criminal prosecution prohibit the release of a prisoner who would have otherwise been

released, and the prisoner is found not guilty of the alleged misconduct, the amount of time spent incarcerated, in excess of what the period of incarceration would have been absent the alleged misbehavior, shall be deducted from the prisoner's parole period.

(h) Nothing in the amendments to this section made at the 1981–82 Regular Session of the Legislature shall affect the granting or revocation of credits attributable to that portion of the prisoner's sentence served prior to January 1, 1983.

SEC. 131. Section 3060.7 of the Penal Code is amended to read:

3060.7. (a) (1) Notwithstanding any other provision of law, the parole authority shall notify any person released on parole or postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3 who has been classified by the Department of Corrections and Rehabilitation as included within the highest control or risk classification that he or she shall be required to report to his or her assigned parole officer or designated local supervising agency within two days of release from the state prison.

(2) This section shall not prohibit the parole authority or local supervising agency from requiring any person released on parole or postrelease community supervision to report to his or her assigned parole officer within a time period that is less than two days from the time of release.

(b) The parole authority, within 24 hours of a parolee's failure to report as required by this section, shall issue a written order suspending the parole of that parolee, pending a hearing before the parole authority, and shall issue a warrant for the parolee's arrest.

(c) Upon the issuance of an arrest warrant for a parolee who has been classified within the highest control or risk classification, the assigned parole officer shall continue to carry the parolee on his or her regular caseload and shall continue to search for the parolee's whereabouts.

(d) With regard to any inmate subject to this section, the Department of Corrections and Rehabilitation shall release an inmate sentenced prior to the effective date of this section one or two days before his or her scheduled release date if the inmate's release date falls on the day before a holiday or weekend.

(e) With regard to any inmate subject to this section, the Department of Corrections and Rehabilitation shall release an inmate one or two days after his or her scheduled release date if the release date falls on the day before a holiday or weekend.

SEC. 132. Section 3453 of the Penal Code is amended to read:

3453. A postrelease community supervision agreement shall include the following conditions:

(a) The person shall sign and agree to the conditions of release.

(b) The person shall obey all laws.

(c) The person shall report to the supervising county agency within two working days of release from custody.

(d) The person shall follow the directives and instructions of the supervising county agency.

(e) The person shall report to the supervising county agency as directed by that agency.

(f) The person, and his or her residence and possessions, shall be subject to search at any time of the day or night, with or without a warrant, by an agent of the supervising county agency or by a peace officer.

(g) The person shall waive extradition if found outside the state.

(h) The person shall inform the supervising county agency of the person's place of residence, employment, education, or training.

(i) (1) The person shall inform the supervising county agency of any pending or anticipated changes in residence, employment, education, or training.

(2) If the person enters into new employment, he or she shall inform the supervising county agency of the new employment within three business days of that entry.

(j) The person shall immediately inform the supervising county agency if he or she is arrested or receives a citation.

(k) The person shall obtain the permission of the supervising county agency to travel more than 50 miles from the person's place of residence.

(*l*) The person shall obtain a travel pass from the supervising county agency before he or she may leave the county or state for more than two days.

(m) The person shall not be in the presence of a firearm or ammunition, or any item that appears to be a firearm or ammunition.

(n) The person shall not possess, use, or have access to any weapon listed in Section 16140, subdivision (c) of Section 16170, Section 16220, 16260, 16320, 16330, or 16340, subdivision (b) of Section 16460, Section 16470, subdivision (f) of Section 16520, or Section 16570, 16740, 16760, 16830, 16920, 16930, 16940, 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270, 17280, 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720, 17725, 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200, 20310, 20410, 20510, 20610, 20710, 20910, 21110, 21310, 21810, 22010, 22015, 22210, 22215, 22410, 24310, 24410, 24510, 24610, 24680, 24710, 30210, 30215, 31500, 32310, 32400, 32405, 32410, 32415, 32420, 32425, 32430, 32435, 32440, 32445, 32450, 32900, 33215, 33220, 33225, or 33600.

(o) (1) Except as provided in paragraph (2) and subdivision (p), the person shall not possess a knife with a blade longer than two inches.

(2) The person may possess a kitchen knife with a blade longer than two inches if the knife is used and kept only in the kitchen of the person's residence.

(p) The person may use a knife with a blade longer than two inches, if the use is required for that person's employment, the use has been approved in a document issued by the supervising county agency, and the person possesses the document of approval at all times and makes it available for inspection.

(q) The person agrees to waive any right to a court hearing prior to the imposition of a period of "flash incarceration" in a county jail of not more than 10 consecutive days for any violation of his or her postrelease supervision conditions.

(r) The person agrees to participate in rehabilitation programming as recommended by the supervising county agency.

(s) The person agrees that he or she may be subject to arrest with or without a warrant by a peace officer employed by the supervising county agency or, at the direction of the supervising county agency, by any peace officer when there is probable cause to believe the person has violated the terms and conditions of his or her release.

SEC. 133. Section 4807 of the Penal Code is amended to read:

4807. (a) At the beginning of every regular session of the Legislature, the Governor shall file a written report with the Legislature that shall include each application that was granted for

each case of reprieve, pardon, or commutation by the Governor, or his or her predecessor in office, during the immediately preceding regular session of the Legislature, stating the name of the person convicted, the crime of which the person was convicted, the sentence and its date, the date of the reprieve, pardon, or commutation, and the reason for granting the same. The report shall be submitted in compliance with Section 9795 of the Government Code.

(b) Notwithstanding any other law, the written report filed with the Legislature pursuant to subdivision (a) shall be available to the public.

SEC. 134. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that, when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or parole revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing his or her duties.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties,

Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(10) (A) (i) Any public utility, as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for

which the person is released on bail or on his or her own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) Nothing in this section shall be construed as imposing a duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the

Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(11) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to a special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) To any foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a

fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190 of this code, and Sections 45125 and 88024 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an

authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization, as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result

in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate, or if the genuine effort reveals, that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the State Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1), the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or

an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C) by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 550 of the Financial Code, or any statute that incorporates the criteria

of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 550 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

SEC. 135. Section 11105.03 of the Penal Code is amended to read:

11105.03. (a) Subject to the requirements and conditions set forth in this section and Section 11105, local law enforcement agencies are hereby authorized to provide state criminal summary history information obtained through the California Law Enforcement Telecommunications System (CLETS) for the purpose of screening prospective participants and prospective and current staff of a regional, county, city, or other local public housing authority, at the request of the chief executive officer of the authority or his or her designee, upon a showing by that authority that the authority manages a Section 8 housing program pursuant to federal law (United States Housing Act of 1937), operates housing at which children under the age of 18 years reside, or operates housing for persons categorized as aged, blind, or disabled.

(b) The following requirements shall apply to information released by local law enforcement agencies pursuant to subdivision (a):

(1) Local law enforcement agencies shall not release any information unless it relates to a conviction for a serious felony, as defined in subdivision (c) of Section 1192.7, a conviction for any offense punishable under Section 273.5, 422.6, 422.7, 422.75, 422.9, or 422.76, or under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6, or under any provision listed in Section 16590, a conviction under Section 273.6 that involves a violation of a protective order, as defined in Section 6218 of the Family Code, or a conviction for any felony offense that involves controlled substances or alcoholic beverages, or any felony offense that involves any activity related to controlled substances or alcoholic beverages, or a conviction for any offense that involves domestic violence, as defined in Section 13700.

(2) Local law enforcement agencies shall not release information concerning an arrest for an offense that did not result in a conviction.

(3) Local law enforcement agencies shall not release information concerning an offense committed by a person who was under 18 years of age at the time he or she committed the offense.

(4) Local law enforcement agencies shall release any information concerning any conviction or release from custody that occurred within 10 years of the date on which the request for information is submitted to the Attorney General, unless the conviction was based upon a felony offense that involved controlled substances or alcoholic beverages or a felony offense that involved any activity related to controlled substances or alcoholic beverages. Where a conviction was based on any of these felony offenses, local law enforcement agencies shall release information concerning this conviction if the conviction occurred within five years of the date on which a request for the information was submitted.

(5) Notwithstanding paragraph (4), if information that meets the requirements of paragraphs (2) to (4), inclusive, is located and the information reveals a conviction of an offense specified in paragraph (1), local law enforcement agencies shall release all summary criminal history information concerning the person whether or not the information meets the requirements of paragraph (4), provided, however, that the information meets the requirements of paragraphs (1) to (3), inclusive.

(6) Information released to the local public housing authority pursuant to this section shall also be released to parole or probation officers at the same time.

(c) State summary criminal history information shall be used by the chief executive officer of the housing authority or a designee only for purposes of identifying prospective participants in subsidized programs and prospective and current staff who have access to residences, whose criminal history is likely to pose a risk to children under 18 years of age or persons categorized as aged, blind, or disabled living in the housing operated by the authority.

(d) If a housing authority obtains summary criminal history information for the purpose of screening a prospective participant pursuant to this section, it shall review and evaluate that information in the context of other available information and shall

not evaluate the person's suitability as a prospective participant based solely on his or her past criminal history.

(e) If a housing authority determines that a prospective participant is not eligible as a resident, it shall promptly notify him or her of the basis for its determination and, upon request, shall provide him or her within a reasonable time after the determination is made with an opportunity for an informal hearing on the determination in accordance with Section 960.207 of Title 24 of the Code of Federal Regulations.

(f) Any information obtained from state summary criminal history information pursuant to this section is confidential and the recipient public housing authority shall not disclose or use the information for any purpose other than that authorized by this section. The state summary criminal history information in the possession of the authority and all copies made from it shall be destroyed not more than 30 days after the authority's final decision whether to act on the housing status of the individual to whom the information relates.

(g) The local public housing authority receiving state summary criminal history information pursuant to this section shall adopt regulations governing the receipt, maintenance, and use of the information. The regulations shall include provisions that require notice that the authority has access to criminal records of participants and employees who have access to programs.

(h) Use of this information is to be consistent with Title 24 of the Code of Federal Regulations and the current regulations adopted by the housing authority using the information.

(i) Nothing in this section shall be construed to require a housing authority to request and review an applicant's criminal history.

(j) The California Housing Authorities Association, after compiling data from all public housing authorities that receive summary criminal information pursuant to this chapter, shall report its findings based upon this data to the Legislature prior to January 1, 2000.

SEC. 136. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by a public or private school.

(4) A classified employee of a public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the State Department of Education whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency, as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in a public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker, unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner or other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means a person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means a person who, for financial compensation, acts as monitor of a visit between a child and another person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) “Animal control officer” means a person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) “Humane society officer” means a person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, “clergy member” means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) The custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) An employee of a police department, county sheriff’s department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 5.655 of the California Rules of Court.

(36) A custodial officer, as defined in Section 831.5.

(37) A person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an “alcohol and drug counselor” is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not, in and of itself, a sufficient basis for reporting child abuse or neglect.

(39) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code.

(40) A clinical counselor intern registered under Section 4999.42 of the Business and Professions Code.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

SEC. 137. Section 13750 of the Penal Code is amended to read:

13750. (a) The City of San Diego, the City of Anaheim, the County of Alameda, and the County of Sonoma are each hereby authorized to create a two-year pilot project for the establishment of a family justice center in accordance with the provisions of this section and Section 13751.

(b) The City of San Diego, the City of Anaheim, the County of Alameda, and the County of Sonoma may each establish a multiagency, multidisciplinary family justice center to assist victims of domestic violence, officer-involved domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying, and human trafficking, depending on the availability of services, to ensure that victims of abuse are able to access all needed services in one location in order to enhance victim safety, increase offender accountability, and improve access to services for victims of domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying, and human trafficking.

(c) For purposes of this title, the following terms have the following meanings:

(1) "Abuse" has the same meaning as set forth in Section 6203 of the Family Code.

(2) "Domestic violence" has the same meaning as set forth in Section 6211 of the Family Code.

(3) "Sexual assault" means an act or attempt made punishable by Section 220, 261, 261.5, 262, 264.1, 266c, 269, 285, 286, 288, 288.5, 288a, 289, or 647.6.

(4) "Elder or dependent adult abuse" means an act made punishable by Section 368.

(5) "Human trafficking" has the same meaning as set forth in Section 236.1.

(6) "Victim of crime," "crime victim," or "victim" means a victim of domestic violence, officer-involved domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying, or human trafficking.

(d) For purposes of this title, family justice centers shall be defined as multiagency, multidisciplinary service centers where public and private agencies assign staff members on a full-time or part-time basis in order to provide services to victims of crime from one location in order to reduce the number of times victims must tell their story, reduce the number of places victims must go for help, and increase access to services and support for victims and their children. Staff members at a family justice center may be comprised of, but are not limited to, the following:

(1) Law enforcement personnel.

(2) Medical personnel.

(3) District attorneys and city attorneys.

(4) Victim-witness program personnel.

(5) Domestic violence shelter service staff.

(6) Community-based rape crisis, domestic violence, and human trafficking advocates.

(7) Social service agency staff members.

(8) Child welfare agency social workers.

(9) County health department staff.

(10) City or county welfare and public assistance workers.

(11) Nonprofit agency counseling professionals.

(12) Civil legal service providers.

(13) Supervised volunteers from partner agencies.

(14) Other professionals providing services.

(e) Victims of crime shall not be required to participate in the criminal justice system or cooperate with law enforcement in order to receive counseling, medical care, or other services at a family justice center.

(f) Victims of crime shall not be denied services on the grounds of criminal history. No criminal history search shall be conducted of a victim at a family justice center without the victim's written consent unless the criminal history search is pursuant to an active criminal investigation.

(g) (1) Each family justice center shall consult with community-based domestic violence, officer-involved domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying, and human trafficking agencies in partnership with survivors of violence and abuse and their advocates in the operations process of the family justice center, and shall establish procedures for the ongoing input, feedback, and evaluation of the family justice center by survivors of violence and abuse and community-based crime victim service providers and advocates.

(2) Each family justice center shall develop policies and procedures, in collaboration with local community-based crime victim service providers and local survivors of violence or abuse, to ensure coordinated services are provided to victims and to enhance the safety of victims and professionals at a family justice center who participate in affiliated survivor-centered support or advocacy groups. All family justice centers shall maintain a formal client feedback, complaint, and input process to address client concerns about services provided or the conduct of any family justice center professionals, agency partners, or volunteers providing services in a family justice center.

(h) (1) Each family justice center shall maintain an informed client consent policy and shall be in compliance with all state and federal laws protecting the confidentiality of the types of information and documents that may be in a victim's file, including, but not limited to, medical and legal records. Each family justice center shall have a designated privacy officer to develop and oversee privacy policies and procedures consistent with state and federal privacy laws and the Fair Information Practice Principles. At no time shall a victim be required to sign a client consent form to share information in order to access services.

(2) Each family justice center is required to inform the victim that information shared with staff members at a family justice center may, under certain circumstances, be shared with law enforcement professionals. Each family justice center shall obtain written acknowledgment that the victim has been informed of this policy.

(3) Information obtained from victims in family justice centers shall be privileged and confidential to the extent it is protected from disclosure under existing California law. Nothing in this title related to confidentiality and client-authorized information sharing is intended to change existing state law.

(4) A victim's consent to share information pursuant to the client consent policy shall not be construed as a waiver of confidentiality or any privilege held by the victim or family justice center professionals.

(i) (1) The National Family Justice Center Alliance shall, with private funds, contract with an independent organization to conduct an evaluation and prepare a report on the four pilot centers. The independent organization conducting the evaluation shall submit the report to the Office of Privacy Protection and the National Family Justice Center Alliance for review and comment, and then to the Assembly Committee on Judiciary, the Senate Committee on Judiciary, the Assembly Committee on Public Safety, and the Senate Committee on Public Safety, no later than January 1, 2013. The independent organization conducting the evaluation shall, in consultation with the four pilot centers, the National Family Justice Center Alliance, groups that advocate on behalf of victims, community-based crime victim service provider representatives, including one person recommended by the federally recognized state domestic violence coalition, privacy rights organizations, and other relevant stakeholders, develop evaluation criteria, which shall include, but not be limited to, all of the following:

(A) The number of clients served, number of children served, reasons for seeking services at the center, services utilized, and number of returning clients.

(B) Filing, conviction, and dismissal rates for misdemeanor and felony criminal cases handled at the center.

(C) Subjective and objective measurements of the impacts of colocated multiagency services for victims and their children related to safety, empowerment, and mental and emotional

well-being, and comparison data from victims, if any, on their access to services outside the family justice center model.

(D) Barriers, if any, to receiving needed services, including access to services based on immigration status, criminal history, or substance abuse and mental health issues, and potential ways to mitigate any identified hurdles to accessing needed services.

(E) Whether privacy, immigration status, or other barriers prevented victims from utilizing a family justice center and, if so, recommendations to improve utilization rates.

(F) Compliance by the four pilot centers, with the service delivery requirements set forth in subdivisions (e), (f), (g), and (h).

(G) Recommended best practices and model protocols, if any.

(2) The independent organization conducting the evaluation shall gather the evaluation data from preservices victim information, postservices exit interviews, victim focus groups, partner agency focus group data, and other evaluation criteria necessary to conduct the evaluation under paragraph (1).

(3) The National Family Justice Center Alliance may include any recommendations for statewide legislation, best practices, and model policies and procedures in the comments submitted to the independent evaluation organization and the Legislature under paragraph (1).

SEC. 138. Section 4461 of the Probate Code is amended to read:

4461. In a statutory form power of attorney, the language granting power with respect to benefits from social security, Medicare, Medicaid, or other governmental programs, or civil or military service, empowers the agent to do all of the following:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in paragraph (1) of subdivision (a) of Section 4460, and for shipment of their household effects.

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of

lading, shipping ticket, certificate, or other instrument for that purpose.

(c) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive.

(e) Receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse, or use anything received for a lawful purpose.

SEC. 139. Section 7660 of the Probate Code is amended to read:

7660. (a) If a public administrator takes possession or control of an estate pursuant to this chapter, the public administrator may, acting as personal representative of the estate, summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the property in the decedent's estate does not exceed the amount prescribed in Section 13100. The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application is two hundred five dollars ($205). The authority for this summary administration of the estate shall be evidenced by a court order for summary disposition.

(2) The total value of the property in the decedent's estate does not exceed fifty thousand dollars ($50,000). The authority provided by this paragraph may be exercised without court authorization.

(A) A public administrator who is authorized to summarily dispose of property of a decedent pursuant to this paragraph may issue a written certification of Authority for Summary Administration. The written certification is effective for 30 days after the date of issuance.

(B) A financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person shall, without the necessity of inquiring into the truth of the written certification of Authority for Summary Administration and without court order or letters being issued, do all of the following:

(i) Provide the public administrator complete information concerning any property held in the name of the decedent, including the names and addresses of any beneficiaries or joint owners.

(ii) Grant the public administrator access to a safe-deposit box or storage facility rented in the name of the decedent for the purpose of inspection and removal of property of the decedent. Costs and expenses incurred in accessing a safe-deposit box or storage facility shall be borne by the estate of the decedent.

(iii) Surrender to the public administrator any property of the decedent that is held or controlled by the financial institution, agency, retirement fund administrator, insurance company, licensed securities dealer, or other person.

(C) Receipt by a financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person of the written certification provided by this article shall do both of the following:

(i) Constitute sufficient acquittance for providing information or granting access to a safe-deposit box or a storage facility and for surrendering any property of the decedent.

(ii) Fully discharge the financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person from liability for any act or omission of the public administrator with respect to the property, a safe-deposit box, or a storage facility.

(b) Summary disposition may be made notwithstanding the existence of the decedent's will, if the will does not name an executor or if the named executor refuses to act.

(c) Nothing in this article precludes the public administrator from filing a petition with the court under any other provision of this code concerning the administration of the decedent's estate.

(d) Petitions filed pursuant to this article shall contain the information required by Section 8002.

(e) If a public administrator takes possession or control of an estate pursuant to this chapter, this article conveys the authority of a personal representative as described in Section 9650 to the public administrator to summarily dispose of the estates pursuant to the procedures described in paragraphs (1) and (2) of subdivision (a).

(f) The fee charged under paragraph (1) of subdivision (a) shall be distributed as provided in Section 68085.4 of the Government Code. When an application is filed under that paragraph, no other fees shall be charged in addition to the uniform filing fee provided for in Section 68085.4 of the Government Code.

SEC. 140. Section 13600 of the Probate Code is amended to read:

13600. (a) At any time after a husband or wife dies, the surviving spouse or the guardian or conservator of the estate of the surviving spouse may, without procuring letters of administration or awaiting probate of the will, collect salary or other compensation owed by an employer for personal services of the deceased spouse, including compensation for unused vacation, not in excess of fifteen thousand dollars ($15,000) net.

(b) Not more than fifteen thousand dollars ($15,000) net in the aggregate may be collected by or for the surviving spouse under this chapter from all of the employers of the decedent.

(c) For the purposes of this chapter, a guardian or conservator of the estate of the surviving spouse may act on behalf of the surviving spouse without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

(d) The fifteen-thousand-dollar ($15,000) net limitation set forth in subdivisions (a) and (b) does not apply to the surviving spouse or the guardian or conservator of the estate of the surviving spouse of a firefighter or peace officer described in subdivision (a) of Section 22820 of the Government Code.

(e) On January 1, 2003, and on January 1 of each year thereafter, the maximum net amount of salary or compensation payable under subdivisions (a) and (b) to the surviving spouse or the guardian or conservator of the estate of the surviving spouse may be adjusted to reflect any increase in the cost of living occurring after January 1 of the immediately preceding year. The United States city average of the "Consumer Price Index for All Urban Consumers," as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made. The net amount payable may not be decreased as a result of the cost-of-living adjustment.

SEC. 141. Section 10490 of the Public Contract Code is amended to read:

10490. (a) A scrutinized company is ineligible to, and shall not, bid on or submit a proposal for a contract with a state agency for goods or services related to products or services that are the reason the company must comply with Section 13(p) of the federal Securities Exchange Act of 1934.

(b) For purposes of this section, a "scrutinized company" is a person that has been found to be in violation of Section 13(p) of the federal Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the United States Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement.

(c) A person shall cease to be regarded as a scrutinized company when the person is no longer deemed to be in violation of Section 13(p) of the federal Securities Exchange Act of 1934, or upon filing by such person of an amended or corrective filing under Section 13(p) of the federal Securities Exchange Act of 1934, which filing corrects the violations described in subdivision (b), or after three years from the date of final judgment or settlement, whichever is earlier.

(d) The Department of General Services shall establish in the State Administrative Manual or the State Contracting Manual policies and procedures for all state agencies, departments, boards, and commissions to implement the contract prohibition of this section.

(e) For purposes of this section, "goods or services" includes goods and services subject to this chapter (commencing with Section 10290), information technology goods and services subject to Chapter 3 (commencing with Section 12100), and telecommunication goods and services subject to Chapter 3.5 (commencing with Section 12120).

SEC. 142. Section 2762 of the Public Resources Code is amended to read:

2762. (a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, a lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan that will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the board.

(2) Assist in the management of land use that affects access to areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) A lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) A subsequent amendment of the mineral resource management policy previously reviewed by the board shall also require review and comment by the board.

(d) (1) If an area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761 and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use that would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing, if required, an environmental document required by Division 13 (commencing with Section 21000), a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

(2) If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(A) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(B) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment roll.

(3) The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, if the lead

agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use that would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located in the area. The results of the evaluation shall be transmitted to the State Geologist and the board.

SEC. 143. Section 4214 of the Public Resources Code is amended to read:

4214. (a) Fire prevention fees collected pursuant to this chapter shall be expended, upon appropriation by the Legislature, as follows:

(1) The State Board of Equalization shall retain moneys necessary for the payment of refunds pursuant to Section 4228 and reimbursement of the State Board of Equalization for expenses incurred in the collection of the fee.

(2) The moneys collected, other than that retained by the State Board of Equalization pursuant to paragraph (1), shall be deposited into the State Responsibility Area Fire Prevention Fund, which is hereby created in the State Treasury, and shall be available to the board and the department to expend for fire prevention activities specified in subdivision (d) that benefit the owners of structures within a state responsibility area who are required to pay the fire prevention fee. The amount expended to benefit the owners of structures within a state responsibility area shall be commensurate with the amount collected from the owners within that state responsibility area. All moneys in excess of the costs of administration of the board and the department shall be expended only for fire prevention activities in counties with state responsibility areas.

(b) (1) The fund may also be used to cover the costs of administering this chapter.

(2) The fund shall cover all startup costs incurred over a period not to exceed two years.

(c) It is the intent of the Legislature that the moneys in this fund be fully appropriated to the board and the department each year in order to effectuate the purposes of this chapter.

(d) Moneys in the fund shall be used only for the following fire prevention activities, which shall benefit owners of structures within the state responsibility areas who are required to pay the annual fire prevention fee pursuant to this chapter:

(1) Local assistance grants pursuant to subdivision (e).

(2) Grants to Fire Safe Councils, the California Conservation Corps, or certified local conservation corps for fire prevention projects and activities in the state responsibility areas.

(3) Grants to a qualified nonprofit organization with a demonstrated ability to satisfactorily plan, implement, and complete a fire prevention project applicable to the state responsibility areas. The department may establish other qualifying criteria.

(4) Inspections by the department for compliance with defensible space requirements around structures in state responsibility areas as required by Section 4291.

(5) Public education to reduce fire risk in the state responsibility areas.

(6) Fire severity and fire hazard mapping by the department in the state responsibility areas.

(7) Other fire prevention projects in the state responsibility areas, authorized by the board.

(e) (1) The board shall establish a local assistance grant program for fire prevention activities designed to benefit structures within state responsibility areas, including public education, that are provided by counties and other local agencies, including special districts, with state responsibility areas within their jurisdictions.

(2) In order to ensure an equitable distribution of funds, the amount of each grant shall be based on the number of structures in state responsibility areas for which the applicant is legally responsible and the amount of moneys made available in the annual Budget Act for this local assistance grant program.

(f) By January 1, 2013, and annually thereafter, the board shall submit to the Legislature a written report on the status and uses of the fund pursuant to this chapter. The written report shall also include an evaluation of the benefits received by counties based on the number of structures in state responsibility areas within their jurisdictions, the effectiveness of the board's grant programs,

the number of defensible space inspections in the reporting period, the degree of compliance with defensible space requirements, measures to increase compliance, if any, and any recommendations to the Legislature.

(g) (1) The requirement for submitting a report imposed under subdivision (f) is inoperative on January 1, 2017, pursuant to Section 10231.5 of the Government Code.

(2) A report to be submitted pursuant to subdivision (f) shall be submitted in compliance with Section 9795 of the Government Code.

(h) It is essential that this article be implemented without delay. To permit timely implementation, the department may contract for services related to the establishment of the fire prevention fee collection process. For this purpose only, and for a period not to exceed 24 months, the provisions of the Public Contract Code or any other provision of law related to public contracting shall not apply.

SEC. 144. Section 4514.5 of the Public Resources Code is amended to read:

4514.5. A person may commence an action on his or her own behalf against the board or the department for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to compel the board or the department to carry out a duty imposed upon them pursuant to this chapter.

SEC. 145. Section 4527 of the Public Resources Code is amended to read:

4527. (a) (1) "Timber operations" means the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuelbreaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, but excluding preparatory work such as treemarking, surveying, or roadflagging.

(2) "Commercial purposes" includes (A) the cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (B) the cutting

or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber that are subject to Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects.

(b) For purposes of this section, the removal of trees less than 16 inches in diameter at breast height from a firebreak or fuelbreak does not constitute "timber operations" if the removal meets all of the following criteria:

(1) It is located within 500 feet of the boundary of an urban wildland interface community at high risk of wildfire, as defined in pages 751 to 776, inclusive, of Volume 66 of the Federal Register (66 FR 751-02), as that definition may be amended from time to time. For purposes of this paragraph, "urban wildland interface community at high risk of wildfire" means an area having one or more structures for every five acres.

(2) It is part of a community wildfire protection plan approved by the department or part of a department fire plan.

(3) The trees to be removed will not be processed into logs or lumber.

(4) The work to be conducted is under a firebreak or fuelbreak project that has been subject to a project-based review pursuant to a negative declaration, mitigated negative declaration, or environmental impact report in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)). For projects to be conducted on forested landscapes, as defined in Section 754, the project and the project-based review shall be prepared by or in consultation with a registered professional forester.

(5) The removal of surface and ladder fuels is consistent with paragraph (9) of subdivision (j) of Section 4584.

SEC. 146. Section 4551.5 of the Public Resources Code is amended to read:

4551.5. Rules and regulations shall apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, for water quality and watershed control, for flood control, for stocking, for protection

against timber operations that unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease, for the protection of natural and scenic qualities in special treatment areas identified pursuant to subdivision (b) of Section 30417, and for the preparation of timber harvesting plans. In developing these rules, the board shall solicit and consider recommendations from the department, recommendations from the Department of Fish and Game relating to the protection of fish and wildlife, recommendations from the State Water Resources Control Board and the California regional water quality control boards relating to water quality, recommendations from the State Air Resources Board and local air pollution control districts relating to air pollution control, and recommendations of the California Coastal Commission relating to the protection of natural and scenic coastal zone resources in special treatment areas.

SEC. 147. Section 4561 of the Public Resources Code is amended to read:

4561. It is the purpose of this section to set forth resource conservation standards for timber operations, and to ensure that a cover of trees of commercial species, sufficient to utilize adequately the suitable and available growing space, is maintained or established after timber operations.

To that end, the following resource conservation standards define minimum acceptable stocking, and an area covered by a timber harvesting plan shall be classified as acceptably stocked if either of the following conditions exist within five years after completion of timber operations:

(a) The area contains an average point count of 300 per acre, except that in areas that the registered professional forester who prepares the timber harvesting plan has determined are site IV classification or lower, the minimum average point count shall be 150 per acre. Point count shall be computed as follows:

(1) A countable tree that is not more than four inches in diameter at breast height to count as one.

(2) A countable tree over 4 inches and not more than 12 inches in diameter at breast height to count as three.

(3) A countable tree over 12 inches in diameter at breast height to count as six.

(b) (1) The average residual basal area, measured in stems one inch or larger in diameter is at least 85 square feet per acre, except that in areas that the registered professional forester who prepares the timber harvesting plan has determined are site II classification or lower, the minimum average residual basal area shall be 50 square feet per acre.

(2) The board, on a finding that it is in furtherance of the purposes of this chapter, may encourage selection, shelterwood, or other types of management of timber if consistent with the biological requirements of the tree species and may regulate the size and shape of areas in which even-age management of timber is utilized.

(3) Rock outcroppings and other areas not normally bearing timber shall not be considered as requiring stocking and are exempt from the stocking provisions.

SEC. 148. Section 21092 of the Public Resources Code is amended to read:

21092. (a) A lead agency that is preparing an environmental impact report or a negative declaration or making a determination pursuant to subdivision (c) of Section 21157.1 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report, adoption of the negative declaration, or making the determination pursuant to subdivision (c) of Section 21157.1.

(b) (1) The notice shall specify the period during which comments will be received on the draft environmental impact report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review, and a description of how the draft environmental impact report or negative declaration can be provided in an electronic format.

(2) This section shall not be construed in any manner that results in the invalidation of an action because of the alleged inadequacy of the notice content if there has been substantial compliance with the notice content requirements of this section.

(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice, and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) For a project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision.

(d) The notice requirements of subdivision (c) apply to both of the following:

(1) The construction of a new facility.

(2) The expansion of an existing facility that burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

SEC. 149. Section 21108 of the Public Resources Code is amended to read:

21108. (a) If a state agency approves or determines to carry out a project that is subject to this division, the state agency shall file notice of that approval or that determination with the Office of Planning and Research. The notice shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings, and indicate the determination of the state agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division.

(b) If a state agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172, and the state agency approves or determines to carry out the project, the state agency or the person specified in subdivision (b) or (c) of Section 21065 may file notice of the determination with the Office of Planning and Research. A notice filed pursuant to this subdivision shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings. A notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the state agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency.

(c) A notice filed pursuant to this section shall be available for public inspection, and a list of these notices shall be posted on a weekly basis in the Office of Planning and Research. Each list shall remain posted for a period of 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

SEC. 150. Section 21152 of the Public Resources Code is amended to read:

21152. (a) If a local agency approves or determines to carry out a project that is subject to this division, the local agency shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings, and indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) If a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21172, and the local agency approves or determines to carry out the project, the local agency or the person specified in subdivision (b) or (c) of Section 21065 may file a notice of the determination with the county clerk of each county in which the project will be located. A notice filed pursuant to this subdivision shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings. A notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

(c) A notice filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt

in the office of the county clerk. A notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 12 months.

SEC. 151. Section 21167.6.5 of the Public Resources Code is amended to read:

21167.6.5. (a) The petitioner or plaintiff shall name, as a real party in interest, the person or persons identified by the public agency in its notice filed pursuant to subdivision (a) or (b) of Section 21108 or Section 21152 or, if no notice is filed, the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings for the project that is the subject of an action or proceeding brought pursuant to Section 21167, 21168, or 21168.5, and shall serve the petition or complaint on that real party in interest, by personal service, mail, facsimile, or any other method permitted by law, not later than 20 business days following service of the petition or complaint on the public agency.

(b) The public agency shall provide the petitioner or plaintiff, not later than 10 business days following service of the petition or complaint on the public agency, with a list of responsible agencies and a public agency having jurisdiction over a natural resource affected by the project.

(c) The petitioner or plaintiff shall provide the responsible agencies, and a public agency having jurisdiction over a natural resource affected by the project, with notice of the action or proceeding within 15 days of receipt of the list described in subdivision (b).

(d) Failure to name potential persons, other than those real parties in interest described in subdivision (a), is not grounds for dismissal pursuant to Section 389 of the Code of Civil Procedure.

(e) This section is not intended to affect an existing right of a party to intervene in the action.

SEC. 152. Section 25747 of the Public Resources Code is amended to read:

25747. (a) The commission shall adopt guidelines governing the funding programs authorized under this chapter, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines shall not be adopted without at least 10 days' written notice to the public. The

public notice of meetings required by this subdivision shall not be less than 30 days. Notwithstanding any other law, any guidelines adopted pursuant to this chapter or Section 399.25 of the Public Utilities Code, shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this subdivision by the act amending this section during the 2002 portion of the 2001–02 Regular Session are declaratory of, and not a change in, existing law.

(b) Funds to further the purposes of this chapter may be committed for multiple years.

(c) Awards made pursuant to this chapter are grants, subject to appeal to the commission upon a showing that factors other than those described in the guidelines adopted by the commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and registered to receive, payments or awards, including satisfying conditions specified by the commission, shall not constitute the rendering of goods, services, or a direct benefit to the commission.

(d) An award made pursuant to this chapter, the amount of the award, and the terms and conditions of the grant are public information.

SEC. 153. Section 278 of the Public Utilities Code is amended to read:

278. (a) (1) Commencing on July 1, 2003, there is hereby created the Telecommunications Access for Deaf and Disabled Administrative Committee, formerly the Deaf and Disabled Telecommunications Program Administrative Committee, as an advisory board to advise the commission regarding the development, implementation, and administration of programs to provide specified telecommunications services and equipment to persons in this state who are deaf or disabled, as provided for in Sections 2881, 2881.1, and 2881.2.

(2) In addition to the membership qualifications established by the commission pursuant to subdivision (a) of Section 271, the commission shall establish qualifications for persons to serve as members of the Telecommunications Access for Deaf and Disabled Administrative Committee so that consumers of telecommunications services for the deaf and disabled comprise not less than two-thirds of the membership of the committee. To

the extent feasible, one of those members shall have experience in the administration of programs similar to those provided for in Sections 2881, 2881.1, and 2881.2.

(3) As part of its advisory role, as specified in paragraph (1), the Telecommunications Access for Deaf and Disabled Administrative Committee shall advise the commission regarding contracts and agreements related to the Deaf and Disabled Telecommunications Program as specified in subdivisions (d) and (e) of Section 2881.4.

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the programs specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. Commencing on July 1, 2003, and continuing thereafter, the commission shall transfer the moneys received, and all unexpended revenue collected prior to July 1, 2003, to the Controller for deposit in the Deaf and Disabled Telecommunications Program Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund. Those revenues that are collected pursuant to subdivision (g) of Section 2881 shall be accounted for separately, as required by subdivision (b) of Section 2881.2, and deposited in the fund created by the commission pursuant to subdivision (b) of Section 2881.2.

(c) Moneys appropriated from the Deaf and Disabled Telecommunications Program Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the programs specified in subdivision (a), including all costs of the committee and the commission associated with the administration and oversight of the programs and the fund.

(d) Commencing on July 1, 2003, staffing costs incurred by the commission for oversight and administration of the programs described in subdivision (a) shall be funded by moneys appropriated from the Deaf and Disabled Telecommunications Program Administrative Committee Fund.

SEC. 154. Section 366.2 of the Public Utilities Code is amended to read:

366.2. (a) (1) Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of his or her community's aggregation program.

(3) If a customer opts out of a community choice aggregator's program, or has no community choice aggregation program available, that customer shall have the right to continue to be served by the existing electrical corporation or its successor in interest.

(4) The implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation.

(5) A community choice aggregator shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute.

(b) If a public agency seeks to serve as a community choice aggregator, it shall offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

(c) (1) Notwithstanding Section 366, a community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services. Those service agreements may be entered into by an entity authorized to be a community choice aggregator, as defined in Section 331.1.

(2) Under community choice aggregation, customer participation may not require a positive written declaration, but each customer shall be informed of his or her right to opt out of the community choice aggregation program. If no negative declaration is made by a customer, that customer shall be served through the community choice aggregation program. If an existing customer

moves the location of his or her electric service within the jurisdiction of the community choice aggregator, the customer shall retain the same subscriber status as prior to the move, unless the customer affirmatively changes his or her subscriber status. If the customer is moving from outside to inside the jurisdiction of the community choice aggregator, customer participation shall not require a positive written declaration, but the customer shall be informed of his or her right to elect not to receive service through the community choice aggregator.

(3) A community choice aggregator establishing electrical load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing. The implementation plan shall contain all of the following:

(A) An organizational structure of the program, its operations, and its funding.

(B) Ratesetting and other costs to participants.

(C) Provisions for disclosure and due process in setting rates and allocating costs among participants.

(D) The methods for entering and terminating agreements with other entities.

(E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.

(F) Termination of the program.

(G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

(4) A community choice aggregator establishing electrical load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:

(A) Universal access.

(B) Reliability.

(C) Equitable treatment of all classes of customers.

(D) Any requirements established by state law or by the commission concerning aggregated service, including those rules adopted by the commission pursuant to paragraph (3) of subdivision (b) of Section 8341 for the application of the

greenhouse gases emission performance standard to community choice aggregators.

(5) In order to determine the cost-recovery mechanism to be imposed on the community choice aggregator pursuant to subdivisions (d), (e), and (f) that shall be paid by the customers of the community choice aggregator to prevent shifting of costs, the community choice aggregator shall file the implementation plan with the commission, and any other information requested by the commission that the commission determines is necessary to develop the cost-recovery mechanism in subdivisions (d), (e), and (f).

(6) The commission shall notify any electrical corporation serving the customers proposed for aggregation that an implementation plan initiating community choice aggregation has been filed, within 10 days of the filing.

(7) Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine a cost-recovery mechanism. After certification of receipt of the implementation plan and any additional information requested, the commission shall then provide the community choice aggregator with its findings regarding any cost recovery that must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in subdivisions (d), (e), and (f).

(8) No entity proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission determines the cost recovery that must be paid by the customers of that proposed community choice aggregation program, as provided for in subdivisions (d), (e), and (f). The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission.

(9) All electrical corporations shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and electrical load data, including, but not limited to, electrical

consumption data as defined in Section 8380 and other data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. The commission shall exercise its authority pursuant to Chapter 11 (commencing with Section 2100) to enforce the requirements of this paragraph when it finds that the requirements of this paragraph have been violated. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers.

(10) If the commission finds that an electrical corporation has violated this section, the commission shall consider the impact of the violation upon community choice aggregators.

(11) The commission shall proactively expedite the complaint process for disputes regarding an electrical corporation's violation of its obligations pursuant to this section in order to provide for timely resolution of complaints made by community choice aggregation programs, so that all complaints are resolved in no more than 180 days following the filing of a complaint by a community choice aggregation program concerning the actions of the incumbent electrical corporation. This deadline may only be extended under either of the following circumstances:

(A) Upon agreement of all of the parties to the complaint.

(B) The commission makes a written determination that the deadline cannot be met, including findings for the reason for this determination, and issues an order extending the deadline. A single order pursuant to this subparagraph shall not extend the deadline for more than 60 days.

(12) (A) An entity authorized to be a community choice aggregator, as defined in Section 331.1, that elects to implement a community choice aggregation program within its jurisdiction pursuant to this chapter, shall do so by ordinance. A city, county, or city and county may request, by affirmative resolution of its governing council or board, that another entity authorized to be a community choice aggregator act as the community choice

aggregator on its behalf. If a city, county, or city and county, by resolution, requests another authorized entity be the community choice aggregator for the city, county, or city and county, that authorized entity shall be responsible for adopting the ordinance to implement the community choice aggregation program on behalf of the city, county, or city and county.

(B) Two or more entities authorized to be a community choice aggregator, as defined in Section 331.1, may participate as a group in a community choice aggregation program pursuant to this chapter, through a joint powers agency established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, if each entity adopts an ordinance pursuant to subparagraph (A). Pursuant to Section 6508.1 of the Government Code, members of a joint powers agency that is a community choice aggregator may specify in their joint powers agreement that, unless otherwise agreed by the members of the agency, the debts, liabilities, and obligations of the agency shall not be the debts, liabilities, and obligations, either jointly or severally, of the members of the agency. The commission shall not, as a condition of registration or otherwise, require an agency's members to voluntarily assume the debts, liabilities, and obligations of the agency to the electrical corporation unless the commission finds that the agreement by the agency's members is the only reasonable means by which the agency may establish its creditworthiness under the electrical corporation's tariff to pay charges to the electrical corporation under the tariff.

(13) Following adoption of aggregation through the ordinance described in paragraph (12), the program shall allow any retail customer to opt out and to continue to be served as a bundled service customer by the existing electrical corporation, or its successor in interest. Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers that have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (3) of subdivision (a). Customers that return to the electrical corporation for procurement services shall be subject to the same

terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law, except that those customers shall be subject to no more than a 12-month stay requirement with the electrical corporation. Any reentry fees to be imposed after the opt-out period specified in this paragraph, shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any amounts previously determined and paid pursuant to subdivisions (d), (e), and (f) from the cost of reentry.

(14) Nothing in this section shall be construed as authorizing any city or any community choice retail load aggregator to restrict the ability of retail electricity customers to obtain or receive service from any authorized electric service provider in a manner consistent with law.

(15) (A) The community choice aggregator shall fully inform participating customers at least twice within two calendar months, or 60 days, in advance of the date of commencing automatic enrollment. Notifications may occur concurrently with billing cycles. Following enrollment, the aggregated entity shall fully inform participating customers for not less than two consecutive billing cycles. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any notification shall inform customers of both of the following:

(i) That they are to be automatically enrolled and that the customer has the right to opt out of the community choice aggregator without penalty.

(ii) The terms and conditions of the services offered.

(B) The community choice aggregator may request the commission to approve and order the electrical corporation to provide the notification required in subparagraph (A). If the commission orders the electrical corporation to send one or more of the notifications required pursuant to subparagraph (A) in the electrical corporation's normally scheduled monthly billing process, the electrical corporation shall be entitled to recover from the community choice aggregator all reasonable incremental costs it incurs related to the notification or notifications. The electrical corporation shall fully cooperate with the community choice

aggregator in determining the feasibility and costs associated with using the electrical corporation's normally scheduled monthly billing process to provide one or more of the notifications required pursuant to subparagraph (A).

(C) Each notification shall also include a mechanism by which a ratepayer may opt out of community choice aggregated service. The opt out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, electrical energy service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical energy service through the electrical corporation providing service in the area.

(16) A community choice aggregator shall have an operating service agreement with the electrical corporation prior to furnishing electric service to consumers within its jurisdiction. The service agreement shall include performance standards that govern the business and operational relationship between the community choice aggregator and the electrical corporation. The commission shall ensure that any service agreement between the community choice aggregator and the electrical corporation includes equitable responsibilities and remedies for all parties. The parties may negotiate specific terms of the service agreement, provided that the service agreement is consistent with this chapter.

(17) The community choice aggregator shall register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

(18) Once the community choice aggregator's contract is signed, the community choice aggregator shall notify the applicable electrical corporation that community choice service will commence within 30 days.

(19) Once notified of a community choice aggregator program, the electrical corporation shall transfer all applicable accounts to the new supplier within a 30-day period from the date of the close of the electrical corporation's normally scheduled monthly metering and billing process.

(20) An electrical corporation shall recover from the community choice aggregator any costs reasonably attributable to the community choice aggregator, as determined by the commission, of implementing this section, including, but not limited to, all

business and information system changes, except for transaction-based costs as described in this paragraph. Any costs not reasonably attributable to a community choice aggregator shall be recovered from ratepayers, as determined by the commission. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided to an aggregator or its customers shall be recovered from the aggregator or its customers on terms and at rates to be approved by the commission.

(21) At the request and expense of any community choice aggregator, electrical corporations shall install, maintain, and calibrate metering devices at mutually agreeable locations within or adjacent to the community choice aggregator's political boundaries. The electrical corporation shall read the metering devices and provide the data collected to the community choice aggregator at the aggregator's expense. To the extent that the community choice aggregator requests a metering location that would require alteration or modification of a circuit, the electrical corporation shall only be required to alter or modify a circuit if such alteration or modification does not compromise the safety, reliability, or operational flexibility of the electrical corporation's facilities. All costs incurred to modify circuits pursuant to this paragraph, shall be borne by the community choice aggregator.

(d) (1) It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers.

(2) The Legislature finds and declares that this subdivision is consistent with the requirements of Division 27 (commencing with Section 80000) of the Water Code and Section 360.5 of this code, and is therefore declaratory of existing law.

(e) A retail end-use customer that purchases electricity from a community choice aggregator pursuant to this section shall pay both of the following:

(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond-related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charge shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged.

(2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(f) A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(g) Estimated net unavoidable electricity costs paid by the customers of a community choice aggregator shall be reduced by the value of any benefits that remain with bundled service customers, unless the customers of the community choice aggregator are allocated a fair and equitable share of those benefits.

(h) (1) Any charges imposed pursuant to subdivision (e) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (f) shall be the property of the

electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to ensure that charges payable pursuant to this section shall be promptly remitted to the party entitled to payment.

(2) Charges imposed pursuant to subdivisions (d), (e), and (f) shall be nonbypassable.

(i) The commission shall authorize community choice aggregation only if the commission imposes a cost-recovery mechanism pursuant to subdivisions (d), (e), (f), and (h). Except as provided by this subdivision, this section shall not alter the suspension by the commission of direct purchases of electricity from alternate providers other than by community choice aggregators, pursuant to Section 365.1.

(j) (1) The commission shall not authorize community choice aggregation until it implements a cost-recovery mechanism, consistent with subdivisions (d), (e), and (f), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and January 1, 2003.

(2) The commission shall not authorize community choice aggregation until it has adopted rules for implementing community choice aggregation.

(k) (1) Except for nonbypassable charges imposed by the commission pursuant to subdivisions (d), (e), (f), and (h), and programs authorized by the commission to provide broader statewide or regional benefits to all customers, electric service customers of a community choice aggregator shall not be required to pay nonbypassable charges for goods, services, or programs that do not benefit either, or where applicable, both, the customer and the community choice aggregator serving the customer.

(2) The commission, Energy Commission, electrical corporation, or third-party administrator shall administer any program funded through a nonbypassable charge on a nondiscriminatory basis so that the electric service customers of a community choice aggregator may participate in the program on an equal basis with the customers of an electrical corporation.

(3) Nothing in this subdivision is intended to modify, or prohibit the use of, charges funding programs for the benefit of low-income customers.

(*l*) (1) An electrical corporation shall not terminate the services of a community choice aggregator unless authorized by a vote of the full commission. The commission shall ensure that prior to authorizing a termination of service, that the community choice aggregator has been provided adequate notice and a reasonable opportunity to be heard regarding any electrical corporation contentions in support of termination. If the contentions made by the electrical corporation in favor of termination include factual claims, the community choice aggregator shall be afforded an opportunity to address those claims in an evidentiary hearing.

(2) Notwithstanding paragraph (1), if the Independent System Operator has transferred the community choice aggregator's scheduling coordination responsibilities to the incumbent electrical corporation, an administrative law judge or assigned commissioner, after providing the aggregator with notice and an opportunity to respond, may suspend the aggregator's service to customers pending a full vote of the commission.

(m) Any meeting of an entity authorized to be a community choice aggregator, as defined in Section 331.1, for the purpose of developing, implementing, or administering a program of community choice aggregation shall be conducted in the manner prescribed by the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

SEC. 155. Section 381.1 of the Public Utilities Code is amended to read:

381.1. (a) No later than July 15, 2003, the commission shall establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a community choice aggregation program, may apply to become administrators for cost-effective energy efficiency and conservation programs established pursuant to Section 381. In determining whether to approve an application to become administrators and subject to an aggregator's right to elect to become an administrator pursuant to subdivision (f), the commission shall consider the value of program continuity and planning certainty and the value of allowing competitive opportunities for potentially new administrators. The commission shall weigh the benefits of the party's proposed program to ensure that the program meets the following objectives:

(1) Is consistent with the goals of the existing programs established pursuant to Section 381.

(2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.

(3) Accommodates the need for broader statewide or regional programs.

(b) All audit and reporting requirements established by the commission pursuant to Section 381 and other statutes shall apply to the parties chosen as administrators under this section.

(c) If a community choice aggregator is not the administrator of energy efficiency and conservation programs for which its customers are eligible, the commission shall require the administrator of cost-effective energy efficiency and conservation programs to direct a proportional share of its approved energy efficiency program activities for which the community choice aggregator's customers are eligible, to the community choice aggregator's territory without regard to customer class. To the extent that energy efficiency and conservation programs are targeted to specific locations to avoid or defer transmission or distribution system upgrades, the targeted expenditures shall continue irrespective of whether the loads in those locations are served by an aggregator or by an electrical corporation. The commission shall also direct the administrator to work with the community choice aggregator, to provide advance information where appropriate about the likely impacts of energy efficiency programs and to accommodate any unique community program needs by placing more, or less, emphasis on particular approved programs to the extent that these special shifts in emphasis in no way diminish the effectiveness of broader statewide or regional programs. If the community choice aggregator proposes energy efficiency programs other than programs already approved for implementation in its territory, it shall do so under established commission policies and procedures. The commission may order an adjustment to the share of energy efficiency program activities directed to a community choice aggregator's territory if necessary to ensure an equitable and cost-effective allocation of energy efficiency program activities.

(d) The commission shall establish an impartial process for making the determination of whether a third party, including a community choice aggregator, may become administrators for

cost-effective energy efficiency and conservation programs pursuant to subdivision (a), and shall not delegate or otherwise transfer the commission's authority to make this determination for a community choice aggregator to an electrical corporation.

(e) The impartial process established by the commission shall allow a registered community choice aggregator to elect to become the administrator of funds collected from the aggregator's electric service customers and collected through a nonbypassable charge authorized by the commission, for cost-effective energy efficiency and conservation programs, except those funds collected for broader statewide and regional programs authorized by the commission.

(f) A community choice aggregator electing to become an administrator shall submit a plan, approved by its governing board, to the commission for the administration of cost-effective energy efficiency and conservation programs for the aggregator's electric service customers that includes funding requirements, a program description, a cost-effectiveness analysis, and the duration of the program. The commission shall certify that the plan submitted does all of the following:

(1) Is consistent with the goals of the programs established pursuant to this section and Section 399.4.

(2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.

(3) Accommodates the need for broader statewide or regional programs.

(4) Includes audit and reporting requirements consistent with the audit and reporting requirements established by the commission pursuant to this section.

(5) Includes evaluation, measurement, and verification protocols established by the community choice aggregator.

(6) Includes performance metrics regarding the community choice aggregator's achievement of the objectives listed in paragraphs (1) to (5), inclusive, and in any previous plan.

(g) If the commission does not certify the plan for the administration of cost-effective energy efficiency and conservation programs submitted by a community choice aggregator pursuant to subdivision (f), the community choice aggregator electing to administer these programs may submit an amended plan to the commission for certification. No moneys may be released to a

community choice aggregator unless the commission certifies the plan pursuant to subdivision (f).

SEC. 156. Section 395.5 of the Public Utilities Code is amended to read:

395.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Nonprofit charitable organization" means any charitable organization described in Section 501(c)(3) of the federal Internal Revenue Code that has as its primary purpose serving the needs of the poor or elderly.

(2) "Electric commodity" means electricity used by the customer or a supply of electricity available for use by the customer, and does not include services associated with the transmission and distribution of electricity.

(b) Notwithstanding Section 80110 of the Water Code, a nonprofit charitable organization may acquire electric commodity service through a direct transaction with an electric service provider if electric commodity service is donated free of charge without compensation.

(c) A nonprofit charitable organization that acquires donated electric commodity service through a direct transaction pursuant to this section shall be responsible for paying all of the following:

(1) Those charges and surcharges that would be imposed upon a retail end-use customer of a community choice aggregator pursuant to subdivisions (d), (e), (f), and (h) of Section 366.2.

(2) The transmission and distribution charges of an electrical corporation or a local publicly owned electric utility.

(3) A nonbypassable charge imposed pursuant to Article 7 (commencing with Section 381), Article 8 (commencing with Section 385), or Article 15 (commencing with Section 399).

(4) Costs imposed upon a load-serving entity pursuant to Section 380.

(d) Existing direct access rules and all service obligations otherwise applicable to electric service providers shall govern transactions under this section.

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

SEC. 157. Section 399.11 of the Public Utilities Code is amended to read:

399.11. The Legislature finds and declares all of the following:

(a) In order to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2013, and 33 percent by December 31, 2020, it is the intent of the Legislature that the commission and the Energy Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Achieving the renewables portfolio standard through the procurement of various electricity products from eligible renewable energy resources is intended to provide unique benefits to California, including all of the following, each of which independently justifies the program:

(1) Displacing fossil fuel consumption within the state.

(2) Adding new electrical generating facilities in the transmission network within the Western Electricity Coordinating Council service area.

(3) Reducing air pollution in the state.

(4) Meeting the state's climate change goals by reducing emissions of greenhouse gases associated with electrical generation.

(5) Promoting stable retail rates for electric service.

(6) Meeting the state's need for a diversified and balanced energy generation portfolio.

(7) Assistance with meeting the state's resource adequacy requirements.

(8) Contributing to the safe and reliable operation of the electrical grid, including providing predictable electrical supply, voltage support, lower line losses, and congestion relief.

(9) Implementing the state's transmission and land use planning activities related to development of eligible renewable energy resources.

(c) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Resources Program administered by the Energy Commission and established pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(d) New and modified electric transmission facilities may be necessary to facilitate the state achieving its renewables portfolio standard targets.

(e) (1) Supplying electricity to California end-use customers that is generated by eligible renewable energy resources is

necessary to improve California's air quality and public health, and the commission shall ensure rates are just and reasonable, and are not significantly affected by the procurement requirements of this article. This electricity may be generated anywhere in the interconnected grid that includes many states, and areas of both Canada and Mexico.

(2) This article requires generating resources located outside of California that are able to supply that electricity to California end-use customers to be treated identically to generating resources located within the state, without discrimination.

(3) California electrical corporations have already executed, and the commission has approved, power purchase agreements with eligible renewable energy resources located outside of California that will supply electricity to California end-use customers. These resources will fully count toward meeting the renewables portfolio standard procurement requirements. In addition, there are nearly 7,000 megawatts of additional proposed renewable energy resources located outside of California that are awaiting interconnection approval from the Independent System Operator. All of these resources, if procured, will count as eligible renewable energy resources that satisfy the portfolio content requirements of paragraph (1) of subdivision (c) of Section 399.16.

SEC. 158. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings:

(a) "Conduit hydroelectric facility" means a facility for the generation of electricity that uses only the hydroelectric potential of an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for a beneficial use.

(b) "Balancing authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange generation balance within a balancing authority area, and supports interconnection frequency in real time.

(c) "Balancing authority area" means the collection of generation, transmission, and loads within the metered boundaries of the area within which the balancing authority maintains the electrical load-resource balance.

(d) "California balancing authority" is a balancing authority with control over a balancing authority area primarily located in this state and operating for retail sellers and local publicly owned electric utilities subject to the requirements of this article and includes the Independent System Operator (ISO) and a local publicly owned electric utility operating a transmission grid that is not under the operational control of the ISO. A California balancing authority is responsible for the operation of the transmission grid within its metered boundaries which may not be limited by the political boundaries of the State of California.

(e) "Eligible renewable energy resource" means an electrical generating facility that meets the definition of a "renewable electrical generation facility" in Section 25741 of the Public Resources Code, subject to the following:

(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005. A small hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system is an eligible renewable energy resource if the retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility that commences generation of electricity after December 31, 2005, is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(C) A facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387, shall be certified as an eligible renewable energy resource by the Energy Commission

pursuant to this article, if the facility is a "renewable electrical generation facility" as defined in Section 25741 of the Public Resources Code.

(2) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable energy resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(f) "Procure" means to acquire through ownership or contract.

(g) "Procurement entity" means any person or corporation authorized by the commission to enter into contracts to procure eligible renewable energy resources on behalf of customers of a retail seller pursuant to subdivision (f) of Section 399.13.

(h) (1) "Renewable energy credit" means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.25, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

(2) "Renewable energy credit" includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

(3) (A) Electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity used to generate electricity in the same process through which the facility converts renewable fuel to electricity, shall not result in the creation of a renewable energy credit. The Energy Commission shall set the de minimis quantity of nonrenewable fuels for each renewable energy technology at a level of no more than 2 percent of the total quantity of fuel used by the technology to generate electricity. The Energy Commission may adjust the de minimis quantity for an individual facility, up to a maximum of 5 percent, if it finds that all of the following conditions are met:

(i) The facility demonstrates that the higher quantity of nonrenewable fuel will lead to an increase in generation from the

eligible renewable energy facility that is significantly greater than generation from the nonrenewable fuel alone.

(ii) The facility demonstrates that the higher quantity of nonrenewable fuels will reduce the variability of its electrical output in a manner that results in net environmental benefits to the state.

(iii) The higher quantity of nonrenewable fuel is limited to either natural gas or hydrogen derived by reformation of a fossil fuel.

(B) Electricity generated by a small hydroelectric generation facility shall not result in the creation of a renewable energy credit unless the facility meets the requirements of subparagraph (A) of paragraph (1) of subdivision (e).

(C) Electricity generated by a conduit hydroelectric generation facility shall not result in the creation of a renewable energy credit unless the facility meets the requirements of subparagraph (B) of paragraph (1) of subdivision (e).

(D) Electricity generated by a facility engaged in the combustion of municipal solid waste shall not result in the creation of a renewable energy credit unless the facility meets the requirements of paragraph (2) of subdivision (e).

(i) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller or a local publicly owned electric utility is required to procure pursuant to this article.

(j) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. This

paragraph does not impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing electricity consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned electric utility.

(k) "WECC" means the Western Electricity Coordinating Council of the North American Electric Reliability Corporation, or a successor to the corporation.

SEC. 159. Section 399.18 of the Public Utilities Code is amended to read:

399.18. (a) This section applies to an electrical corporation that as of January 1, 2010, met either of the following conditions:

(1) Served 30,000 or fewer customer accounts in California and had issued at least four solicitations for eligible renewable energy resources prior to June 1, 2010.

(2) Had 1,000 or fewer customer accounts in California and was not connected to any transmission system or to the Independent System Operator.

(b) For an electrical corporation or its successor, electricity products from eligible renewable energy resources may be used for compliance with this article, notwithstanding any procurement content limitation in Section 399.16, provided that both of the following conditions are met:

(1) The electrical corporation or its successor participates in, and complies with, the accounting system administered by the Energy Commission pursuant to subdivision (b) of Section 399.25.

(2) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the requirements of Section 399.15.

SEC. 160. Section 2775.6 of the Public Utilities Code is amended to read:

2775.6. Every request for the recovery in rates of any costs or liability incurred by a gas corporation and resulting from any

violation of Section 25421 of the Health and Safety Code, or of any costs, damages, penalties, or other liabilities incurred in connection with the sale of landfill gas containing chemicals known to the state to cause cancer or reproductive toxicity shall be reviewed by the commission for the purposes of establishing rates for the gas corporation. If the commission finds that the gas corporation, on or after January 1, 1989, knowingly and intentionally violated Section 25421 of the Health and Safety Code, the costs and liability shall be disallowed by the commission for purposes of determining rates.

SEC. 161. Section 2830 of the Public Utilities Code is amended to read:

2830. (a) As used in this section, the following terms have the following meanings:

(1) "Benefiting account" means an electricity account, or more than one account, located within the geographical boundaries of a local government or, for a campus, within the geographical boundary of the city, county, or city and county in which the campus is located, that is mutually agreed upon by the local government or campus and an electrical corporation.

(2) "Bill credit" means an amount of money credited to a benefiting account that is calculated based upon the time-of-use electricity generation component of the electricity usage charge of the generating account, multiplied by the quantities of electricity generated by an eligible renewable generating facility that are exported to the grid during the corresponding time period. Electricity is exported to the grid if it is generated by an eligible renewable generating facility, is not utilized onsite by the local government, and the electricity flows through the meter site and on to the electrical corporation's distribution or transmission infrastructure.

(3) "Campus" means an individual community college campus, individual California State University campus, or individual University of California campus.

(4) "Eligible renewable generating facility" means a generation facility that meets all of the following requirements:

(A) Has a generating capacity of no more than five megawatts.

(B) Is an eligible renewable energy resource, as defined in Article 16 (commencing with Section 399.11) of Part 1.

(C) Is located within the geographical boundary of the local government or, for a campus, within the geographical boundary of the city or city and county, if the campus is located in an incorporated area, or county, if the campus is located in an unincorporated area.

(D) Is owned by, operated by, or on property under the control of the local government or campus.

(E) Is sized to offset all or part of the electrical load of the benefiting account. For these purposes, premises that are leased by a local government or campus are under the control of the local government or campus.

(5) "Generating account" means the time-of-use electric service account of the local government or campus where the eligible renewable generating facility is located.

(6) "Local government" means a city, county, whether general law or chartered, city and county, special district, school district, political subdivision, or other local public agency, but shall not mean a joint powers authority, the state or any agency or department of the state, other than an individual campus of the University of California or the California State University.

(b) Subject to the limitation in subdivision (h), a local government may elect to receive electric service pursuant to this section if all of the following conditions are met:

(1) The local government designates one or more benefiting accounts to receive a bill credit.

(2) A benefiting account receives service under a time-of-use rate schedule.

(3) The benefiting account is the responsibility of, and serves property that is owned, operated, or on property under the control of the same local government that owns, operates, or controls the eligible renewable generating facility.

(4) The electrical output of the eligible renewable generating facility is metered for time of use to allow calculation of the bill credit based upon when the electricity is exported to the grid.

(5) All costs associated with the metering requirements of paragraphs (2) and (4) are the responsibility of the local government.

(6) All costs associated with interconnection are the responsibility of the local government. For purposes of this paragraph, "interconnection" has the same meaning as defined in

Section 2803, except that it applies to the interconnection of an eligible renewable generating facility rather than the energy source of a private energy producer.

(7) The local government does not sell electricity exported to the electrical grid to a third party.

(8) All electricity exported to the grid by the local government that is generated by the eligible renewable generating facility becomes the property of the electrical corporation to which the facility is interconnected, but shall not be counted toward the electrical corporation's total retail sales for purposes of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1. Ownership of the renewable energy credits, as defined in Section 399.12, shall be the same as the ownership of the renewable energy credits associated with electricity that is net metered pursuant to Section 2827.

(9) An electrical corporation shall not be required to compensate a local government for electricity generated from an eligible renewable facility pursuant to this section in excess of the bill credits applied to the designated benefiting account. A local government renewable generation facility participating pursuant to this section shall not be eligible for any other tariff or program that requires an electrical corporation to purchase generation from that facility while participating in the local government renewable energy self-generation program pursuant to this section.

(c) (1) A benefiting account shall be billed for all electricity usage, and for each bill component, at the rate schedule applicable to the benefiting account, including any cost-responsibility surcharge or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(2) The bill shall then subtract the bill credit applicable to the benefiting account. The generation component credited to the benefiting account shall not include the cost-responsibility surcharge or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code. The electrical corporation shall ensure that the local government receives the full bill credit.

(3) If, during the billing cycle, the generation component of the electricity usage charges exceeds the bill credit, the benefiting account shall be billed for the difference.

(4) If, during the billing cycle, the bill credit applied pursuant to paragraph (2) exceeds the generation component of the electricity usage charges, the difference shall be carried forward as a financial credit to the next billing cycle.

(5) After the electricity usage charge pursuant to paragraph (1) and the credit pursuant to paragraph (2) are determined for the last billing cycle of a 12-month period, any remaining credit resulting from the application of this section shall be reset to zero.

(d) The commission shall ensure that the transfer of a bill credit to a benefiting account does not result in a shifting of costs to bundled service subscribers. The costs associated with the transfer of a bill credit shall include all billing-related expenses.

(e) Not more frequently than once per year, and upon providing the electrical corporation with a minimum of 60 days' notice, the local government may elect to change a benefiting account. Any credit resulting from the application of this section earned prior to the change in a benefiting account that has not been used as of the date of the change in the benefiting account shall be applied, and may only be applied, to a benefiting account as changed.

(f) A local government shall provide the electrical corporation to which the eligible renewable generating facility will be interconnected with not less than 60 days' notice prior to the eligible renewable generating facility becoming operational. The electrical corporation shall file an advice letter with the commission that complies with this section not later than 30 days after receipt of the notice proposing a rate tariff for a benefiting account. The commission, within 30 days of the date of filing, shall approve the proposed tariff or specify conforming changes to be made by the electrical corporation to be filed in a new advice letter.

(g) The local government may terminate its election pursuant to subdivision (b), upon providing the electrical corporation with a minimum of 60 days' notice. Should the local government sell its interest in the eligible renewable generating facility, or sell the electricity generated by the eligible renewable generating facility, in a manner other than required by this section, upon the date of either event, and the earliest date if both events occur, no further bill credit pursuant to paragraph (3) of subdivision (b) may be

earned. Only credit earned prior to that date shall be made to a benefiting account.

(h) An electrical corporation is not obligated to provide a bill credit to a benefiting account that is not designated by a local government prior to the point in time that the combined statewide cumulative rated generating capacity of all eligible renewable generating facilities within the service territories of the state's three largest electrical corporations reaches 250 megawatts. Only those eligible renewable generating facilities that are providing bill credits to benefiting accounts pursuant to this section shall count toward reaching this 250-megawatt limitation. Each electrical corporation shall only be required to offer service or contracts under this section until that electrical corporation reaches its proportionate share of the 250-megawatt limitation based on the ratio of its peak demand to the total statewide peak demand of all electrical corporations.

(i) This chapter does not apply to an electrical corporation with 60,000 or fewer customer accounts.

SEC. 162. Section 2851 of the Public Utilities Code is amended to read:

2851. (a) In implementing the California Solar Initiative, the commission shall do all of the following:

(1) The commission shall authorize the award of monetary incentives for up to the first megawatt of alternating current generated by solar energy systems that meet the eligibility criteria established by the Energy Commission pursuant to Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code. The commission shall determine the eligibility of a solar energy system, as defined in Section 25781 of the Public Resources Code, to receive monetary incentives until the time the Energy Commission establishes eligibility criteria pursuant to Section 25782 of the Public Resources Code. Monetary incentives shall not be awarded for solar energy systems that do not meet the eligibility criteria. The incentive level authorized by the commission shall decline each year following implementation of the California Solar Initiative, at a rate of no less than an average of 7 percent per year, and shall be zero as of December 31, 2016. The commission shall adopt and publish a schedule of declining incentive levels no less than 30 days in advance of the first decline in incentive levels. The commission may develop incentives based

upon the output of electricity from the system, provided those incentives are consistent with the declining incentive levels of this paragraph and the incentives apply to only the first megawatt of electricity generated by the system.

(2) The commission shall adopt a performance-based incentive program so that by January 1, 2008, 100 percent of incentives for solar energy systems of 100 kilowatts or greater and at least 50 percent of incentives for solar energy systems of 30 kilowatts or greater are earned based on the actual electrical output of the solar energy systems. The commission shall encourage, and may require, performance-based incentives for solar energy systems of less than 30 kilowatts. Performance-based incentives shall decline at a rate of no less than an average of 7 percent per year. In developing the performance-based incentives, the commission may:

(A) Apply performance-based incentives only to customer classes designated by the commission.

(B) Design the performance-based incentives so that customers may receive a higher level of incentives than under incentives based on installed electrical capacity.

(C) Develop financing options that help offset the installation costs of the solar energy system, provided that this financing is ultimately repaid in full by the consumer or through the application of the performance-based rebates.

(3) By January 1, 2008, the commission, in consultation with the Energy Commission, shall require reasonable and cost-effective energy efficiency improvements in existing buildings as a condition of providing incentives for eligible solar energy systems, with appropriate exemptions or limitations to accommodate the limited financial resources of low-income residential housing.

(4) Notwithstanding subdivision (g) of Section 2827, the commission may develop a time-variant tariff that creates the maximum incentive for ratepayers to install solar energy systems so that the system's peak electricity production coincides with California's peak electricity demands and that ensures that ratepayers receive due value for their contribution to the purchase of solar energy systems and customers with solar energy systems continue to have an incentive to use electricity efficiently. In developing the time-variant tariff, the commission may exclude customers participating in the tariff from the rate cap for residential customers for existing baseline quantities or usage by those

customers of up to 130 percent of existing baseline quantities, as required by Section 80110 of the Water Code. Nothing in this paragraph authorizes the commission to require time-variant pricing for ratepayers without a solar energy system.

(b) Notwithstanding subdivision (a), in implementing the California Solar Initiative, the commission may authorize the award of monetary incentives for solar thermal and solar water heating devices, in a total amount up to one hundred million eight hundred thousand dollars ($100,800,000).

(c) (1) In implementing the California Solar Initiative, the commission shall not allocate more than fifty million dollars ($50,000,000) to research, development, and demonstration that explores solar technologies and other distributed generation technologies that employ or could employ solar energy for generation or storage of electricity or to offset natural gas usage. Any program that allocates additional moneys to research, development, and demonstration shall be developed in collaboration with the Energy Commission to ensure there is no duplication of efforts, and adopted by the commission through a rulemaking or other appropriate public proceeding. Any grant awarded by the commission for research, development, and demonstration shall be approved by the full commission at a public meeting. This subdivision does not prohibit the commission from continuing to allocate moneys to research, development, and demonstration pursuant to the self-generation incentive program for distributed generation resources originally established pursuant to Chapter 329 of the Statutes of 2000, as modified pursuant to Section 379.6.

(2) The Legislature finds and declares that a program that provides a stable source of monetary incentives for eligible solar energy systems will encourage private investment sufficient to make solar technologies cost effective.

(3) On or before June 30, 2009, and by June 30 of every year thereafter, the commission shall submit to the Legislature an assessment of the success of the California Solar Initiative program. That assessment shall include the number of residential and commercial sites that have installed solar thermal devices for which an award was made pursuant to subdivision (b) and the dollar value of the award, the number of residential and commercial sites that have installed solar energy systems, the electrical generating

capacity of the installed solar energy systems, the cost of the program, total electrical system benefits, including the effect on electrical service rates, environmental benefits, how the program affects the operation and reliability of the electrical grid, how the program has affected peak demand for electricity, the progress made toward reaching the goals of the program, whether the program is on schedule to meet the program goals, and recommendations for improving the program to meet its goals. If the commission allocates additional moneys to research, development, and demonstration that explores solar technologies and other distributed generation technologies pursuant to paragraph (1), the commission shall include in the assessment submitted to the Legislature, a description of the program, a summary of each award made or project funded pursuant to the program, including the intended purposes to be achieved by the particular award or project, and the results of each award or project.

(d) (1) The commission shall not impose any charge upon the consumption of natural gas, or upon natural gas ratepayers, to fund the California Solar Initiative.

(2) Notwithstanding any other provision of law, any charge imposed to fund the program adopted and implemented pursuant to this section shall be imposed upon all customers not participating in the California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) programs, including those residential customers subject to the rate cap required by Section 80110 of the Water Code for existing baseline quantities or usage up to 130 percent of existing baseline quantities of electricity.

(3) The costs of the program adopted and implemented pursuant to this section may not be recovered from customers participating in the CARE program established pursuant to Section 739.1, except to the extent that program costs are recovered out of the nonbypassable system benefits charge authorized pursuant to Section 399.8.

(e) In implementing the California Solar Initiative, the commission shall ensure that the total cost over the duration of the program does not exceed three billion five hundred fifty million eight hundred thousand dollars ($3,550,800,000). The financial components of the California Solar Initiative shall consist of the following:

(1) Programs under the supervision of the commission funded by charges collected from customers of San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company. The total cost over the duration of these programs shall not exceed two billion three hundred sixty-six million eight hundred thousand dollars ($2,366,800,000) and includes moneys collected directly into a tracking account for support of the California Solar Initiative and moneys collected into other accounts that are used to further the goals of the California Solar Initiative.

(2) Programs adopted, implemented, and financed in the amount of seven hundred eighty-four million dollars ($784,000,000), by charges collected by local publicly owned electric utilities pursuant to Section 387.5. Nothing in this subdivision shall give the commission power and jurisdiction with respect to a local publicly owned electric utility or its customers.

(3) Programs for the installation of solar energy systems on new construction, administered by the Energy Commission pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, and funded by nonbypassable charges in the amount of four hundred million dollars ($400,000,000), collected from customers of San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company pursuant to Article 15 (commencing with Section 399).

SEC. 163. Section 2881.1 of the Public Utilities Code is amended to read:

2881.1. (a) In addition to the requirements of Section 2881, the commission shall design and implement a program to provide a telecommunications device capable of servicing the needs of the deaf or severely hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber which is an agency of state government and which the commission determines serves a significant portion of the deaf or severely hearing-impaired population, and to an office located in the State Capitol and selected by the Joint Rules Committee, for purposes of access by the deaf or severely hearing impaired to Members of the Legislature.

(b) The commission shall permit providers of equipment and service specified in subdivision (a) to recover costs as they are

incurred under this section pursuant to subdivision (g) of Section 2881.

(c) The commission may direct any telephone corporation subject to its jurisdiction to comply with its determinations pursuant to this section.

SEC. 164. Section 2881.2 of the Public Utilities Code is amended to read:

2881.2. (a) In addition to the requirements of Section 2881, the commission shall design and implement a program that shall provide for publicly available telecommunications devices capable of servicing the needs of the deaf or hearing impaired in existing buildings, structures, facilities, and public accommodations of the type specified in Section 4450 of the Government Code and Sections 19955.5 and 19956 of the Health and Safety Code, making available reasonable access of all phases of public telephone service to individuals who are deaf or hearing impaired. The commission shall direct the appropriate committee under its control to determine and specify locations within existing buildings, structures, facilities, and public accommodations in need of a telecommunications device and to contract for the procurement, installation, and maintenance of these devices. In the letting of the contract, the commission shall direct the committee to ensure consideration of for-profit and nonprofit corporations, including nonprofit corporations with demonstrated service to individuals who are deaf or hearing impaired and whose boards of directors and staff are made up of a majority of those individuals. The commission shall also direct the committee to seek the cooperation of the owners, managers, and tenants of the existing buildings, structures, facilities, and public accommodations that have been determined to be in need of a telecommunications device with regard to its installation and maintenance. The commission shall phase in this program over a reasonable period of time, beginning no later than January 1, 1998, giving priority to those existing buildings, structures, facilities, and public accommodations determined by the commission, with the advice and counsel of statewide nonprofit consumer organizations for the deaf, to be of most importance and usefulness to the deaf or hearing impaired.

(b) The commission shall ensure that costs are recovered as they are incurred under this section, including any costs incurred by the owners, managers, or tenants of existing buildings, structures,

facilities, and public accommodations, and shall utilize for this purpose the rate recovery mechanism established pursuant to subdivision (g) of Section 2881. The commission shall also establish a fund and require separate accounting for the program implemented under this section and, in addition, shall require that the surcharge utilized to fund the program not exceed two-hundredths of 1 percent, that it be combined with the surcharge required by subdivision (g) of Section 2881, and that it count toward the limits set by that subdivision. This surcharge shall be in effect until January 1, 2006.

(c) "Existing buildings, structures, facilities, and public accommodations," for the purposes of this section, means those buildings, structures, facilities, and public accommodations or parts thereof that were constructed or altered prior to January 26, 1993, or are otherwise not required by Section 303 of the federal Americans with Disabilities Act of 1990 (P.L. 101-336; 42 U.S.C. Sec. 12183) or any other section of that act and its implementing regulations and guidelines, to have a publicly available telecommunications device capable of serving the needs of the deaf or hearing impaired.

SEC. 165. Section 8283 of the Public Utilities Code is amended to read:

8283. (a) The commission shall require each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars ($25,000,000) and their commission-regulated subsidiaries and affiliates, to submit annually, a detailed and verifiable plan for increasing procurement from women, minority, and disabled veteran business enterprises in all categories, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

(b) These annual plans shall include short- and long-term goals and timetables, but not quotas, and shall include methods for encouraging both prime contractors and grantees to engage women, minority, and disabled veteran business enterprises in subcontracts in all categories that provide subcontracting opportunities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

(c) The commission shall establish guidelines for all electrical, gas, water, wireless telecommunications service providers, and

telephone corporations with gross annual revenues exceeding twenty-five million dollars ($25,000,000) and their commission-regulated subsidiaries and affiliates, to be utilized in establishing programs pursuant to this article.

(d) Every electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars ($25,000,000) shall furnish an annual report to the commission regarding the implementation of programs established pursuant to this article in a form that the commission shall require, and at the time that the commission shall annually designate.

(e) (1) The commission shall provide a report to the Legislature on September 1 of each year, on the progress of activities undertaken by each electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars ($25,000,000) pursuant to this article in the implementation of women, minority, and disabled veteran business enterprise development programs. The report shall include information about which procurements are made with women, minority, and disabled veteran business enterprises with at least a majority of the enterprise's workforce in California, to the extent that information is readily accessible. The commission shall recommend a program for carrying out the policy declared in this article, together with recommendations for legislation that it deems necessary or desirable to further that policy. The commission shall make the report available on its Internet Web site.

(2) In regard to disabled veteran business enterprises, the commission shall ensure that the programs and legislation recommended pursuant to paragraph (1) are consistent with the disabled veteran business enterprise certification eligibility requirements imposed by the Department of General Services and that the recommendations include only those disabled veteran business enterprises certified by the Department of General Services.

(f) (1) The Legislature declares that each electrical, gas, water, mobile telephony service provider, and telephone corporation that is not required to submit a plan pursuant to subdivision (a) is encouraged to voluntarily adopt a plan for increasing women,

minority, and disabled veteran business enterprise procurement in all categories.

(2) The Legislature declares that each cable television corporation and direct broadcast satellite provider is encouraged to voluntarily adopt a plan for increasing women, minority, and disabled veteran business enterprise procurement and to voluntarily report activity in this area to the Legislature on an annual basis.

SEC. 166. Section 214.02 of the Revenue and Taxation Code is amended to read:

214.02. (a) Except as provided in subdivision (b) or (c), property that is used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty, is open to the general public subject to reasonable restrictions concerning the needs of the land, and is owned and operated by a scientific or charitable fund, foundation, limited liability company, or corporation, the primary interest of which is to preserve those natural areas, and that meets all the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Section 4, and Section 5, of Article XIII of the California Constitution and Section 214 of this code.

(b) The exemption provided by this section shall not apply to any property of an organization that owns in the aggregate 30,000 acres or more in one county that were exempt under this section prior to March 1, 1983, or that are proposed to be exempt, unless the nonprofit organization that holds the property is fully independent of the owner of any taxable real property that is adjacent to the property otherwise qualifying for tax exemption under this section. For purposes of this section, the nonprofit organization that holds the property shall be considered fully independent if the exempt property is not used or operated by that organization or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the exempt organization or operator, or the owner of any adjacent property, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(c) The exemption provided by this section shall not apply to property that is reserved for future development.

(d) This section shall be operative from the lien date in 1983 to and including the lien date in 2022, after which date this section shall become inoperative, and as of January 1, 2023, this section is repealed.

(e) The amendments made by Chapter 354 of the Statutes of 2004 shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 167. Section 3725 of the Revenue and Taxation Code is amended to read:

3725. (a) A proceeding based on alleged invalidity or irregularity of any proceedings instituted under this chapter can only be commenced in a court if both of the following are satisfied:

(1) The person commencing the proceeding has first petitioned the board of supervisors pursuant to Section 3731 within one year of the date of the execution of the tax collector's deed.

(2) The proceeding is commenced within one year of the date the board of supervisors determines that a tax deed sold under this part should not be rescinded pursuant to Section 3731.

(b) Sections 351 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under this section.

(c) The amendments made to this section by Chapter 288 of the Statutes of 2011 shall apply to sales that are completed on or after January 1, 2012.

SEC. 168. Section 17053.85 of the Revenue and Taxation Code is amended to read:

17053.85. (a) (1) For taxable years beginning on or after January 1, 2011, there shall be allowed to a qualified taxpayer a credit against the "net tax," as defined in Section 17039, in an amount equal to the applicable percentage, as specified in paragraph (4), of the qualified expenditures for the production of a qualified motion picture in California.

(2) The credit shall be allowed for the taxable year in which the California Film Commission issues the credit certificate pursuant to subdivision (g) for the qualified motion picture, and shall be for the applicable percentage of all qualified expenditures paid or incurred by the qualified taxpayer in all taxable years for that qualified motion picture.

(3) The amount of the credit allowed to a qualified taxpayer shall be limited to the amount specified in the credit certificate issued to the qualified taxpayer by the California Film Commission pursuant to subdivision (g).

(4) For purposes of paragraphs (1) and (2), the applicable percentage shall be:

(A) Twenty percent of the qualified expenditures attributable to the production of a qualified motion picture in California.

(B) Twenty-five percent of the qualified expenditures attributable to the production of a qualified motion picture in California where the qualified motion picture is a television series that relocated to California or an independent film.

(b) For purposes of this section:

(1) "Ancillary product" means any article for sale to the public that contains a portion of, or any element of, the qualified motion picture.

(2) "Budget" means an estimate of all expenses paid or incurred during the production period of a qualified motion picture. It shall be the same budget used by the qualified taxpayer and production company for all qualified motion picture purposes.

(3) "Clip use" means a use of any portion of a motion picture, other than the qualified motion picture, used in the qualified motion picture.

(4) "Credit certificate" means the certificate issued by the California Film Commission pursuant to subparagraph (C) of paragraph (2) of subdivision (g).

(5) (A) "Employee fringe benefits" means the amount allowable as a deduction under this part to the qualified taxpayer involved in the production of the qualified motion picture, exclusive of any amounts contributed by employees, for any year during the production period with respect to any of the following:

(i) Employer contributions under any pension, profit-sharing, annuity, or similar plan.

(ii) Employer-provided coverage under any accident or health plan for employees.

(iii) The employer's cost of life or disability insurance provided to employees.

(B) Any amount treated as wages under clause (i) of subparagraph (A) of paragraph (18) shall not be taken into account under this paragraph.

(6) "Independent film" means a motion picture with a minimum budget of one million dollars ($1,000,000) and a maximum budget of ten million dollars ($10,000,000) that is produced by a company that is not publicly traded and publicly traded companies do not own, directly or indirectly, more than 25 percent of the producing company.

(7) "Licensing" means any grant of rights to distribute the qualified motion picture, in whole or in part.

(8) "New use" means any use of a motion picture in a medium other than the medium for which it was initially created.

(9) (A) "Postproduction" means the final activities in a qualified motion picture's production, including editing, foley recording, automatic dialogue replacement, sound editing, scoring and music editing, beginning and end credits, negative cutting, negative processing and duplication, the addition of sound and visual effects, soundmixing, film-to-tape transfers, encoding, and color correction.

(B) "Postproduction" does not include the manufacture or shipping of release prints.

(10) "Preproduction" means the process of preparation for actual physical production which begins after a qualified motion picture has received a firm agreement of financial commitment, or is greenlit, with, for example, the establishment of a dedicated production office, the hiring of key crew members, and includes, but is not limited to, activities that include location scouting and execution of contracts with vendors of equipment and stage space.

(11) "Principal photography" means the phase of production during which the motion picture is actually shot, as distinguished from preproduction and postproduction.

(12) "Production period" means the period beginning with preproduction and ending upon completion of postproduction.

(13) "Qualified entity" means a personal service corporation as defined in Section 269A(b)(1) of the Internal Revenue Code, a payroll services corporation, or any entity receiving qualified wages with respect to services performed by a qualified individual.

(14) (A) "Qualified individual" means any individual who performs services during the production period in an activity related to the production of a qualified motion picture.

(B) "Qualified individual" shall not include either of the following:

(i) Any individual related to the qualified taxpayer as described in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal Revenue Code.

(ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of the Internal Revenue Code, of the qualified taxpayer.

(15) (A) "Qualified motion picture" means a motion picture that is produced for distribution to the general public, regardless of medium, that is one of the following:

(i) A feature with a minimum production budget of one million dollars ($1,000,000) and a maximum production budget of seventy-five million dollars ($75,000,000).

(ii) A movie of the week or miniseries with a minimum production budget of five hundred thousand dollars ($500,000).

(iii) A new television series produced in California with a minimum production budget of one million dollars ($1,000,000) licensed for original distribution on basic cable.

(iv) An independent film.

(v) A television series that relocated to California.

(B) To qualify as a "qualified motion picture," all of the following conditions shall be satisfied:

(i) At least 75 percent of the production days occur wholly in California or 75 percent of the production budget is incurred for payment for services performed within the state and the purchase or rental of property used within the state.

(ii) Production of the qualified motion picture is completed within 30 months from the date on which the qualified taxpayer's application is approved by the California Film Commission. For purposes of this section, a qualified motion picture is "completed" when the process of postproduction has been finished.

(iii) The copyright for the motion picture is registered with the United States Copyright Office pursuant to Title 17 of the United States Code.

(iv) Principal photography of the qualified motion picture commences after the date on which the application is approved by the California Film Commission, but no later than 180 days after the date of that approval.

(C) For the purposes of subparagraph (A), in computing the total wages paid or incurred for the production of a qualified motion picture, all amounts paid or incurred by all persons or

entities that share in the costs of the qualified motion picture shall be aggregated.

(D) "Qualified motion picture" shall not include commercial advertising, music videos, a motion picture produced for private noncommercial use, such as weddings, graduations, or as part of an educational course and made by students, a news program, current events or public events program, talk show, game show, sporting event or activity, awards show, telethon or other production that solicits funds, reality television program, clip-based programming if more than 50 percent of the content is comprised of licensed footage, documentaries, variety programs, daytime dramas, strip shows, one-half hour (air time) episodic television shows, or any production that falls within the recordkeeping requirements of Section 2257 of Title 18 of the United States Code.

(16) "Qualified expenditures" means amounts paid or incurred to purchase or lease tangible personal property used within this state in the production of a qualified motion picture and payments, including qualified wages, for services performed within this state in the production of a qualified motion picture.

(17) (A) "Qualified taxpayer" means a taxpayer who has paid or incurred qualified expenditures and has been issued a credit certificate by the California Film Commission pursuant to subdivision (g).

(B) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section is not allowed to the passthrough entity, but shall be passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, "passthrough entity" means any entity taxed as a partnership or "S" corporation.

(18) (A) "Qualified wages" means all of the following:

(i) Any wages subject to withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code that were paid or incurred by any taxpayer involved in the production of a qualified motion picture with respect to a qualified individual for services performed on the qualified motion picture production within this state.

(ii) The portion of any employee fringe benefits paid or incurred by any taxpayer involved in the production of the qualified motion picture that are properly allocable to qualified wage amounts described in clause (i).

(iii) Any payments made to a qualified entity for services performed in this state by qualified individuals within the meaning of paragraph (14).

(iv) Remuneration paid to an independent contractor who is a qualified individual for services performed within this state by that qualified individual.

(B) "Qualified wages" shall not include any of the following:

(i) Expenses, including wages, related to new use, reuse, clip use, licensing, secondary markets, or residual compensation, or the creation of any ancillary product, including, but not limited to, a soundtrack album, toy, game, trailer, or teaser.

(ii) Expenses, including wages, paid or incurred with respect to acquisition, development, turnaround, or any rights thereto.

(iii) Expenses, including wages, related to financing, overhead, marketing, promotion, or distribution of a qualified motion picture.

(iv) Expenses, including wages, paid per person per qualified motion picture for writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines.

(19) "Residual compensation" means supplemental compensation paid at the time that a motion picture is exhibited through new use, reuse, clip use, or in secondary markets, as distinguished from payments made during production.

(20) "Reuse" means any use of a qualified motion picture in the same medium for which it was created, following the initial use in that medium.

(21) "Secondary markets" means media in which a qualified motion picture is exhibited following the initial media in which it is exhibited.

(22) "Television series that relocated to California" means a television series, without regard to episode length or initial media exhibition, that filmed all of its prior season or seasons outside of California and for which the taxpayer certifies that the credit provided pursuant to this section is the primary reason for relocating to California.

(c) (1) Notwithstanding any other law, a qualified taxpayer may sell any credit allowed under this section that is attributable to an independent film, as defined in paragraph (6) of subdivision (b), to an unrelated party.

(2) The qualified taxpayer shall report to the Franchise Tax Board prior to the sale of the credit, in the form and manner specified by the Franchise Tax Board, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the qualified taxpayer for the sale of the credit.

(3) In the case where the credit allowed under this section exceeds the "net tax," the excess credit may be carried over to reduce the "net tax" in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.

(4) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.

(5) A party that has acquired tax credits under this section shall be subject to the requirements of this section.

(6) In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed by this section is claimed on any tax return of the qualified taxpayer.

(7) In the event that both the taxpayer originally allocated a credit under this section by the California Film Commission and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the Franchise Tax Board may disallow the credit of either taxpayer, so long as the statute of limitations upon assessment remains open.

(8) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this subdivision.

(9) Subdivision (g) of Section 17039 shall not apply to any credit sold pursuant to this subdivision.

(10) For purposes of this subdivision, the unrelated party or parties that purchase a credit pursuant to this subdivision shall be

treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(d) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:

(1) Identification of each qualified individual.

(2) The specific start and end dates of production.

(3) The total wages paid.

(4) The amount of qualified wages paid to each qualified individual.

(5) The copyright registration number, as reflected on the certificate of registration issued under the authority of Section 410 of Title 17 of the United States Code, relating to registration of claim and issuance of certificate. The registration number shall be provided on the return claiming the credit.

(6) The total amounts paid or incurred to purchase or lease tangible personal property used in the production of a qualified motion picture.

(7) Information to substantiate its qualified expenditures.

(8) Information required by the California Film Commission under regulations promulgated pursuant to subdivision (e) necessary to verify the amount of credit claimed.

(e) The California Film Commission may prescribe rules and regulations to carry out the purposes of this section, including any rules and regulations necessary to establish procedures, processes, requirements, and rules identified in or required to implement this section. The regulations shall include provisions to set aside a percentage of annual credit allocations for independent films.

(f) If the qualified taxpayer fails to provide the copyright registration number as required in paragraph (5) of subdivision (d), the credit shall be disallowed and assessed and collected under Section 19051 until the procedures are satisfied.

(g) For purposes of this section, the California Film Commission shall do the following:

(1) On or after July 1, 2009, and before July 1, 2015, allocate tax credits to applicants.

(A) Establish a procedure for applicants to file with the California Film Commission a written application, on a form jointly prescribed by the California Film Commission and the Franchise

Tax Board for the allocation of the tax credit. The application shall include, but not be limited to, the following information:

(i) The budget for the motion picture production.

(ii) The number of production days.

(iii) A financing plan for the production.

(iv) The diversity of the workforce employed by the applicant, including, but not limited to, the ethnic and racial makeup of the individuals employed by the applicant during the production of the qualified motion picture, to the extent possible.

(v) All members of a combined reporting group and any members to which the credit is assigned, including, if readily available, the states, provinces, or other jurisdictions in which any of those members finance motion picture productions.

(vi) Financial information, if available, including, but not limited to, the most recently produced balance sheets, annual statements of profits and losses, audited or unaudited financial statements, summary budget projections or results, or the functional equivalent of these documents of a partnership or owner of a single member limited liability company that is disregarded pursuant to Section 23038. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(vii) The names of all partners in a partnership not publicly traded or the names of all members of a limited liability company classified as a partnership not publicly traded for California income tax purposes. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(viii) Detailed narratives, for use only by the Legislative Analyst's Office in conducting a study of the effectiveness of this credit, that describe the extent to which the credit is expected to influence or affect filming and other business location decisions, hiring decisions, salary decisions, and any other financial matters of the applicant.

(ix) Any other information deemed relevant by the California Film Commission or the Franchise Tax Board.

(B) Establish criteria, consistent with the requirements of this section, for allocating tax credits.

(C) Determine and designate applicants who meet the requirements of this section.

(D) Process and approve, or reject, all applications on a first-come-first-served basis.

(E) Subject to the annual cap established as provided in subdivision (i), allocate an aggregate amount of credits under this section and Section 23685, and allocate any carryover of unallocated credits from prior years.

(2) Certify tax credits allocated to qualified taxpayers.

(A) Establish a verification procedure for the amount of qualified expenditures paid or incurred by the applicant, including, but not limited to, updates to the information in subparagraph (A) of paragraph (1).

(B) Establish audit requirements that must be satisfied before a credit certificate may be issued by the California Film Commission.

(C) Issue a credit certificate to a qualified taxpayer upon completion of the qualified motion picture reflecting the credit amount allocated after qualified expenditures have been verified under this section. The amount of credit shown in the credit certificate shall not exceed the amount of credit allocated to that qualified taxpayer pursuant to this section.

(3) Provide the Legislative Analyst's Office, upon request, any application materials or any other materials received from applicants, including, but not limited to, information in electronic format when available.

(A) Financial information, including, but not limited to, statements of profits and losses of a partnership or of an owner of a single member limited liability company that is disregarded pursuant to Section 23038.

(B) The names of all members of the qualified taxpayer's combined reporting group and any member to which the credit is assigned.

(C) The names of all partners in a partnership or the names of all members of a limited liability company classified as a partnership for California income tax purposes that is not publicly traded.

(D) The sales price of a credit certificate provided by the Franchise Tax Board. The Franchise Tax Board, upon request and subject to confidentiality requirements, shall provide aggregate information on the identity of the qualified taxpayer, the amount of the credit, and the credit recipient.

(h) The California Film Commission shall provide the Franchise Tax Board and the board annually with a list of qualified taxpayers

and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission. The list shall include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayer.

(i) (1) The aggregate amount of credits that may be allocated in any fiscal year pursuant to this section and Section 23685 shall be an amount equal to the sum of all of the following:

(A) One hundred million dollars ($100,000,000) in credits for the 2009–10 fiscal year and each fiscal year thereafter, through and including the 2014–15 fiscal year.

(B) The unused allocation credit amount, if any, for the preceding fiscal year.

(C) The amount of previously allocated credits not certified.

(2) If the amount of credits applied for in any particular fiscal year exceeds the aggregate amount of tax credits authorized to be allocated under this section, such excess shall be treated as having been applied for on the first day of the subsequent fiscal year. However, credits may not be allocated from a fiscal year other than the fiscal year in which the credit was originally applied for or the immediately succeeding fiscal year.

(3) Notwithstanding the foregoing, the California Film Commission shall set aside up to ten million dollars ($10,000,000) of tax credits each fiscal year for independent films allocated in accordance with rules and regulations developed pursuant to subdivision (e).

(4) Any act that reduces the amount that may be allocated pursuant to paragraph (1) constitutes a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution and may be passed by not less than two-thirds of all Members elected to each of the two houses of the Legislature.

(j) The California Film Commission shall have the authority to allocate tax credits in accordance with this section and in accordance with any regulations prescribed pursuant to subdivision (e) upon adoption.

SEC. 169. Section 17085 of the Revenue and Taxation Code is amended to read:

17085. Section 72 of the Internal Revenue Code, relating to annuities, certain proceeds of endowment and life insurance contracts, is modified as follows:

(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees' annuities, shall apply only to the following:

(1) Any individual whose annuity starting date is after December 31, 1986.

(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.

(b) The amount of a distribution from an individual retirement account or annuity or employee trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:

(1) An amount equal to the amount includable in federal gross income for the taxable year.

(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions), the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals), the increased basis allowed by Section 17501, or the increased basis allowed by Section 17551 that is remaining after adjustment for reductions in gross income under this provision in prior taxable years.

(c) (1) Except as provided in paragraph (2), the amount of the additional tax imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code, as applicable for federal income tax purposes for the same taxable year, using a rate of 2½ percent, in lieu of the rate provided in those sections.

(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, as applicable for federal income tax purposes for the same taxable year, applies, the rate in paragraph (1) shall be 6 percent in lieu of the 2½ percent rate specified therein.

(d) Section 72(f)(2) of the Internal Revenue Code shall be applicable without applying the exceptions which immediately follow that paragraph.

(e) The amendments made by Section 844 of the federal Pension Protection Act of 2006 (P.L. 109-280) to Section 72(e) of the Internal Revenue Code, shall not apply.

SEC. 170. Section 17131.10 of the Revenue and Taxation Code, as added by Section 15 of Chapter 727 of the Statutes of 2011, is amended and renumbered to read:

17131.14. (a) For taxable years beginning on or after January 1, 2011, Section 125(j) of the Internal Revenue Code, relating to simple cafeteria plans for small businesses, as added by Section 9022 of the federal Patient Protection and Affordable Care Act (P.L. 111-148), shall apply, except as otherwise provided.

(b) For taxable years beginning on or after January 1, 2014, Section 125(f) of the Internal Revenue Code, relating to qualified benefits defined, as amended by Section 1515 of the federal Patient Protection and Affordable Care Act (P.L. 111-148), shall apply, except as otherwise provided.

SEC. 171. Section 17282 of the Revenue and Taxation Code is amended to read:

17282. (a) In computing taxable income, deductions, including deductions for cost of goods sold, shall not be allowed to any taxpayer from any of his or her gross income directly derived from any act or omission of criminal profiteering activity, as defined in Section 186.2 of the Penal Code, or as defined in Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code, or Article 5 (commencing with Section 750) of Chapter 1 of Part 2 of Division 1 of the Insurance Code; and deductions shall not be allowed to any taxpayer from any of his or her gross income derived from any other activities which directly tend to promote or to further, or are directly connected or associated with, those acts or omissions.

(b) A prior, final determination by a court of competent jurisdiction of this state in any criminal proceedings or any proceeding in which the state, county, city and county, city, or other political subdivision was a party thereto on the merits of the legality of the activities of a taxpayer, or predecessor in interest of a taxpayer, shall be required in order for subdivision (a) to apply

and shall be binding upon the Franchise Tax Board and the State Board of Equalization.

(c) (1) Except as provided in paragraphs (2) and (3), this section shall be applied with respect to taxable years that have not been closed by a statute of limitations, res judicata, or otherwise as of September 14, 1982.

(2) The amendments made to this section by Chapter 962 of the Statutes of 1984 shall be applied with respect to taxable years that have not been closed by a statute of limitations, res judicata, or otherwise as of January 1, 1985.

(3) The amendments made to this section by Chapter 454 of the Statutes of 2011 shall be applied with respect to taxable years that have not been closed by a statute of limitations, res judicata, or otherwise as of the effective date of that act.

SEC. 172. Section 19191 of the Revenue and Taxation Code is amended to read:

19191. (a) The Franchise Tax Board may enter into a voluntary disclosure agreement with any qualified entity, qualified shareholder, qualified member, or qualified beneficiary as defined in Section 19192, that is binding on both the Franchise Tax Board and the qualified entity, qualified shareholder, qualified member, or qualified beneficiary.

(b) The Franchise Tax Board shall do all of the following:

(1) Provide guidelines and establish procedures for qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries to apply for voluntary disclosure agreements.

(2) Accept applications on an anonymous basis from qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries for voluntary disclosure agreements.

(3) Implement procedures for accepting applications for voluntary disclosure agreements through the National Nexus Program administered by the Multistate Tax Commission.

(4) For purposes of considering offers from qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries to enter into voluntary disclosure agreements, take into account the following criteria:

(A) The nature and magnitude of the qualified entity's previous presence and activity in this state and the facts and circumstances by which the nexus of the qualified entity or qualified shareholder, qualified member, or qualified beneficiary was established.

(B) The extent to which the weight of the factual circumstances demonstrates that a prudent business person exercising reasonable care would conclude that the previous activities and presence in this state were or were not immune from taxation by this state by reason of Public Law 86-272 or otherwise.

(C) Reasonable reliance on the advice of a person in a fiduciary position or other competent advice that the qualified entity or qualified shareholder, qualified member, or qualified beneficiary activities were immune from taxation by this state.

(D) Lack of evidence of willful disregard or neglect of the tax laws of this state on the part of the qualified entity or qualified shareholder, qualified member, or qualified beneficiary.

(E) Demonstrations of good faith on the part of the qualified entity.

(F) Benefits that will accrue to the state by entering into a voluntary disclosure agreement.

(5) Act on any application of a voluntary disclosure agreement within 120 days of receipt.

(6) Enter into voluntary disclosure agreements with qualified entities, qualified shareholders, qualified members, or qualified beneficiaries, as authorized in subdivision (a) and based on the criteria set forth in paragraph (4).

(c) Before any voluntary disclosure agreement becomes binding, the Franchise Tax Board, itself, shall approve the agreement in the following manner:

(1) The Executive Officer and Chief Counsel of the Franchise Tax Board shall recommend and submit the voluntary disclosure agreement to the Franchise Tax Board for approval.

(2) Each voluntary disclosure agreement recommendation shall be submitted in a manner as to maintain the anonymity of the taxpayer applying for the voluntary disclosure agreement.

(3) Any recommendation for approval of a voluntary disclosure agreement shall be approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation to the board.

(4) Any recommendation of a voluntary disclosure agreement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved.

(5) Disapproval of a recommendation of a voluntary disclosure agreement shall be made only by a majority vote of the Franchise Tax Board.

(6) The members of the Franchise Tax Board shall not participate in any voluntary disclosure agreement except as provided in this subdivision.

(d) The voluntary disclosure agreement entered into by the Franchise Tax Board and the qualified entity, qualified shareholder, qualified member, or qualified beneficiary as provided for in subdivision (a) shall to the extent applicable specify that:

(1) The Franchise Tax Board shall with respect to a qualified entity, qualified shareholder, qualified member, or qualified beneficiary, except as provided in paragraph (4), (6), or (9) of subdivision (a) of Section 19192:

(A) Waive its authority under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) to assess or propose to assess taxes, additions to tax, fees, or penalties with respect to each taxable year ending prior to six years from the signing date of the voluntary disclosure agreement.

(B) With respect to each of the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement, based on its discretion, agree to waive any or all of the following:

(i) Any penalty related to a failure to make and file a return, as provided in Section 19131.

(ii) Any penalty related to a failure to pay any amount due by the date prescribed for payment, as provided in Section 19132.

(iii) Any addition to tax related to an underpayment of estimated tax, as provided in Section 19136.

(iv) Any penalty related to Section 6810 or subdivision (a) of Section 8810 of the Corporations Code, as provided in Section 19141 of this code.

(v) Any penalty related to a failure to furnish information or maintain records, as provided in Section 19141.5.

(vi) Any addition to tax related to an underpayment of tax imposed under Part 11 (commencing with Section 23001), as provided in Section 19142.

(vii) Any penalty related to a partnership required to file a return under Section 18633, as provided in Section 19172.

(viii) Any penalty related to a failure to file information returns, as provided in Section 19183.

(ix) Any penalty related to relief from contract voidability, as provided in Section 23305.1.

(2) The qualified entity, qualified shareholder, qualified member, or qualified beneficiary shall:

(A) With respect to each of the six taxable years ending immediately preceding the signing date of the written agreement:

(i) Voluntarily and fully disclose on the qualified entity's application all material facts pertinent to the qualified entity's, shareholder's, member's, or beneficiary's liability for any taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(ii) Except as provided in paragraph (3), within 30 days from the signing date of the voluntary disclosure agreement:

(I) File all returns required under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(II) Pay in full any tax, interest, fee, and penalties, other than those penalties specifically waived by the Franchise Tax Board under the terms of the voluntary disclosure agreement, imposed under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) in a manner as may be prescribed by the Franchise Tax Board. Paragraph (1) of subdivision (f) of Section 23153 shall not apply to qualified entities admitted into the voluntary disclosure program.

(B) Agree to comply with all franchise and income tax laws of this state in subsequent taxable years by filing all returns required and paying all amounts due under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(3) The Franchise Tax Board may extend the time for filing returns and paying amounts due to 120 days from the signing date of the voluntary disclosure agreement or to the latest extended due date of the return for a taxable year for which relief is granted, whichever is later.

(e) No addition to tax under Section 19136 or 19142 shall be made for any underpayment of estimated tax attributable to the underpayment of an installment of estimated tax due before the signing date of the voluntary disclosure agreement.

(f) The amendments to this section made by Chapter 954 of the Statutes of 1996 shall apply to taxable years beginning on or after January 1, 1997.

(g) The amendments to this section made by Chapter 543 of the Statutes of 2001 shall apply to voluntary disclosure agreements entered into on or after January 1, 2002.

(h) The amendments to this section made by Chapter 543 of the Statutes of 2001 shall apply to voluntary disclosure agreements entered into on or after January 1, 2005.

(i) The amendments to this section made by Chapter 296 of the Statutes of 2011 shall apply to voluntary disclosure agreements entered into on or after January 1, 2011.

SEC. 173. Section 24436.1 of the Revenue and Taxation Code is amended to read:

24436.1. (a) In computing net income, deductions, including deductions for cost of goods sold, shall not be allowed to any taxpayer from any of its gross income directly derived from any act or omission of criminal profiteering activity, as defined in Section 186.2 of the Penal Code, or as defined in Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code, or Article 5 (commencing with Section 750) of Chapter 1 of Part 2 of Division 1 of the Insurance Code; and deductions shall not be allowed to any taxpayer on any of its gross income derived from any other activities which directly tend to promote or to further, or are directly connected or associated with, those acts or omissions.

(b) A prior, final determination by a court of competent jurisdiction of this state in any criminal proceedings or any proceeding in which the state, county, city and county, city, or other political subdivision was a party thereto on the merits of the legality of the activities of a taxpayer, or predecessor in interest of a taxpayer, shall be required in order for subdivision (a) to apply and shall be binding upon the Franchise Tax Board and the State Board of Equalization.

(c) (1) Except as provided in paragraphs (2) and (3), this section shall be applied with respect to taxable years that have not been closed by a statute of limitations, res judicata, or otherwise as of September 14, 1982.

(2) The amendments made to this section by Chapter 962 of the Statutes of 1984 shall be applied with respect to taxable years that

have not been closed by a statute of limitations, res judicata, or otherwise as of January 1, 1985.

(3) The amendments made to this section by Chapter 454 of the Statutes of 2011 shall be applied with respect to taxable years that have not been closed by a statute of limitations, res judicata, or otherwise as of the effective date of that act.

SEC. 174. Section 30459.15 of the Revenue and Taxation Code, as amended by Section 575 of Chapter 15 of the Statutes of 2011, is amended to read:

30459.15. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 13 (commencing with Section 30001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by the following:

(1) A business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) A taxpayer that has purchased untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(d) Offers in compromise shall not be considered under the following conditions:

(1) The taxpayer has been convicted of felony tax evasion under this part during the liability period.

(2) The taxpayer has filed a statement under paragraph (3) of subdivision (e) and continues to purchase untaxed cigarettes or tobacco products from out-of-state vendors for the taxpayer's own use or consumption.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(3) For liabilities generated in the manner described in paragraph (2) of subdivision (c), the taxpayer shall file with the board a statement, under penalty of perjury, that he or she will no longer purchase untaxed cigarettes or tobacco products from out-of-state vendors for his or her own use or consumption.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event

an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 30455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating

to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

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

SEC. 175. Section 50156.18 of the Revenue and Taxation Code, as amended by Section 591 of Chapter 15 of the Statutes of 2011, is amended to read:

50156.18. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability in which the reduction of the fee is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in the fee in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of the fee is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 26 (commencing with Section 50101), or related interest, additions to the fee, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(g) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable feepayer shall not relieve the other feepayers from paying the entire liability.

However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of the fee or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the feepayer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Chapter 8 (commencing with Section 50159). No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty

thousand dollars ($50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(k) For purposes of this section, "person" means the feepayer, any member of the feepayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(*l*) This section shall become operative on January 1, 2013.

SEC. 176. The heading of Article 9 (commencing with Section 6850) of Chapter 6 of Part 1 of Division 2 of the Revenue and Taxation Code is amended to read:

Article 9. Collection of Tax Debts Due to the Internal Revenue Service or Other States

SEC. 177. Section 1962.4 of the Streets and Highways Code is amended to read:

1962.4. If the County of Riverside or any city in the county adopts a NEV transportation plan for the plan area pursuant to Section 1962.2, it shall do all of the following:

(a) Establish minimum general design criteria for the development, planning, and construction of separated NEV lanes, including, but not limited to, the design speed of the facility, the space requirements of the NEV, and roadway design criteria, if the plan envisions separated NEV lanes.

(b) In cooperation with the department, establish uniform specifications and symbols for signs, markers, and traffic control devices to control NEV traffic; to warn of dangerous conditions, obstacles, or hazards; to designate the right-of-way as between NEVs, other vehicles, and bicycles, as may be applicable; to state the nature and destination of the NEV lane; and to warn

pedestrians, bicyclists, and motorists of the presence of NEV traffic.

(c) Submit the transportation plan to the director for approval following a review and recommendation by the California Traffic Control Devices Committee.

SEC. 178. Section 679 of the Unemployment Insurance Code is amended to read:

679. (a) Notwithstanding Sections 606.5 and 678, for the purposes of this code, "employer" means any employing unit that is a motion picture payroll services company that pays and controls the payment of wages of a motion picture production worker for services either to a motion picture production company or to an allied motion picture services company, and files a timely statement of its intent to be the employer of motion picture production workers pursuant to subdivision (b).

(b) (1) Any employing unit meeting the requirements of a motion picture payroll services company that intends to be treated as an employer of motion picture production workers pursuant to subdivision (a) shall file a statement with the department that declares its intent to be the employer of motion picture production workers, pursuant to this section, within 15 days after first paying wages to the workers. The statement shall include identification of each affiliated entity.

(2) Any employing unit operating as a motion picture payroll services company as of January 1, 2007, that intends to be treated as an employer of motion picture production workers pursuant to this section, shall file a statement with the department that declares its intent to be the employer of motion picture production workers, pursuant to this section, by January 15, 2007. The statement shall include identification of each affiliated entity.

(3) Any motion picture payroll company that quits business shall:

(A) Within 10 days of quitting business:

(i) File with the director a final return and report of wages of its workers, as required by Section 1116.

(ii) File all statements required by this subdivision.

(B) Forty-five days in advance of quitting business, notify each motion picture production company and allied motion picture services company, with respect to which they have been treated

as the employer of the motion picture production workers, of its intent to quit business.

(4) The director may prevent a motion picture payroll services company that fails to file a timely statement from being treated as an employer of motion picture production workers, for a period not to exceed the period for which the statement is required.

(5) Any statement filed by a motion picture payroll services company pursuant to this subdivision shall be applied to each affiliated entity of the motion picture payroll services company in existence at the time the statement is filed.

(c) For each rating period beginning on or after January 1, 2007, in which an employer operating as a motion picture payroll services company obtains or attempts to obtain a more favorable rate of contributions under this section in a manner that is due to deliberate ignorance, reckless disregard, fraud, intent to evade, misrepresentation, or willful nondisclosure, the director shall assign the maximum contribution rate plus 2 percent for each applicable rating period, the current rating period, and the subsequent rating period. Contributions paid in excess of the maximum rate under this section shall not be credited to the employing unit's reserve account.

(d) (1) On and after January 1, 2007, whenever a motion picture payroll services company creates or acquires a motion picture payroll services company, or acquires substantially all of the assets of a motion picture payroll services company, the created or acquired motion picture payroll services company shall:

(A) Constitute a separate employing unit, notwithstanding Sections 135.1 and 135.2.

(B) Have its reserve account and rate of contributions determined in accordance with subdivision (e).

(C) Notify the department of the entity being created or acquired and the nature of its affiliation to that entity.

(2) The department may promulgate regulations requiring a motion picture payroll services company, prior to the creation or acquisition of a motion picture payroll services company that will be an affiliated entity, to seek the approval of the department to apply this section to the created or acquired entity.

(e) When a motion picture payroll services company transfers all or part of its business or payroll to another motion picture payroll services company the reserve account attributable to the

transferor shall be transferred to the transferee motion picture payroll services company, and the transferee's rate of contribution shall be determined in accordance with Section 1052. The transferee shall notify the department within 15 days of the transfer of the business or payroll.

(f) For purposes of this section:

(1) "Affiliated entity" means any one or more motion picture payroll services company or companies that are united by factors of common ownership, management, or control as prescribed by Section 1061.

(2) "Allied motion picture services company" means any person engaged in an industry closely allied with, and whose work is integral to, a motion picture production company in the development, production, or postproduction of a motion picture, excluding the distribution of the completed motion picture and any activity occurring thereafter, and who hires from the same pool of craft and guild or union workers, actors, or extras as a motion picture production company.

(3) "Motion picture" means a motion picture of any type, including, but not limited to, a theatrical motion picture, a television production, a television commercial, or a music video, regardless of its theme or the technology used in its production or distribution.

(4) (A) "Motion picture payroll services company" means any employing unit that directly or through its affiliated entities meets all of the following criteria:

(i) Contractually provides the services of motion picture production workers to a motion picture production company or to an allied motion picture services company.

(ii) Is a signatory to a collective bargaining agreement for one or more of its clients.

(iii) Controls the payment of wages to the motion picture production workers and pays those wages from its own account or accounts.

(iv) Is contractually obligated to pay wages to the motion picture production workers without regard to payment or reimbursement by the motion picture production company or allied motion picture services company.

(v) At least 80 percent of the wages paid by the motion picture payroll services company each calendar year are paid to workers

associated between contracts with motion picture production companies and motion picture payroll services companies.

(B) If the director determines that any employing unit is operating as a motion picture payroll services company but is failing to comply with any of the provisions of subparagraph (A) of paragraph (4), the employing unit is subject to determination of the employer-employee relationship pursuant to this code. When the director's ruling becomes final, the director may preclude the employing unit from being classified as a motion picture payroll services company pursuant to this section for up to three years from the date of the determination.

(5) "Motion picture production company" means any employing unit engaged in the development, production, and postproduction of a motion picture, excluding the distribution of the completed motion picture and any activities occurring thereafter.

(6) "Motion picture production worker" means an individual who provides services to a motion picture production company or allied motion picture services company and who, with regard to those services, is reported under this part as an employee by the motion picture payroll services company. An individual who has been reported as an employee by the motion picture payroll services company, without regard to the individual's status as an employee or independent contractor, shall be the employee of the motion picture payroll services company for the purposes of this code throughout the contractual period with the motion picture payroll services company.

(7) "Wages" shall have the same meaning given the term in Article 2 (commencing with Section 926) of Chapter 4 of Part 1 of Division 1, and shall include residual payments.

(g) If the director determines that an entity does not meet any requirement of this section, the director shall give notice of its determination to that entity pursuant to Section 1206. The notice shall contain a statement of the facts and circumstances upon which the determination was made. The entity so noticed shall have the right to petition for review of the director's determination within 30 days of the notice, as provided in Section 1222.

(h) The director shall prescribe the form and manner of the statements and information required to be filed or reported by this section.

SEC. 179. Article 2 (commencing with Section 10521) of Chapter 4.5 of Part 1 of Division 3 of the Unemployment Insurance Code is repealed.

SEC. 180. Section 11713.3 of the Vehicle Code is amended to read:

11713.3. It is unlawful and a violation of this code for a manufacturer, manufacturer branch, distributor, or distributor branch licensed pursuant to this code to do, directly or indirectly through an affiliate, any of the following:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of a new vehicle sold or distributed by the manufacturer or distributor, a new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require, or attempt to prevent or require, by contract or otherwise, a change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, if the dealer at all times meets reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and if a change in capital structure does not cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators, if the franchise was granted to the dealer in reliance upon the personal qualifications of that person.

(d) (1) Except as provided in subdivision (t), to prevent or require, or attempt to prevent or require, by contract or otherwise, a dealer, or an officer, partner, or stockholder of a dealership, the sale or transfer of a part of the interest of any of them to another person. A dealer, officer, partner, or stockholder shall not, however, have the right to sell, transfer, or assign the franchise, or a right

thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.

(2) (A) For the transferring franchisee to fail, prior to the sale, transfer, or assignment of a franchisee or the sale, assignment, or transfer of all, or substantially all, of the assets of the franchised business or a controlling interest in the franchised business to another person, to notify the manufacturer or distributor of the franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:

(i) The proposed transferee's name and address.

(ii) A copy of all of the agreements relating to the sale, assignment, or transfer of the franchised business or its assets.

(iii) The proposed transferee's application for approval to become the successor franchisee. The application shall include forms and related information generally utilized by the manufacturer or distributor in reviewing prospective franchisees, if those forms are readily made available to existing franchisees. As soon as practicable after receipt of the proposed transferee's application, the manufacturer or distributor shall notify the franchisee and the proposed transferee of information needed to make the application complete.

(B) For the manufacturer or distributor, to fail, on or before 60 days after the receipt of all of the information required pursuant to subparagraph (A), or as extended by a written agreement between the manufacturer or distributor and the franchisee, to notify the franchisee of the approval or the disapproval of the sale, transfer, or assignment of the franchise. The notice shall be in writing and shall be personally served or sent by certified mail, return receipt requested, or by guaranteed overnight delivery service that provides verification of delivery and shall be directed to the franchisee. A proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of disapproval a statement setting forth the reasons for the disapproval.

(3) In an action in which the manufacturer's or distributor's withholding of consent under this subdivision or subdivision (e) is an issue, whether the withholding of consent was unreasonable

is a question of fact requiring consideration of all the existing circumstances.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall not be a transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of a claim or defense by the dealer.

(f) To obtain money, goods, services, or another benefit from a person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and that other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.

(g) (1) Except as provided in paragraph (3), to obtain from a dealer or enforce against a dealer an agreement, provision, release, assignment, novation, waiver, or estoppel that does any of the following:

(A) Modifies or disclaims a duty or obligation of a manufacturer, manufacturer branch, distributor, distributor branch, or representative, or a right or privilege of a dealer, pursuant to Chapter 4 (commencing with Section 11700) of Division 5 or Chapter 6 (commencing with Section 3000) of Division 2.

(B) Limits or constrains the right of a dealer to file, pursue, or submit evidence in connection with a protest before the board.

(C) Requires a dealer to terminate a franchise.

(D) Requires a controversy between a manufacturer, manufacturer branch, distributor, distributor branch, or representative and a dealer to be referred to a person for a binding determination. However, this subparagraph does not prohibit arbitration before an independent arbitrator, provided that whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of, or relating to, that contract, arbitration may be used to settle the controversy only if, after the controversy arises, all parties to the controversy consent in writing to use arbitration to settle the controversy. For the purpose of this subparagraph, the terms "motor vehicle" and "motor vehicle franchise contract" shall have the same meaning as defined in Section 1226 of Title 15 of the United States Code. If arbitration is elected to settle a dispute under a motor vehicle franchise

contract, the arbitrator shall provide the parties to the arbitration with a written explanation of the factual and legal basis for the award.

(2) An agreement, provision, release, assignment, novation, waiver, or estoppel prohibited by this subdivision shall be unenforceable and void.

(3) This subdivision does not do any of the following:

(A) Limit or restrict the terms upon which parties to a protest before the board, civil action, or other proceeding can settle or resolve, or stipulate to evidentiary or procedural matters during the course of, a protest, civil action, or other proceeding.

(B) Affect the enforceability of any stipulated order or other order entered by the board.

(C) Affect the enforceability of any provision in a contract if the provision is not prohibited under this subdivision or any other law.

(D) Affect the enforceability of a provision in any contract entered into on or before December 31, 2011.

(E) Prohibit a dealer from waiving its right to file a protest pursuant to Section 3065.1 if the waiver agreement is entered into after a franchisor incentive program claim has been disapproved by the franchisor and the waiver is voluntarily given as part of an agreement to settle that claim.

(F) Prohibit a voluntary agreement supported by valuable consideration, other than granting or renewing a franchise, that does both of the following:

(i) Provides that a dealer establish or maintain exclusive facilities, personnel, or display space or provides that a dealer make a material alteration, expansion, or addition to a dealership facility.

(ii) Contains no waiver or other provision prohibited by subparagraph (A), (B), (C), or (D) of paragraph (1).

(G) Prohibit an agreement separate from the franchise agreement that implements a dealer's election to terminate the franchise if the agreement is conditioned only on a specified time for termination or payment of consideration to the dealer.

(H) (i) Prohibit a voluntary waiver agreement, supported by valuable consideration, other than the consideration of renewing a franchise, to waive the right of a dealer to file a protest under Section 3062 for the proposed establishment or relocation of a

specific proposed dealership, if the waiver agreement provides all of the following:

(I) The approximate address at which the proposed dealership will be located.

(II) The planning potential used to establish the proposed dealership's facility, personnel, and capital requirements.

(III) An approximation of projected vehicle and parts sales, and number of vehicles to be serviced at the proposed dealership.

(IV) Whether the franchisor or affiliate will hold an ownership interest in the proposed dealership or real property of the proposed dealership, and the approximate percentage of any franchisor or affiliate ownership interest in the proposed dealership.

(V) The line-makes to be operated at the proposed dealership.

(VI) If known at the time the waiver agreement is executed, the identity of the dealer who will operate the proposed dealership.

(VII) The date the waiver agreement is to expire, which may not be more than 30 months after the date of execution of the waiver agreement.

(ii) Notwithstanding the provisions of a waiver agreement entered into pursuant to the provisions of this subparagraph, a dealer may file a protest under Section 3062 if any of the information provided pursuant to clause (i) has become materially inaccurate since the waiver agreement was executed. Any determination of the enforceability of a waiver agreement shall be determined by the board and the franchisor shall have the burden of proof.

(h) To increase prices of motor vehicles that the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of the order. In the event of manufacturer price reductions, the amount of the reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions apply to all vehicles in the dealer's inventory that were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. This subdivision does not apply to price changes caused by either of the following:

(1) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law.

(2) Revaluation of the United States dollar in the case of a foreign-make vehicle.

(i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, a payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles.

(j) To deny the widow, widower, or heirs designated by a deceased owner of a dealership the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

(k) To offer refunds or other types of inducements to a person for the purchase of new motor vehicles of a certain line-make to be sold to the state or a political subdivision of the state without making the same offer to all other dealers in the same line-make within the relevant market area.

(*l*) To modify, replace, enter into, relocate, terminate, or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.

(m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny a dealer the right of free association with another dealer for a lawful purpose.

(o) (1) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area.

(2) A manufacturer, branch, or distributor or an entity that controls or is controlled by, a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that satisfies all of the following requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3) (A) A manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

(B) A manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted to its franchisees to make warranty adjustments with retail customers.

(q) To sell vehicles to a person not licensed pursuant to this chapter for resale.

(r) To fail to affix an identification number to a park trailer, as described in Section 18009.3 of the Health and Safety Code, that is manufactured on or after January 1, 1987, and that does not clearly identify the unit as a park trailer to the department. The configuration of the identification number shall be approved by the department.

(s) To dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This subdivision shall not prohibit the disallowance of that rebate or incentive if the purchaser or dealer is ineligible to receive the rebate or incentive pursuant to any other term or condition of a rebate or incentive program.

(t) To exercise a right of first refusal or other right requiring a franchisee or an owner of the franchise to sell, transfer, or assign to the franchisor, or to a nominee of the franchisor, all or a material part of the franchised business or of the assets of the franchised business unless all of the following requirements are met:

(1) The franchise authorizes the franchisor to exercise a right of first refusal to acquire the franchised business or assets of the franchised business in the event of a proposed sale, transfer, or assignment.

(2) The franchisor gives written notice of its exercise of the right of first refusal no later than 45 days after the franchisor receives all of the information required pursuant to subparagraph (A) of paragraph (2) of subdivision (d).

(3) The sale, transfer, or assignment being proposed relates to not less than all or substantially all of the assets of the franchised business or to a controlling interest in the franchised business.

(4) The proposed transferee is neither a family member of an owner of the franchised business, nor a managerial employee of the franchisee owning 15 percent or more of the franchised business, nor a corporation, partnership, or other legal entity owned by the existing owners of the franchised business. For purposes of this paragraph, a “family member” means the spouse of an owner of the franchised business, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members. This paragraph does not limit the rights of the franchisor to disapprove a proposed transferee as provided in subdivision (d).

(5) Upon the franchisor's exercise of the right of first refusal, the consideration paid by the franchisor to the franchisee and owners of the franchised business shall equal or exceed all consideration that each of them were to have received under the terms of, or in connection with, the proposed sale, assignment, or transfer, and the franchisor shall comply with all the terms and conditions of the agreement or agreements to sell, transfer, or assign the franchised business.

(6) The franchisor shall reimburse the proposed transferee for expenses paid or incurred by the proposed transferee in evaluating, investigating, and negotiating the proposed transfer to the extent those expenses do not exceed the usual, customary, and reasonable fees charged for similar work done in the area in which the franchised business is located. These expenses include, but are not limited to, legal and accounting expenses, and expenses incurred for title reports and environmental or other investigations of real property on which the franchisee's operations are conducted. The proposed transferee shall provide the franchisor a written itemization of those expenses, and a copy of all nonprivileged reports and studies for which expenses were incurred, if any, within 30 days of the proposed transferee's receipt of a written request from the franchisor for that accounting. The franchisor shall make payment within 30 days of exercising the right of first refusal.

(u) (1) To unfairly discriminate in favor of a dealership owned or controlled, in whole or in part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Unfair discrimination includes, but is not limited to, the following:

(A) The furnishing to a franchisee or dealer that is owned or controlled, in whole or in part, by a manufacturer, branch, or distributor of any of the following:

(i) A vehicle that is not made available to each franchisee pursuant to a reasonable allocation formula that is applied uniformly, and a part or accessory that is not made available to all franchisees on an equal basis when there is no reasonable allocation formula that is applied uniformly.

(ii) A vehicle, part, or accessory that is not made available to each franchisee on comparable delivery terms, including the time of delivery after the placement of an order. Differences in delivery terms due to geographic distances or other factors beyond the

control of the manufacturer, branch, or distributor shall not constitute unfair competition.

(iii) Information obtained from a franchisee by the manufacturer, branch, or distributor concerning the business affairs or operations of a franchisee in which the manufacturer, branch, or distributor does not have an ownership interest. The information includes, but is not limited to, information contained in financial statements and operating reports, the name, address, or other personal information or buying, leasing, or service behavior of a dealer customer, and other information that, if provided to a franchisee or dealer owned or controlled by a manufacturer or distributor, would give that franchisee or dealer a competitive advantage. This clause does not apply if the information is provided pursuant to a subpoena or court order, or to aggregated information made available to all franchisees.

(iv) Sales or service incentives, discounts, or promotional programs that are not made available to all California franchises of the same line-make on an equal basis.

(B) Referring a prospective purchaser or lessee to a dealer in which a manufacturer, branch, or distributor has an ownership interest, unless the prospective purchaser or lessee resides in the area of responsibility assigned to that dealer or the prospective purchaser or lessee requests to be referred to that dealer.

(2) This subdivision does not prohibit a franchisor from granting a franchise to prospective franchisees or assisting those franchisees during the course of the franchise relationship as part of a program or programs to make franchises available to persons lacking capital, training, business experience, or other qualifications ordinarily required of prospective franchisees.

(v) (1) To access, modify, or extract information from a confidential dealer computer record, as defined in Section 11713.25, without obtaining the prior written consent of the dealer and without maintaining administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the information.

(2) Paragraph (1) does not limit a duty that a dealer may have to safeguard the security and privacy of records maintained by the dealer.

(w) (1) To use electronic, contractual, or other means to prevent or interfere with any of the following:

(A) The lawful efforts of a dealer to comply with federal and state data security and privacy laws.

(B) The ability of a dealer to do either of the following:

(i) Ensure that specific data accessed from the dealer's computer system is within the scope of consent specified in subdivision (v).

(ii) Monitor specific data accessed from or written to the dealer's computer system.

(2) Paragraph (1) does not limit a duty that a dealer may have to safeguard the security and privacy of records maintained by the dealer.

(x) (1) To unfairly discriminate against a franchisee selling a service contract, debt cancellation agreement, maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch or affiliate. For purposes of this subdivision, unfair discrimination includes, but is not limited to, any of the following:

(A) Express or implied statements that the dealer is under an obligation to exclusively sell or offer to sell service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch or affiliate.

(B) Express or implied statements that selling or offering to sell service contracts, debt cancellation agreements, maintenance agreements, or similar products not approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch or affiliate, or the failure to sell or offer to sell service contracts, debt cancellation agreements, maintenance agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch or affiliate will have any negative consequences for the dealer.

(C) Measuring a dealer's performance under a franchise agreement based upon the sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch or affiliate.

(D) Requiring a dealer to actively promote the sale of service contracts, debt cancellation agreements, or similar products

approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch or affiliate.

(E) Conditioning access to vehicles or parts, or vehicle sales or service incentives upon the sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch or affiliate.

(2) Unfair discrimination does not include, and nothing shall prohibit a manufacturer from, offering an incentive program to vehicle dealers who voluntarily sell or offer to sell service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch or affiliate, if the program does not provide vehicle sales or service incentives.

(3) This subdivision does not prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from requiring a franchisee that sells a used vehicle as "certified" under a certified used vehicle program established by the manufacturer, manufacturer branch, distributor, or distributor branch to provide a service contract approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch.

(4) Unfair discrimination does not include, and nothing shall prohibit a franchisor from requiring a franchisee to provide, the following notice prior to the sale of the service contract if the service contract is not provided or backed by the franchisor and the vehicle is of the franchised line-make:

"Service Contract Disclosure
The service contract you are purchasing is not provided or backed by the manufacturer of the vehicle you are purchasing. The manufacturer of the vehicle is not responsible for claims or repairs under this service contract.

_____
Signature of Purchaser"

(y) As used in this section, "area of responsibility" is a geographic area specified in a franchise that is used by the franchisor for the purpose of evaluating the franchisee's performance of its sales and service obligations.

SEC. 181. Section 12804.11 of the Vehicle Code is amended to read:

12804.11. (a) To operate firefighting equipment, a driver, including a tiller operator, is required to do either of the following:

(1) Obtain and maintain a firefighter endorsement issued by the department and obtain and maintain a class C license as described in Section 12804.9, a restricted class A license as described in Section 12804.12, or a noncommercial class B license as described in Section 12804.10.

(2) Obtain and maintain a class A or B license as described in Section 12804.9 and, as appropriate, for the size and configuration of the firefighting equipment operated.

(b) To qualify for a firefighter endorsement the driver shall do all of the following:

(1) (A) Provide to the department proof of current employment as a firefighter or registration as a volunteer firefighter with a fire department and evidence of fire equipment operation training by providing a letter, or other indication, from the chief of the fire department, or his or her designee.

(B) For purposes of this section, evidence of fire equipment operation training means the applicant has successfully completed Fire Apparatus Driver/Operator 1A taught by an instructor registered with the Office of the State Fire Marshal or fire department driver training that meets all of the following requirements:

(i) Meets or exceeds the standards outlined in NFPA 1002, Chapter 4 (2008 version) or the Fire Apparatus Driver/Operator 1A course adopted by the Office of the State Fire Marshal.

(ii) Prepares the applicant to safely operate the department's fire equipment that the applicant will be authorized to operate.

(iii) Includes a classroom (cognitive) portion of at least 16 hours.

(iv) Includes a manipulative portion of at least 14 hours, which includes directly supervised behind-the-wheel driver training.

(C) Driver training shall be conducted by a person who is registered with the Office of the State Fire Marshal to instruct Fire Apparatus Driver/Operator 1A or a person who meets all of the following criteria:

(i) Possesses a minimum of five years of fire service experience as an emergency vehicle operator, three of which must be at the rank of engineer or higher.

(ii) Possesses a valid California class A or B license or a class A or B license restricted to the operation of firefighting equipment.

(iii) Is certified as a qualified training instructor or training officer by the State of California, the federal government, or a county training officers' association.

(2) Pass the written firefighter examination developed by the department with the cooperation of the Office of the State Fire Marshal.

(3) Submit a report of medical examination on a form approved by the department. The report shall be dated within four years preceding the application date, except as required by paragraph (2) of subdivision (a) of Section 12804.9. Holders of a restricted firefighter's license as of January 1, 2011, are not subject to the requirement for a medical exam until he or she renews his or her license.

(c) There shall be no additional charge for adding a firefighter endorsement to an original license or when renewing a license. To add a firefighter endorsement to an existing license when not renewing the license, the applicant shall pay the fee for a duplicate license pursuant to Section 14901.

(d) (1) A driver of firefighting equipment is subject to the requirements of subdivision (a) if both of the following conditions exist:

(A) The equipment is operated by a person employed as a firefighter by a federal or state agency, by a regularly organized fire department of a city, county, city and county, or district, or by a tribal fire department or registered as a volunteer member of a regularly organized fire department having official recognition of the city, county, city and county, or district in which the department is located, or of a tribal fire department.

(B) The motor vehicle is used to travel to and from the scene of any emergency situation, or to transport equipment used in the control of any emergency situation, and which is owned, leased, or rented by, or under the exclusive control of, a federal or state agency, a regularly organized fire department of a city, county, city and county, or district, a volunteer fire department having official recognition of the city, county, city and county, or district in which the department is located, or a tribal fire department.

(2) A driver of firefighting equipment is not required to obtain and maintain a firefighter endorsement pursuant to paragraph (1)

of subdivision (a) if the driver is operating the firefighting equipment for training purposes, during a nonemergency, while under the direct supervision of a fire department employee who is properly licensed to operate the equipment and is authorized by the fire department to provide training.

(e) For purposes of this section, a tiller operator is the driver of the rear free-axle portion of a ladder truck.

(f) For purposes of this section, "firefighting equipment" means a motor vehicle, that meets the definition of a class A or class B vehicle described in subdivision (b) of Section 12804.9, that is used to travel to and from the scene of an emergency situation, or to transport equipment used in the control of an emergency situation, and that is owned, leased, or rented by, or under the exclusive control of, a federal or state agency, a regularly organized fire department of a city, county, city and county, or district, or a volunteer fire department having official recognition of the city, county, city and county, or district in which the department is located.

(g) Notwithstanding paragraph (1) of subdivision (a), a regularly organized fire department, having official recognition of the city, county, city and county, or district in which the department is located, may require an employee or a volunteer of the fire department who is a driver or operator of firefighting equipment to hold a class A or B license.

(h) This section applies to a person hired by a fire department, or to a person renewing a driver's license, on or after January 1, 2011.

SEC. 182. Section 23575 of the Vehicle Code is amended to read:

23575. (a) (1) In addition to any other law, the court may require that a person convicted of a first offense violation of Section 23152 or 23153 install a certified ignition interlock device on any vehicle that the person owns or operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device. The court shall give heightened consideration to applying this sanction to a first offense violator with 0.15 percent or more, by weight, of alcohol in his or her blood at arrest, or with two or more prior moving traffic violations, or to persons who refused the chemical tests at arrest. If the court orders the ignition interlock

device restriction, the term shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(2) The court shall require a person convicted of a violation of Section 14601.2 to install an ignition interlock device on any vehicle that the person owns or operates and prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(b) The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816 the requirement and term for the use of a certified ignition interlock device. The records of the department shall reflect mandatory use of the device for the term ordered by the court.

(c) The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(d) A person whose driving privilege is restricted by the court pursuant to this section shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device. The installer shall notify the court if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with a requirement for the maintenance or calibration of the ignition interlock device. There is no obligation for the installer to notify the court if the person has complied with all of the requirements of this article.

(e) The court shall monitor the installation and maintenance of an ignition interlock device restriction ordered pursuant to subdivision (a) or (*l*). If a person fails to comply with the court order, the court shall give notice of the fact to the department pursuant to Section 40509.1.

(f) (1) If a person is convicted of a violation of Section 23152 or 23153 and the offense occurred within 10 years of one or more separate violations of Section 23152 or 23153 that resulted in a conviction, or if a person is convicted of a violation of Section 23103, as specified in Section 23103.5, and is suspended for one year under Section 13353.3, the person may apply to the Department of Motor Vehicles for a restricted driver's license pursuant to Section 13352 or 13353.3 that prohibits the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 13386. The restriction shall remain in effect for at least the remaining period of the original suspension or revocation and until all reinstatement requirements in Section 13352 or 13353.4 are met.

(2) Pursuant to subdivision (g), the Department of Motor Vehicles shall immediately terminate the restriction issued pursuant to Section 13352 or 13353.3 and shall immediately suspend or revoke the privilege to operate a motor vehicle of a person who attempts to remove, bypass, or tamper with the device, who has the device removed prior to the termination date of the restriction, or who fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device ordered pursuant to Section 13352 or 13353.3. The privilege shall remain suspended or revoked for the remaining period of the originating suspension or revocation and until all reinstatement requirements in Section 13352 or 13353.4 are met.

(g) A person whose driving privilege is restricted by the Department of Motor Vehicles pursuant to Section 13352 or 13353.3 shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the Department of Motor Vehicles if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any

requirement for the maintenance or calibration of the ignition interlock device. There is no obligation on the part of the installer to notify the department or the court if the person has complied with all of the requirements of this section.

(h) Nothing in this section permits a person to drive without a valid driver's license.

(i) The Department of Motor Vehicles shall include information along with the order of suspension or revocation for repeat offenders informing them that after a specified period of suspension or revocation has been completed, the person may either install an ignition interlock device on any vehicle that the person owns or operates or remain with a suspended or revoked driver's license.

(j) Pursuant to this section, an out-of-state resident who otherwise would qualify for an ignition interlock device restricted license in California shall be prohibited from operating a motor vehicle in California unless that vehicle is equipped with a functioning ignition interlock device. An ignition interlock device is not required to be installed on any vehicle owned by the defendant that is not driven in California.

(k) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, then that person shall only have the suspension option.

(*l*) This section does not restrict a court from requiring installation of an ignition interlock device and prohibiting operation of a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device for a person to whom subdivision (a) or (b) does not apply. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(m) For the purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. Any person subject to an ignition interlock device restriction shall not operate a motorcycle for the duration of the ignition interlock device restriction period.

(n) For the purposes of this section, "owned" means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, "operates" includes operating a vehicle that is not owned by the person subject to this section.

(o) For the purposes of this section, "bypass" includes, but is not limited to, either of the following:

(1) A combination of failing or not taking the ignition interlock device rolling retest three consecutive times.

(2) An incidence of failing or not taking the ignition interlock device rolling retest, when not followed by an incidence of passing the ignition interlock rolling retest prior to turning off the vehicle's engine.

SEC. 183. Section 40240 of the Vehicle Code is amended to read:

40240. (a) The City and County of San Francisco may install automated forward facing parking control devices on city-owned public transit vehicles, as defined by Section 99211 of the Public Utilities Code, for the purpose of video imaging of parking violations occurring in transit-only traffic lanes. Citations shall be issued only for violations captured during the posted hours of operation for a transit-only traffic lane. The devices shall be angled and focused so as to capture video images of parking violations and not unnecessarily capture identifying images of other drivers, vehicles, and pedestrians. The devices shall record the date and time of the violation at the same time as the video images are captured.

(b) Prior to issuing notices of parking violations pursuant to subdivision (a) of Section 40241, the City and County of San Francisco shall commence a program to issue only warning notices for 30 days. The City and County of San Francisco shall also make a public announcement of the program at least 30 days prior to commencement of issuing notices of parking violations.

(c) A designated employee of the City and County of San Francisco, who is qualified by the city and county to issue parking citations, shall review video image recordings for the purpose of determining whether a parking violation occurred in a transit-only traffic lane. A violation of a statute, regulation, or ordinance governing vehicle parking under this code, under a federal or state statute or regulation, or under an ordinance enacted by the City and County of San Francisco occurring in a transit-only traffic

lane observed by the designated employee in the recordings is subject to a civil penalty.

(d) The registered owner shall be permitted to review the video image evidence of the alleged violation during normal business hours at no cost.

(e) (1) Except as it may be included in court records described in Section 68152 of the Government Code, or as provided in paragraph (2), the video image evidence may be retained for up to six months from the date the information was first obtained, or 60 days after final disposition of the citation, whichever date is later, after which time the information shall be destroyed.

(2) Notwithstanding Section 26202.6 of the Government Code, video image evidence from forward facing automated enforcement devices that does not contain evidence of a parking violation occurring in a transit-only traffic lane shall be destroyed within 15 days after the information was first obtained.

(f) Notwithstanding Section 6253 of the Government Code, or any other provision of law, the video image records are confidential. Public agencies shall use and allow access to these records only for the purposes authorized by this article.

(g) For purposes of this article, "local agency" means the City and County of San Francisco.

(h) For purposes of this article, "transit-only traffic lane" means any designated transit-only lane on which use is restricted to mass transit vehicles, or other designated vehicles including taxis and vanpools, during posted times.

SEC. 184. Section 1486 of the Water Code is amended to read:

1486. (a) The Sacramento Regional County Sanitation District, and any successor thereto, with respect to treated wastewater produced by the sanitation district that meets the requirements of the Central Valley Regional Water Quality Control Board, as may be amended or modified, and that is discharged into the Sacramento River, may file an application for a permit to appropriate an amount of water up to the amount of treated wastewater that is discharged into the Sacramento River, less diminution by seepage, evaporation, transportation, or other natural causes between the point of discharge from its wastewater treatment plant and the point of diversion out of the Sacramento River or the Sacramento-San Joaquin Delta.

(b) Upon application for a permit to appropriate water pursuant to subdivision (a), the board may grant the permit subject to the terms and conditions as in the board's judgment are necessary for the protection of the rights of any legal user of the water.

(c) Prior to the board granting a permit under subdivision (b), the board shall comply with the provisions of this part, and other applicable law, and may impose terms and conditions authorized thereunder.

(d) Water appropriated in accordance with this section may be sold or utilized for any beneficial purpose.

SEC. 185. Section 10753 of the Water Code is amended to read:

10753. (a) Any local agency, whose service area includes a groundwater basin, or a portion of a groundwater basin, that is not subject to groundwater management pursuant to other provisions of law or a court order, judgment, or decree, may, by ordinance, or by resolution if the local agency is not authorized to act by ordinance, adopt and implement a groundwater management plan pursuant to this part within all or a portion of its service area.

(b) Notwithstanding subdivision (a), a local public agency, other than an agency defined in subdivision (g) of Section 10752, that provides flood control, groundwater management, or groundwater replenishment, or a local agency formed pursuant to this code for the principal purpose of providing water service that has not yet provided that service, may exercise the authority of this part within a groundwater basin that is located within its boundaries within areas that are either of the following:

(1) Not served by a local agency.

(2) Served by a local agency whose governing body, by a majority vote, declines to exercise the authority of this part and enters into an agreement with the local public agency pursuant to Section 10750.7 or 10750.8.

(c) Except as provided in subdivision (b), this chapter does not authorize a local agency to manage groundwater planning within the service area of another local agency.

(d) Except as otherwise provided in this part, the process for developing and adopting a revised groundwater management plan shall be the same as the process for developing and adopting a new groundwater management plan.

SEC. 186. Section 74209 of the Water Code is amended to read:

74209. (a) A district with a board consisting of seven directors may reduce the number of directors to five pursuant to this section. A reduction in the number of directors shall not be made within 180 days preceding the election of a director.

(b) In order to reduce the number of directors pursuant to this section, the board shall adopt, by a recorded vote of two-thirds of the total membership of the board, a resolution proposing to reduce the number of directors from seven to five. The resolution shall contain a map and description of the boundaries for the five divisions proposed to be established.

(c) The secretary of the district shall set a date for a public hearing on the proposal to reduce the number of directors, which shall be not less than 30 days and not more than 60 days after the date on which the board adopted the resolution described in subdivision (b). The secretary shall give notice of the hearing, which shall include a description of the proposal and shall contain a map and general description of the proposed boundaries of the five divisions. The secretary shall give notice of the hearing by publishing a notice pursuant to Section 6063 of the Government Code in at least one newspaper of general circulation within the jurisdiction of the district at least 10 days before the hearing. In addition, the secretary shall mail the notice to a person who has filed a written request for notice with the secretary at least 10 days before the hearing.

(d) At the hearing, the board shall receive and consider any written or oral comments regarding the proposed reduction in the number of directors. After receiving and considering those comments, the board, by a recorded vote of two-thirds of the total membership of the board, shall do either of the following:

(1) Disapprove the proposal.

(2) Adopt a resolution that orders the reduction in the number of members of the board.

(e) The adoption of a resolution that orders a reduction in the number of members of the board pursuant to this section is a legislative act that is subject to referendum pursuant to Article 2 (commencing with Section 9340) of Chapter 4 of Division 9 of the Elections Code.

(f) A reduction in the number of directors and a change in division boundaries pursuant to this section shall not affect the term of office of any director. A director of a division for which boundaries have been changed shall continue to be the director of the division bearing the number of his or her division until the office becomes vacant by means of term expiration or otherwise, whether or not the director is a resident within the boundaries of the division as changed. The successor to the office of a director of a division for which boundaries have been changed shall be a resident and voter of that division.

(g) This section does not apply to districts within the County of Ventura, which are subject to the provisions of Chapter 4 (commencing with Section 74450) of Part 4.

SEC. 187. Section 319 of the Welfare and Institutions Code is amended to read:

319. (a) At the initial petition hearing, the court shall examine the child's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the child, as provided in Section 350.

(b) The social worker shall report to the court on the reasons why the child has been removed from the parent's physical custody, the need, if any, for continued detention, the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents or guardians, and whether there are any relatives who are able and willing to take temporary physical custody of the child. The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300, the court finds that continuance in the parent's or guardian's home is contrary to the child's welfare, and any of the following circumstances exist:

(1) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parent's or guardian's physical custody.

(2) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(3) The child has left a placement in which he or she was placed by the juvenile court.

(4) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

(c) If the matter is continued pursuant to Section 322 or for any other reason, the court shall find that the continuance of the child in the parent's or guardian's home is contrary to the child's welfare at the initial petition hearing or order the release of the child from custody.

(d) (1) The court shall also make a determination on the record, referencing the social worker's report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) and Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention.

(2) If the child can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the child with his or her parent or guardian and order that the services shall be provided. If the child cannot be returned to the physical custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child, and has been assessed pursuant to paragraph (1) of subdivision (d) of Section 309.

(e) If a court orders a child detained, the court shall state the facts on which the decision is based, specify why the initial removal

was necessary, reference the social worker's report or other evidence relied upon to make its determination whether continuance in the home of the parent or legal guardian is contrary to the child's welfare, order temporary placement and care of the child to be vested with the county child welfare department pending the hearing held pursuant to Section 355 or further order of the court, and order services to be provided as soon as possible to reunify the child and his or her family if appropriate.

(f) (1) If the child is not released from custody, the court may order that the child shall be placed in the assessed home of a relative, in an emergency shelter or other suitable licensed place, in a place exempt from licensure designated by the juvenile court, or in the assessed home of a nonrelative extended family member as defined in Section 362.7 for a period not to exceed 15 judicial days.

(2) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or sibling of the child.

(3) The court shall consider the recommendations of the social worker based on the assessment pursuant to paragraph (1) of subdivision (d) of Section 309 of the relative's home, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The court shall order the parent to disclose to the social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

(g) (1) At the initial hearing upon the petition filed in accordance with subdivision (c) of Rule 5.520 of the California Rules of Court or anytime thereafter up until the time that the minor is adjudged a dependent child of the court or a finding is made dismissing the petition, the court may temporarily limit the right of the parent or guardian to make educational or

developmental services decisions for the child and temporarily appoint a responsible adult to make educational or developmental services decisions for the child if all of the following conditions are found:

(A) The parent or guardian is unavailable, unable, or unwilling to exercise educational or developmental services rights for the child.

(B) The county placing agency has made diligent efforts to locate and secure the participation of the parent or guardian in educational or developmental services decisionmaking.

(C) The child's educational and developmental services needs cannot be met without the temporary appointment of a responsible adult.

(2) If the court cannot identify a responsible adult to make educational decisions for the child and the appointment of a surrogate parent, as defined in subdivision (a) of Section 56050 of the Education Code, is not warranted, the court may, with the input of any interested person, make educational decisions for the child. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision must be consistent with the child's individual program plan and pursuant to the provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)). If the court cannot identify a responsible adult to make developmental services decisions for the child, the court may, with the input of any interested person, make developmental services decisions for the child. If the court makes educational or developmental services decisions for the child, the court shall also issue appropriate orders to ensure that every effort is made to identify a responsible adult to make future educational or developmental services decisions for the child.

(3) Any temporary appointment of a responsible adult and temporary limitation on the right of the parent or guardian to make educational or developmental services decisions for the child shall be specifically addressed in the court order. Any order made under this section shall expire at the conclusion of the hearing held pursuant to Section 361 or upon dismissal of the petition. Upon the entering of disposition orders, any additional needed limitation on the parent's or guardian's educational or developmental services rights shall be addressed pursuant to Section 361.

(4) If the court appoints a developmental services decisionmaker pursuant to this section, he or she shall have the authority to access the child's information and records pursuant to subdivision (u) of Section 4514 and subdivision (y) of Section 5328, and to act on the child's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700), and as set forth in the court order.

SEC. 188. Section 366.21 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 59 of the Statutes of 2011, is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10

calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, the facility or agency shall file with the court a report, or a Judicial Council Caregiver Information Form (JV-290), containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49,

whichever occurs earlier, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, provided the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child.

Regardless of whether the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section

361.5, the court has ordered that reunification services shall not be provided.

If the child was under three years of age on the date of the initial removal, or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permit a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence

that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. The court shall take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration or institutionalization. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the

permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Regardless of whether the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state placement options. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26

be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement.

If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests. When the court orders a termination of reunification services to the parent or legal guardian, it shall also order that the child's caregiver receive the child's birth certificate in accordance with Sections 16010.4 and 16010.5. Additionally, when the court orders a termination of reunification services to the parent or legal guardian, it shall order, when appropriate, that a child who is 16 years of age or older receive his or her birth certificate.

(i) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents or legal guardians.

(B) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including the prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

(E) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, the motivation for seeking adoption or guardianship, a statement from the child concerning placement and the adoption or guardianship, and whether the child, if over 12 years of age, has been consulted about the proposed relative guardianship arrangements, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange within the state or out of the state.

(G) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(H) In the case of an Indian child, in addition to subparagraphs (A) to (G), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a tribal customary adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

(i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.

(ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(m) The implementation and operation of the amendments to subdivisions (c) and (g) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

(n) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 189. Section 366.21 of the Welfare and Institutions Code, as amended by Section 4 of Chapter 59 of the Statutes of 2011, is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified

foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report, or a Judicial Council Caregiver Information Form (JV-290), containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49, whichever occurs earlier, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker

shall have the burden of establishing that detriment. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, provided the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child.

Regardless of whether the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under three years of age on the date of the initial removal, or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive

progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permit a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. The court shall take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration or institutionalization. If the court finds by clear and convincing evidence that the parent has been convicted of a felony

indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images

to obtain criminal history information as part of the case plan. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Regardless of whether the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state placement options. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided

or offered to the parents or legal guardians. On or after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement.

If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests. When the court orders a termination of reunification services to the parent or legal guardian, it shall also order that the child's caregiver receive the child's birth certificate in accordance with Sections 16010.4 and 16010.5. Additionally, when the court orders a termination of reunification services to the parent or legal guardian, it shall order, when appropriate, that a child who is 16 years of age or older receive his or her birth certificate.

(i) (1) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents or legal guardians.

(B) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative

of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

(E) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, the motivation for seeking adoption or guardianship, a statement from the child concerning placement and the adoption or guardianship, and whether the child, if over 12 years of age, has been consulted about the proposed relative guardianship arrangements, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange within the state or out of the state.

(G) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth

degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(m) The implementation and operation of the amendments to subdivisions (c) and (g) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

(n) This section shall become operative on January 1, 2014.

SEC. 190. Section 391 of the Welfare and Institutions Code is amended to read:

391. (a) The dependency court shall not terminate jurisdiction over a nonminor unless a hearing is conducted pursuant to this section.

(b) At any hearing for a nonminor at which the court is considering termination of the jurisdiction of the juvenile court, the county welfare department shall do all of the following:

(1) Ensure that the dependent nonminor is present in court, unless the nonminor does not wish to appear in court, and elects a telephonic appearance, or document reasonable efforts made by the county welfare department to locate the nonminor when the nonminor is not available.

(2) Submit a report describing whether it is in the nonminor's best interests to remain under the court's dependency jurisdiction, which includes a recommended transitional independent living case plan for the nonminor when the report describes continuing dependency jurisdiction as being in the nonminor's best interest.

(3) If the county welfare department recommends termination of the court's dependency jurisdiction, submit documentation of the reasonable efforts made by the department to provide the

nonminor with the assistance needed to meet or maintain eligibility as a nonminor dependent, as defined in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403.

(4) If the nonminor has indicated that he or she does not want dependency jurisdiction to continue, the report shall address the manner in which the nonminor was advised of his or her options, including the benefits of remaining in foster care, and of his or her right to reenter foster care and to file a petition pursuant to subdivision (e) of Section 388 to resume dependency jurisdiction prior to attaining 21 years of age.

(c) (1) The court shall continue dependency jurisdiction over a nonminor who meets the definition of a nonminor dependent as described in subdivision (v) of Section 11400 unless the court finds either of the following:

(A) That the nonminor does not wish to remain subject to dependency jurisdiction.

(B) That the nonminor is not participating in a reasonable and appropriate transitional independent living case plan.

(2) In making the findings pursuant to paragraph (1), the court must also find that the nonminor has been informed of his or her options including the benefits of remaining in foster care and the right to reenter foster care by filing a petition pursuant to subdivision (e) of Section 388 to resume dependency jurisdiction and by completing a voluntary reentry agreement pursuant to subdivision (z) of Section 11400, and has had an opportunity to confer with his or her counsel if counsel has been appointed pursuant to Section 317.

(d) (1) The court may terminate its jurisdiction over a nonminor if the court finds after reasonable and documented efforts the nonminor cannot be located.

(2) When terminating dependency jurisdiction the court shall maintain general jurisdiction over the nonminor to allow for the filing of a petition to resume dependency jurisdiction under subdivision (e) of Section 388 until the nonminor attains 21 years of age, although no review proceedings shall be required. A nonminor may petition the court pursuant to subdivision (e) of Section 388 to resume dependency jurisdiction at any time before attaining 21 years of age.

(e) The court shall not terminate dependency jurisdiction over a nonminor dependent who has attained 18 years of age until a

hearing is conducted pursuant to this section and the department has submitted a report verifying that the following information, documents, and services have been provided to the nonminor, or in the case of a nonminor who, after reasonable efforts by the county welfare department, cannot be located, verifying the efforts made to make the following available to the nonminor:

(1) Written information concerning the nonminor's dependency case, including any known information regarding the nonminor's Indian heritage or tribal connections, if applicable, his or her family history and placement history, any photographs of the nonminor or his or her family in the possession of the county welfare department, other than forensic photographs, the whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of the sibling, directions on how to access the documents the nonminor is entitled to inspect under Section 827, and the date on which the jurisdiction of the juvenile court would be terminated.

(2) The following documents:

(A) Social security card.

(B) Certified copy of his or her birth certificate.

(C) Health and education summary, as described in subdivision (a) of Section 16010.

(D) Driver's license, as described in Section 12500 of the Vehicle Code, or identification card, as described in Section 13000 of the Vehicle Code.

(E) A letter prepared by the county welfare department that includes the following information:

(i) The nonminor's name and date of birth.

(ii) The dates during which the nonminor was within the jurisdiction of the juvenile court.

(iii) A statement that the nonminor was a foster youth in compliance with state and federal financial aid documentation requirements.

(F) If applicable, the death certificate of the parent or parents.

(G) If applicable, proof of the nonminor's citizenship or legal residence.

(H) An advance healthcare directive form.

(I) The Judicial Council form that the nonminor would use to file a petition pursuant to subdivision (e) of Section 388 to resume dependency jurisdiction.

(J) The written 90-day transition plan prepared pursuant to Section 16501.1.

(3) Assistance in completing an application for Medi-Cal or assistance in obtaining other health insurance.

(4) Referrals to transitional housing, if available, or assistance in securing other housing.

(5) Assistance in obtaining employment or other financial support.

(6) Assistance in applying for admission to college or to a vocational training program or other educational institution and in obtaining financial aid, where appropriate.

(7) Assistance in maintaining relationships with individuals who are important to a nonminor who has been in out-of-home placement for six months or longer from the date the nonminor entered foster care, based on the nonminor's best interests.

(8) For nonminors between 18 and 21 years of age, assistance in accessing the Independent Living Aftercare Program in the nonminor's county of residence, and, upon the nonminor's request, assistance in completing a voluntary reentry agreement for care and placement pursuant to subdivision (z) of Section 11400 and in filing a petition pursuant to subdivision (e) of Section 388 to resume dependency jurisdiction.

(9) Written information notifying the child that current or former dependent children who are or have been in foster care are granted a preference for student assistant or internship positions with state agencies pursuant to Section 18220 of the Government Code. The preference shall be granted to applicants up to 26 years of age.

(f) At the hearing closest to and before a dependent minor's 18th birthday and every review hearing thereafter for nonminors, the department shall submit a report describing efforts toward completing the items described in paragraph (2) of subdivision (e).

(g) The Judicial Council shall develop and implement standards, and develop and adopt appropriate forms necessary to implement this provision.

(h) This section shall become operative on January 1, 2012.

SEC. 191. Section 712 of the Welfare and Institutions Code is amended to read:

712. (a) The evaluation ordered by the court under Section 711 shall be made, in accordance with the provisions of Section

741 and Division 4.5 (commencing with Section 4500), by either of the following, as applicable:

(1) For minors suspected to be developmentally disabled, by the director of a regional center or his or her designee, pursuant to subdivision (f) of Section 709.

(2) For all other minors, by an appropriate and licensed mental health professional who meets one or more of the following criteria:

(A) The person is licensed to practice medicine in the State of California and is trained and actively engaged in the practice of psychiatry.

(B) The person is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(b) The evaluator selected by the court shall personally examine the minor, conduct appropriate psychological or mental health screening, assessment, or testing, according to a uniform protocol developed by the county mental health department, and prepare and submit to the court a written report indicating his or her findings and recommendations to guide the court in determining whether the minor has a serious mental disorder or is seriously emotionally disturbed, as described in Section 5600.3. If the minor is detained, the examination shall occur within three court days of the court's order of referral for evaluation, and the evaluator's report shall be submitted to the court not later than five court days after the evaluator has personally examined the minor, unless the submission date is extended by the court for good cause shown.

(c) Based on the written report by the evaluator or the regional center, the court shall determine whether the minor has a serious mental disorder or is seriously emotionally disturbed, as described in Section 5600.3, or has a developmental disability, as defined in Section 4512. If the court determines that the minor has a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the case shall proceed as described in Section 713. If the court determines that the minor does not have a serious mental disorder, is not seriously emotionally disturbed, or does not have a developmental disability, the matter shall proceed without the application of Section 713 and in accordance with all other applicable provisions of law.

(d) This section shall not be construed to interfere with the legal authority of the juvenile court or of any other public or private

agency or individual to refer a minor for mental health evaluation or treatment as provided in Section 370, 635.1, 704, 741, 5150, 5694.7, 5699.2, 5867.5, or 6551 of this code, or in Section 4011.6 of the Penal Code.

SEC. 192. Section 912 of the Welfare and Institutions Code, as added by Section 77 of Chapter 36 of the Statutes of 2011, is amended to read:

912. (a) Commencing on and after January 1, 2012, counties from which persons are committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, shall pay to the state an annual rate of one hundred twenty-five thousand dollars ($125,000) for the time those persons remain in any institution under the direct supervision of the division, or in any institution, boarding home, foster home, or other private or public institution in which they are placed by the division, on parole or otherwise, and cared for and supported at the expense of the division, as provided in this section. This section applies to any person committed to the division by a court, including persons committed to the division prior to January 1, 2012, who, on or after January 1, 2012, remain in or return to the facilities described in this section.

(b) The Department of Corrections and Rehabilitation, Division of Juvenile Facilities, shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section, which the county shall process and pay pursuant to Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

SEC. 193. Section 4512 of the Welfare and Institutions Code is amended to read:

4512. As used in this division:

(a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for

individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

(b) “Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision

is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

(c) Notwithstanding subdivisions (a) and (b), for any organization or agency receiving federal financial participation under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, as amended, "developmental disability" and "services for persons with developmental disabilities" mean the terms as defined in the federal act to the extent required by federal law.

(d) "Consumer" means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a).

(e) "Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

(f) "Circle of support" means a committed group of community members, who may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. A circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support.

(g) "Facilitation" means the use of modified or adapted materials, special instructions, equipment, or personal assistance by an individual, such as assistance with communications, that will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices that effect his or her life.

(h) "Family support services" means services and supports that are provided to a child with developmental disabilities or his or her family and that contribute to the ability of the family to reside together.

(i) "Voucher" means any authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit, or other form of authorization that enables the consumer or family member to choose his or her own service provider.

(j) "Planning team" means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, or the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705, and including a minor's, dependent's, or ward's court-appointed developmental services decisionmaker appointed pursuant to Section 319, 361, or 726.

(k) "Stakeholder organizations" means statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations.

(*l*) "Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(1) Self-care.
(2) Receptive and expressive language.
(3) Learning.
(4) Mobility.
(5) Self-direction.
(6) Capacity for independent living.
(7) Economic self-sufficiency.

Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

SEC. 194. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), this division, Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this chapter shall be construed to compel a physician and surgeon, psychologist, social worker, marriage and family therapist, professional clinical counselor, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, dependent, ward, or conservatee, and his or her parent, guardian, conservator, limited conservator with access to confidential records, or authorized representative, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this chapter shall be construed to compel a physician and surgeon, psychologist, social worker, marriage and family therapist, professional clinical counselor, nurse, attorney, or other

professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

" _____
Date

As a condition of doing research concerning persons with developmental disabilities who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or the person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

_____"
Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Committee on Rules or the Assembly Committee on Rules for the purposes of legislative investigation authorized by the committee.

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of this code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician and surgeon, psychologist, social worker, marriage and family therapist, professional clinical counselor, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information that has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d)

of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician and surgeon in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician and surgeon in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident that is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Care Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in these facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Care Services or the State Department of Social Services in a criminal, civil, or administrative proceeding.

The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Care Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Care Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when (1) the person with a developmental disability has been reported lost or missing or (2) there is probable cause to believe that a person with a developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in any provision listed in Section 16590 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating

to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9 of this code.

(q) To the Division of Juvenile Facilities and Department of Corrections and Rehabilitation or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code or Section 15630 of this code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

(t) (1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representative because they were from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed

with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents that are no longer in the possession of the employee or the employee's legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that have been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

(u) To the person appointed as the developmental services decisionmaker for a minor, dependent, or ward pursuant to Section 319, 361, or 726.

SEC. 195. Section 4640.6 of the Welfare and Institutions Code is amended to read:

4640.6. (a) In approving regional center contracts, the department shall ensure that regional center staffing patterns demonstrate that direct service coordination is the highest priority.

(b) Contracts between the department and regional centers shall require that regional centers implement an emergency response system that ensures that a regional center staff person will respond to a consumer, or individual acting on behalf of a consumer, within two hours of the time an emergency call is placed. This emergency response system shall be operational 24 hours per day, 365 days per year.

(c) Contracts between the department and regional centers shall require regional centers to have service coordinator-to-consumer ratios, as follows:

(1) An average service coordinator-to-consumer ratio of 1 to 62 for all consumers who have not moved from the developmental centers to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 79 consumers for more than 60 days.

(2) An average service coordinator-to-consumer ratio of 1 to 45 for all consumers who have moved from a developmental center to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 59 consumers for more than 60 days.

(3) Commencing January 1, 2004, the following coordinator-to-consumer ratios shall apply:

(A) All consumers three years of age and younger and for consumers enrolled in the Home and Community-based Services Waiver program for persons with developmental disabilities, an average service coordinator-to-consumer ratio of 1 to 62.

(B) All consumers who have moved from a developmental center to the community since April 14, 1993, and have lived continuously in the community for at least 12 months, an average service coordinator-to-consumer ratio of 1 to 62.

(C) All consumers who have not moved from the developmental centers to the community since April 14, 1993, and who are not described in subparagraph (A), an average service coordinator-to-consumer ratio of 1 to 66.

(4) For purposes of paragraph (3), service coordinators may have a mixed caseload of consumers three years of age and younger, consumers enrolled in the Home and Community-based

Services Waiver program for persons with developmental disabilities, and other consumers if the overall average caseload is weighted proportionately to ensure that overall regional center average service coordinator-to-consumer ratios as specified in paragraph (3) are met. For purposes of paragraph (3), in no case shall a service coordinator have an assigned caseload in excess of 84 for more than 60 days.

(d) For purposes of this section, "service coordinator" means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' individual program plans, securing and coordinating consumer services and supports, and providing placement and monitoring activities.

(e) In order to ensure that caseload ratios are maintained pursuant to this section, each regional center shall provide service coordinator caseload data to the department, annually for each fiscal year. The data shall be submitted in the format, including the content, prescribed by the department. Within 30 days of receipt of data submitted pursuant to this subdivision, the department shall make a summary of the data available to the public upon request. The department shall verify the accuracy of the data when conducting regional center fiscal audits. Data submitted by regional centers pursuant to this subdivision shall:

(1) Only include data on service coordinator positions as defined in subdivision (d). Regional centers shall identify the number of positions that perform service coordinator duties on less than a full-time basis. Staffing ratios reported pursuant to this subdivision shall reflect the appropriate proportionality of these staff to consumers served.

(2) Be reported separately for service coordinators whose caseload includes any of the following:

(A) Consumers who are three years of age and older and who have not moved from the developmental center to the community since April 14, 1993.

(B) Consumers who have moved from a developmental center to the community since April 14, 1993.

(C) Consumers who are younger than three years of age.

(D) Consumers enrolled in the Home and Community-based Services Waiver program.

(3) Not include positions that are vacant for more than 60 days or new positions established within 60 days of the reporting month that are still vacant.

(4) For purposes of calculating caseload ratios for consumers enrolled in the Home and Community-based Services Waiver program, vacancies shall not be included in the calculations.

(f) The department shall provide technical assistance and require a plan of correction for any regional center that, for two consecutive reporting periods, fails to maintain service coordinator caseload ratios required by this section or otherwise demonstrates an inability to maintain appropriate staffing patterns pursuant to this section. Plans of correction shall be developed following input from the local area board, local organizations representing consumers, family members, regional center employees, including recognized labor organizations, and service providers, and other interested parties.

(g) Contracts between the department and regional center shall require the regional center to have, or contract for, all of the following areas:

(1) Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee.

(2) Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.

(3) Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.

(4) Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.

(5) Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.

(6) Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the area board in conducting quality-of-life assessments and coordinating the regional center quality assurance efforts.

(7) Each regional center shall employ at least one consumer advocate who is a person with developmental disabilities.

(8) Other staffing arrangements related to the delivery of services that the department determines are necessary to ensure maximum cost-effectiveness and to ensure that the service needs of consumers and families are met.

(h) Any regional center proposing a staffing arrangement that substantially deviates from the requirements of this section shall request a waiver from the department. Prior to granting a waiver, the department shall require a detailed staffing proposal, including, but not limited to, how the proposed staffing arrangement will benefit consumers and families served, and shall demonstrate clear and convincing support for the proposed staffing arrangement from constituencies served and impacted, that include, but are not limited to, consumers, families, providers, advocates, and recognized labor organizations. In addition, the regional center shall submit to the department any written opposition to the proposal from organizations or individuals, including, but not limited to, consumers, families, providers, and advocates, including recognized labor organizations. The department may grant waivers to regional centers that sufficiently demonstrate that the proposed staffing arrangement is in the best interest of consumers and families served, complies with the requirements of this chapter, and does not violate any contractual requirements. A waiver shall be approved by the department for up to 12 months, at which time a regional center may submit a new request pursuant to this subdivision.

(i) From February 1, 2009, to June 30, 2010, inclusive, the following shall not apply:

(1) The service coordinator-to-consumer ratio requirements of paragraph (1), and subparagraph (C) of paragraph (3), of subdivision (c).

(2) The requirements of subdivision (e). The regional centers shall, instead, maintain sufficient service coordinator caseload data to document compliance with the service coordinator-to-consumer ratio requirements in effect pursuant to this section.

(3) The requirements of paragraphs (1) to (6), inclusive, of subdivision (g).

(j) From July 1, 2010, to June 30, 2012, inclusive, the following shall not apply:

(1) The service coordinator-to-consumer ratio requirements of paragraph (1), and subparagraph (C) of paragraph (3), of subdivision (c).

(2) The requirements of paragraphs (1) to (6), inclusive, of subdivision (g).

(k) (1) Any contract between the department and a regional center entered into on and after January 1, 2003, shall require that all employment contracts entered into with regional center staff or contractors be available to the public for review, upon request. For purposes of this subdivision, an employment contract or portion thereof may not be deemed confidential nor unavailable for public review.

(2) Notwithstanding paragraph (1), the social security number of the contracting party may not be disclosed.

(3) The term of the employment contract between the regional center and an employee or contractor shall not exceed the term of the state's contract with the regional center.

SEC. 196. Section 4641.5 of the Welfare and Institutions Code is amended to read:

4641.5. (a) Effective July 1, 2011, regional centers shall begin transitioning all vendors of all regional center services to electronic billing for services purchased through a regional center. All vendors and contracted providers shall submit all billings electronically for services provided on or after July 1, 2012, with the exception of the following:

(1) A vendor or provider whose services are paid for by vouchers, as that term is defined in subdivision (i) of Section 4512.

(2) A vendor or provider who demonstrates that submitting billings electronically for services presents a substantial financial hardship for the provider.

(b) For purposes of this section, "electronic billing" is defined as the Regional Center e-Billing System Web application provided by the department.

SEC. 197. Section 4646.5 of the Welfare and Institutions Code is amended to read:

4646.5. (a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with

developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, authorized representative, if applicable, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

(3) When developing individual program plans for children, regional centers shall be guided by the principles, process, and services and support parameters set forth in Section 4685.

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The individual program plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

(5) When agreed to by the consumer, the parents, legally appointed guardian, or authorized representative of a minor consumer, or the legally appointed conservator of an adult consumer or the authorized representative, including those

appointed pursuant to subdivision (d) of Section 4548, subdivision (b) of Section 4701.6, and subdivision (e) of Section 4705, a review of the general health status of the adult or child, including medical, dental, and mental health needs, shall be conducted. This review shall include a discussion of current medications, any observed side effects, and the date of last review of the medication. Service providers shall cooperate with the planning team to provide any information necessary to complete the health status review. If any concerns are noted during the review, referrals shall be made to regional center clinicians or to the consumer's physician, as appropriate. Documentation of health status and referrals shall be made in the consumer's record by the service coordinator.

(6) (A) The development of a transportation access plan for a consumer when all of the following conditions are met:

(i) The regional center is purchasing private, specialized transportation services or services from a residential, day, or other provider, excluding vouchered service providers, to transport the consumer to and from day or work services.

(ii) The planning team has determined that a consumer's community integration and participation could be safe and enhanced through the use of public transportation services.

(iii) The planning team has determined that generic transportation services are available and accessible.

(B) To maximize independence and community integration and participation, the transportation access plan shall identify the services and supports necessary to assist the consumer in accessing public transportation and shall comply with Section 4648.35. These services and supports may include, but are not limited to, mobility training services and the use of transportation aides. Regional centers are encouraged to coordinate with local public transportation agencies.

(7) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation.

(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every

three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, authorized representative, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.

(c) (1) The department, with the participation of representatives of a statewide consumer organization, the Association of Regional Center Agencies, an organized labor organization representing service coordination staff, and the Organization of Area Boards shall prepare training material and a standard format and instructions for the preparation of individual program plans, which embodies an approach centered on the person and family.

(2) Each regional center shall use the training materials and format prepared by the department pursuant to paragraph (1).

(3) The department shall biennially review a random sample of individual program plans at each regional center to ensure that these plans are being developed and modified in compliance with Section 4646 and this section.

SEC. 198. Section 4659.13 of the Welfare and Institutions Code is amended to read:

4659.13. (a) If a consumer or child under 36 months of age who is eligible for the California Early Intervention Program pursuant to Title 14 (commencing with Section 95000) of the Government Code, the department, or a regional center brings an action or claim against a third party or carrier, the consumer, child, regional center, or department, within 30 days of filing the action, shall provide the other persons or entities specified in this subdivision with written notice by personal service or registered mail of the action or claim, and of the name of the court or state or local agency in which the action or claim is brought. Proof of the notice shall be filed in the action or claim. If an action or claim is brought by the department, the regional center, the child, or the consumer, any of the other persons or entities described in this subdivision, at any time before trial on the facts, may become a party to, or shall consolidate their action or claim with, another action or claim if brought independently.

(b) If an action or claim is brought by the department or the regional center pursuant to subdivision (a) of Section 4659.11, written notice to the child, consumer, guardian, conservator, personal representative, estate, or survivor given pursuant to this section shall advise him or her of his or her right to intervene in

the proceeding, his or her right to obtain a private attorney of his or her choice, and the department's right to recover the reasonable value of the services provided.

SEC. 199. Section 4659.23 of the Welfare and Institutions Code is amended to read:

4659.23. In order to assess overlapping or duplicate health coverage, every health insurer, self-insured plan, group health plan, as defined in Section 607(1) of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.), service benefit plan, managed care organization, including a health care service plan as defined in subdivision (f) of Section 1345 of the Health and Safety Code, licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service shall maintain a centralized file of the subscribers', policyholders', or enrollees' names, mailing addresses, and social security numbers or dates of birth, and where available, for all other covered persons, the names and social security numbers or dates of birth. This information shall be made available to the department or a regional center upon reasonable request. Notwithstanding Section 20230 of the Government Code, the Board of Administration of the Public Employees' Retirement System and affiliated systems or contract agencies shall permit data matches with the state department to identify consumers with third-party health coverage or insurance.

SEC. 200. Section 4688.21 of the Welfare and Institutions Code is amended to read:

4688.21. (a) The Legislature places a high priority on opportunities for adults with developmental disabilities to choose and customize day services to meet their individualized needs; have opportunities to further the development or maintenance of employment and volunteer activities; direct their services; pursue postsecondary education; and increase their ability to lead integrated and inclusive lives. To further these goals, a consumer may choose a tailored day service or vouchered community-based training service, in lieu of any other regional center vendored day program, look-alike day program, supported employment program, or work activity program.

(b) (1) A tailored day service shall do both of the following:

(A) Include an individualized service design, as determined through the individual program plan (IPP) and approved by the regional center, that maximizes the consumer's individualized choices and needs. This service design may include, but may not be limited to, the following:

(i) Fewer days or hours than in the program's approved day program, look-alike day program, supported employment program, or work activity program design.

(ii) Flexibility in the duration and intensity of services to meet the consumer's individualized needs.

(B) Encourage opportunities to further the development or maintenance of employment, volunteer activities, or pursuit of postsecondary education; maximize consumer direction of the service; and increase the consumer's ability to lead an integrated and inclusive life.

(2) The type and amount of tailored day service shall be determined through the IPP process, pursuant to Section 4646. The IPP shall contain, but not be limited to, the following:

(A) A detailed description of the consumer's individualized choices and needs and how these choices and needs will be met.

(B) The type and amount of services and staffing needed to meet the consumer's individualized choices and needs, and unique health and safety and other needs.

(3) The staffing requirements set forth in Section 55756 of Title 17 of the California Code of Regulations and subdivision (r) of Section 4851 of this code shall not apply to a tailored day service.

(4) For currently vendored programs wishing to offer a tailored day service option, the regional center shall vendor a tailored day service option upon negotiating a rate and maximum units of service design that includes, but is not limited to, the following:

(A) A daily or hourly rate and maximum units of service design that does not exceed the equivalent cost of four days per week of the vendor's current rate, if the vendor has a daily day program rate.

(B) A rate and maximum units of service design that does not exceed the equivalent cost of four-fifths of the hours of the vendor's current rate, if the vendor has an hourly rate.

(5) The regional center shall ensure that the vendor is capable of complying with, and will comply with, the consumer's IPP, individual choice, and health and safety needs.

(6) For new programs wishing to offer a tailored day service option, the regional center shall vendor a tailored day service option upon negotiating a rate and maximum units of service design. The rate paid to the new vendor shall not exceed four-fifths of the temporary payment rate or the median rate, whichever is applicable.

(7) Effective July 1, 2011, and prior to the time of development, review, or modification of a consumer's IPP, regional centers shall provide information about tailored day service to eligible adult consumers. A consumer may request information about tailored day services from the regional center at any time and may request an IPP meeting to secure those services.

(c) (1) A vouchered community-based training service is defined as a consumer-directed service that assists the consumer in the development of skills required for community integrated employment or participation in volunteer activities, or both, and the assistance necessary for the consumer to secure employment or volunteer positions or pursue secondary education.

(2) Implementation of vouchered community-based training service is contingent upon the approval of the federal Centers for Medicare and Medicaid Services.

(3) Vouchered community-based training service shall be provided in natural environments in the community, separate from the consumer's residence.

(4) A consumer, parent, or conservator vendored as a vouchered community-based training service shall utilize the services of a financial management services (FMS) entity. The regional center shall provide information about available financial management services and shall assist the consumer in selecting a FMS vendor to act as coemployer.

(5) A parent or conservator shall not be the direct support worker employed by the vouchered community-based training service vendor.

(6) If the direct support worker is required to transport the consumer, the vouchered community-based training service vendor shall verify that the direct support worker can transport the consumer safely and has a valid California driver's license and proof of insurance.

(7) The rate for vouchered community-based training service shall not exceed thirteen dollars and forty-seven cents ($13.47) per hour. The rate includes employer-related taxes and all transportation needed to implement the service, except as described in paragraph (8). The rate does not include the cost of the FMS.

(8) A consumer vendored as a vouchered community-based training service shall also be eligible for a regional center-funded bus pass, if appropriate and needed.

(9) Vouchered community-based training service shall be limited to a maximum of 150 hours per quarter. The services to be provided and the service hours shall be documented in the consumer's IPP.

(10) A direct support worker of vouchered community-based training service shall be an adult who possesses the skill, training, and experience necessary to provide services in accordance with the IPP.

(11) Effective July 1, 2011, and prior to the time of development, review, or modification of a consumer's IPP, regional centers shall provide information about vouchered community-based training service to eligible adult consumers. A consumer may request information about vouchered community-based training service from the regional center at any time and may request an IPP meeting to secure those services.

(12) The type and amount of vouchered community-based training service shall be determined through the IPP process pursuant to Section 4646. The IPP shall contain, but not be limited to, the following:

(A) A detailed description of the consumer's individualized choices and needs and how these choices and needs will be met.

(B) The type and amount of services and staffing needed to meet the consumer's individualized choices and unique health and safety and other needs.

(d) The department may adopt emergency regulations for tailored day service or vouchered community-based training service. The adoption, amendment, repeal, or readoption of a regulation authorized by this subdivision is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action. A certificate of compliance

for these implementing regulations shall be filed within 24 months following the adoption of the first emergency regulations filed pursuant to this subdivision.

SEC. 201. Section 4689 of the Welfare and Institutions Code is amended to read:

4689. Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

(a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:

(1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.

(2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.

(3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.

(4) Consumers shall have control over the environment within their own home.

(5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.

(6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.

(7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.

(8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.

(b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.

(c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying, and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. Assessment of consumer needs may begin before 18 years of age to enable the consumer to move to his or her own home when he or she reaches 18 years of age.

(d) Regional centers shall provide information and education to consumers and their families about supported living principles and services.

(e) Regional centers shall monitor and ensure the quality of services and supports provided to individuals living in homes that they own or lease. Monitoring shall take into account all of the following:

(1) Adherence to the principles set forth in this section.

(2) Whether the services and supports outlined in the consumer's individual program plan are congruent with the choices and needs of the individual.

(3) Whether services and supports described in the consumer's individual program plan are being delivered.

(4) Whether services and supports are having the desired effects.

(5) Whether the consumer is satisfied with the services and supports.

(f) The planning team, established pursuant to subdivision (j) of Section 4512, for a consumer receiving supported living services shall confirm that all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible for that consumer.

(g) Regional centers shall utilize the same supported living provider for consumers who reside in the same domicile, provided

that each individual consumer's particular needs can still be met pursuant to his or her individual program plans.

(h) Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer.

(i) A regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except under the following circumstances:

(1) If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:

(A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.

(B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the supported living services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer.

(C) The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's individual program plan that the requirements set forth in subparagraph (A) continue to be met.

(2) A regional center that has been contributing to rent, mortgage, or lease payments or paying for household expenses prior to July 1, 2009, shall at the time of development, review, or modification of a consumer's individual program plan determine if the conditions in paragraph (1) are met. If the planning team determines that these contributions are no longer appropriate under

this section, a reasonable time for transition, not to exceed six months, shall be permitted.

(j) All paid roommates and live-in support staff in supported living arrangements in which regional centers have made rent, mortgage, or lease payments, or have paid for household expenses pursuant to subdivision (i) shall pay their share of the rent, mortgage, or lease payments or household expenses for the supported living home, subject to the requirements of Industrial Welfare Commission Order No. 15-2001 and the Housing Choice Voucher Program, as set forth in Section 1437f of Title 42 of the United States Code.

(k) Regional centers shall ensure that the supported living services vendors' administrative costs are necessary and reasonable, given the particular services that they are providing and the number of consumers to whom the vendor provides services. Administrative costs shall be limited to allowable costs for community-based day programs, as defined in Section 57434 of Title 17 of the California Code of Regulations, or its successor.

(*l*) Regional centers shall ensure that the most cost-effective of the rate methodologies is utilized to determine the negotiated rate for vendors of supported living services, consistent with Section 4689.8 and Title 17 of the California Code of Regulations.

(m) For purposes of this section, "household expenses" means general living expenses and includes, but is not limited to, utilities paid and food consumed within the home.

(n) A supported living services provider shall provide assistance to a consumer who is a Medi-Cal beneficiary in applying for in-home supportive services, as set forth in Section 12300, within five days of the consumer's moving into a supported living services arrangement.

(o) For consumers receiving supported living services who share a household with one or more adults receiving supported living services, efficiencies in the provision of service may be achieved if some tasks can be shared, meaning the tasks can be provided at the same time while still ensuring that each person's individual needs are met. These tasks shall only be shared to the extent they are permitted under the Labor Code and related regulations, including, but not limited to, Industrial Welfare Commission Wage Order No. 15. The planning team, as defined in subdivision (j) of Section 4512, at the time of development, review, or modification

of a consumer's individual program plan (IPP), for housemates currently in a supported living arrangement or planning to move together into a supported living arrangement, or for consumers who live with a housemate not receiving supported living services who is responsible for the task, shall consider, with input from the service provider, whether any tasks, such as meal preparation and cleanup, menu planning, laundry, shopping, general household tasks, or errands can appropriately be shared. If tasks can be appropriately shared, the regional center shall purchase the prorated share of the activity. Upon a determination of a reduction in services pursuant to this section, the regional center shall inform the consumer of the reason for the determination, and shall provide a written notice of fair hearing rights pursuant to Section 4701.

(p) To ensure that consumers in supported living arrangements receive the appropriate amount and type of supports, an independent assessment shall be required for consumers currently receiving, or initially entering, supported living who have supported living services costs, or have an initial recommendation for service costs, that exceeds 125 percent of the annual statewide average cost of supported living services, as published by the department commencing June 30, 2011. Notwithstanding any other provision of law, commencing July 1, 2011, regional centers shall identify consumers currently receiving supported living services, pursuant to this section, whose annual supported living service costs exceed 125 percent of the annual statewide average cost of supported living services. The regional center shall also identify consumers who have an initial recommendation for supported living service costs that exceeds 125 percent of the annual statewide average cost of supported living services. For those consumers identified pursuant to this subdivision, the regional center shall arrange for an independent assessment to be completed prior to the next scheduled IPP for consumers currently in a supported living arrangement and within 30 days of identification of consumers with an initial recommendation for services. The independent assessment shall be completed by an impartial entity or individual other than the supported living services agency providing, or planning to provide, the service and shall be used during IPP meetings to assist the team to determine whether the services provided or recommended are necessary and sufficient and that the most cost-effective methods of service are utilized. Decisions

about supported living shall be made by the IPP team. The independent assessment process shall adhere to all of the following:

(1) Supported living service providers shall conduct comprehensive assessments for the purpose of getting to know the consumer they will be supporting and developing a support plan congruent with the choices and needs of the individual and consistent with the principles of supported living set forth in this section and in Subchapter 19 (commencing with Section 58600) of Chapter 3 of Division 2 of Title 17 of the California Code of Regulations. The independent assessment required by this paragraph is not intended to take the place of or repeat the service provider's comprehensive assessment. The purpose of the independent assessment is to provide an additional look at whether the supported living services being provided, or being proposed for a person initially entering supported living, are necessary, sufficient, or cost effective to meet the person's choices and needs, as determined by the comprehensive assessment and the planning team. The independent needs assessment may include, but is not limited to, use of natural and generic support, technology that provides support otherwise necessary through direct staffing hours, shared housing, support alternatives, learning methods, lifting and transferring, bathroom, grooming, meals, communication, transportation, mobility, emergency procedures, medication management, household responsibilities, personal needs, interpersonal relationships, and behavioral, medical, and overnight supports.

(2) A consumer shall not be excluded from supported living services based on an independent assessment.

(3) The entity or individual conducting independent assessments shall not be an employee of a regional center or the consumer's service provider. Current supported living providers may conduct independent assessments for consumers being supported, or about to be supported, by other providers. However a provider who conducts an independent assessment may not provide direct services to a consumer it has assessed for a period of one year. Each regional center shall publicly identify the entities and individuals it will use to conduct independent assessments. Regional centers shall ensure there are sufficient independent assessors so that assessments can be provided when required without undue delay.

(4) Initial entry into supported living shall not be delayed for more than 30 days following the determination to request an independent assessment due to the need for an independent assessment pursuant to this section. If the independent assessment cannot be conducted within that time period, the individual may move into supported living with the amount of supports recommended by the service provider's comprehensive assessment and an additional IPP to consider the results of the independent assessment shall be conducted when that assessment becomes available, if necessary. For individuals currently in a supported living arrangement, supports shall continue at the same level while the independent assessment is being conducted.

(5) Independent assessors shall meet all of the following qualifications:

(A) Have a demonstrated understanding of the foundation of supported living as a service that assists an individual to live in his or her own home with supports as needed to be part of their community and of the principles and operational requirements of supported living set forth in this section and in Subchapter 19 (commencing with Section 58600) of Chapter 3 of Division 2 of Title 17 of the California Code of Regulations.

(B) Have a demonstrated understanding of the IPP process and the legal rights of people with developmental disabilities in California.

(C) Have experience with the provision of supported living services in California.

(6) The department shall establish a rate of payment for an independent assessment.

(7) The planning team, as defined in subdivision (j) of Section 4512, shall consider the independent assessment along with the provider's assessment, if available, and any other relevant information in determining whether there should be any adjustment to the amount or type of supports currently being received by individuals in supported living arrangement or recommended for individuals initially entering supported living arrangement. Any decisions to reduce supports shall not be applied retroactively.

(8) A consumer shall be reassessed as described in this subdivision every three years in conjunction with the consumer's IPP review to determine whether all services are necessary and

sufficient and to ensure that the most cost-effective methods of service are being utilized.

(9) Individuals who are moving to a supported living arrangement or have moved to a supported living arrangement from a developmental center or state-operated community facility shall not be required to have an additional assessment during the first 12 months following placement.

(10) Upon a determination of a reduction in services pursuant to this section, the regional center shall inform the consumer of the reason for the determination, and shall provide a written notice of fair hearing rights pursuant to Section 4701.

(11) Nothing in this section precludes the completion of an independent assessment for other purposes.

SEC. 202. Section 5720 of the Welfare and Institutions Code, as added by Section 4 of Chapter 651 of the Statutes of 2011, is amended to read:

5720. (a) Notwithstanding any other provision of law, the director, in the 1993–94 fiscal year and fiscal years thereafter, subject to the approval of the Director of Health Care Services, shall establish the amount of reimbursement for services provided by county mental health programs to Medi-Cal eligible individuals. For purposes of federal reimbursement to counties that have certified to the state that certified public expenditures have been incurred, the reimbursement amounts shall be consistent with federal Medicaid requirements for calculating federal upper payment limits, as specified in the approved Medicaid state plan and waivers.

(b) If the reimbursement methodology utilizes federal upper payment limits and the total cost of services exceeds the state maximum rates in effect for the 2011–12 fiscal year, a county may use certified public expenditures to claim the costs of services that exceed the state maximum rates, up to the federal upper payment limits. If a county chooses to claim costs that exceed the state maximum rates with certified public expenditures, the county shall use only local funds, and not state funds, to claim the portion of the costs over the state maximum rates. As a condition of receiving reimbursement up to the federal upper payment limits, a county shall enter into and maintain an agreement with the department implementing this subdivision.

(c) Notwithstanding subdivisions (a) and (b), in the event that a health facility has entered into a negotiated rate agreement pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3 of Division 9, the facility's rates shall be governed by that agreement.

(d) This section shall become operative on July 1, 2012.

SEC. 203. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the

Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control, any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state

or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control, any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court which imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the Department of Justice, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase

any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (5), found that the people of the State of California have not met their burden pursuant to paragraph (6).

(2) (A) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the Department of Justice, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report submitted pursuant to this paragraph shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(B) Commencing July 1, 2012, facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. The Department of Justice shall prescribe the form. Where the person requests a hearing at the time of discharge, the facility shall forward the form to the superior court unless the person states that he or she will submit the form to the superior court.

(4) The Department of Justice shall provide the form upon request to any person described in paragraph (1). The Department of Justice shall also provide the form to the superior court in each county. A person described in paragraph (1) may make a single request for a hearing at any time during the five-year period. The request for hearing shall be made on the form prescribed by the department or in a document that includes equivalent language.

(5) Any person who is subject to paragraph (1) who has requested a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the plaintiff in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the hearing to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after the request for a hearing, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The court shall set the hearing within 30 days of receipt of the request for a hearing. Upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 14 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. The district attorney may notify the county mental health director of the hearing who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code shall be admissible at the hearing under this section.

(6) The people shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.

(7) If the court finds at the hearing set forth in paragraph (5) that the people have not met their burden as set forth in paragraph (6), the court shall order that the person shall not be subject to the five-year prohibition in this section on the ownership, control, receipt, possession, or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(8) Where the district attorney declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five-year prohibition required by this subdivision on the ownership, control, receipt, possession, or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall, within 15 days, delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(9) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g) (1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) (A) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(B) Commencing July 1, 2012, facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition, and the county mental health director shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other provision of law, any declaration, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at

the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for not more than one year.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

SEC. 204. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of

establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine; or by imprisonment in a county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(c) Whenever any person has, willfully and knowingly, with the intent to deceive, by means of false statement or representation, or by failing to disclose a material fact, or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is nine hundred fifty dollars ($950) or less, by imprisonment in a county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than nine hundred fifty dollars ($950), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine; or by imprisonment in a county jail for a period of not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Supplemental Nutrition Assistance Program in any manner not authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Supplemental Nutrition Assistance Program or to receive CalFresh benefits or electronically transferred benefits in any manner not authorized by the federal Food Stamp Act of 1964 (P.L. 88-525 and all amendments thereto) or the federal Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011 et seq.) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates CalFresh benefits, electronically transferred benefits, or authorizations to participate in the federal Supplemental Nutrition Assistance Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Any person who knowingly uses, transfers, sells, purchases, or possesses CalFresh benefits, electronically transferred benefits, or authorizations to participate in the federal Supplemental Nutrition Assistance Program in any manner not authorized by Chapter 10 (commencing with Section 18900), of Part 6, or by the federal Food Stamp Act of 1977 (P.L. 95-113 and all amendments thereto) or the federal Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011 et seq.) (1) is guilty of a misdemeanor if the face value of the food stamp benefits or the authorizations to participate is nine hundred fifty dollars ($950) or less, and shall be punished by imprisonment in a county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine, or (2) is guilty of a felony if the face value of the CalFresh benefits or the authorizations to participate exceeds nine hundred fifty dollars ($950), and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine, or by imprisonment in a county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(h) (1) If the violation of subdivision (f) or (g) is committed by means of an electronic transfer of benefits, in addition and consecutive to the penalties for the violation, or attempted

violation, of those subdivisions, the court shall impose the following punishment:

(A) If the electronic transfer of benefits exceeds fifty thousand dollars ($50,000), an additional term pursuant to subdivision (h) of Section 1170 of the Penal Code of one year.

(B) If the electronic transfer of benefits exceeds one hundred fifty thousand dollars ($150,000), an additional term pursuant to subdivision (h) of Section 1170 of the Penal Code of two years.

(C) If the electronic transfer of benefits exceeds one million dollars ($1,000,000), an additional term pursuant to subdivision (h) of Section 1170 of the Penal Code of three years.

(D) If the electronic transfer of benefits exceeds two million five hundred thousand dollars ($2,500,000), an additional term of four years.

(2) In any accusatory pleading involving multiple charges of violations of subdivision (f) or (g), or both, committed by means of an electronic transfer of benefits, the additional terms provided in paragraph (1) may be imposed if the aggregate losses to the victims from all violations exceed the amounts specified in this paragraph and arise from a common scheme or plan.

(i) A person who is punished by an additional term of imprisonment under another provision of law for a violation of subdivision (f) or (g) shall not receive an additional term of imprisonment under subdivision (h).

SEC. 205. Section 11451.5 of the Welfare and Institutions Code, as added by Section 20 of Chapter 501 of the Statutes of 2011, is amended to read:

11451.5. (a) Except as provided by subdivision (f) of Section 11322.6, the following income, determined for the semiannual period pursuant to Sections 11265.2 and 11265.3, shall be exempt from the calculation of the income of the family for purposes of subdivision (a) of Section 11450:

(1) If disability-based unearned income does not exceed two hundred twenty-five dollars ($225), both of the following amounts:

(A) All disability-based unearned income, plus any amount of not otherwise exempt earned income not in excess of the lesser of the following:

(i) One hundred twelve dollars ($112).

(ii) The amount of the difference between the amount of disability-based unearned income and two hundred twenty-five dollars ($225).

(B) Fifty percent of all not otherwise exempt earned income in excess of the amount applied to meet the differential applied in subparagraph (A).

(2) If disability-based unearned income exceeds two hundred twenty-five dollars ($225), both of the following amounts:

(A) All of the first two hundred twenty-five dollars ($225) in disability-based unearned income.

(B) Fifty percent of all earned income.

(b) For purposes of this section:

(1) Earned income means gross income received as wages, salary, employer-provided sick leave benefits, commissions, or profits from activities such as a business enterprise or farming in which the recipient is engaged as a self-employed individual or as an employee.

(2) Disability-based unearned income means state disability insurance benefits, private disability insurance benefits, temporary workers' compensation benefits, and social security disability benefits.

(3) Unearned income means any income not described in paragraph (1) or (2).

(c) (1) This section shall become operative on April 1, 2013. A county shall implement the semiannual reporting requirements in accordance with the act that added this section no later than October 1, 2013.

(2) Upon implementation described in paragraph (1), each county shall provide a certificate to the director certifying that semiannual reporting has been implemented in the county.

(3) Upon filing the certificate described in paragraph (2), a county shall comply with the semiannual reporting provisions of this section.

SEC. 206. Section 11461 of the Welfare and Institutions Code is amended to read:

11461. (a) For children or, on and after January 1, 2012, nonminor dependents placed in a licensed or approved family home with a capacity of six or fewer, or in an approved home of a relative or nonrelated legal guardian, or the approved home of a nonrelative extended family member as described in Section 362.7,

or, on and after January 1, 2012, a supervised independent living setting, as defined in subdivision (w) of Section 11400, the per child per month basic rates in the following schedule shall be in effect for the period July 1, 1989, to December 31, 1989, inclusive:

Age	Basic rate
0–4	$ 294
5–8	319
9–11	340
12–14	378
15–20	412

(b) (1) Any county that, as of October 1, 1989, has in effect a basic rate that is at the levels set forth in the schedule in subdivision (a), shall continue to receive state participation, as specified in subdivision (c) of Section 15200, at these levels.

(2) Any county that, as of October 1, 1989, has in effect a basic rate that exceeds a level set forth in the schedule in subdivision (a), shall continue to receive the same level of state participation as it received on October 1, 1989.

(c) The amounts in the schedule of basic rates in subdivision (a) shall be adjusted as follows:

(1) Effective January 1, 1990, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 12 percent.

(2) Effective May 1, 1990, any county that did not increase the basic rate by 12 percent on January 1, 1990, shall do both of the following:

(A) Increase the basic rate in effect December 31, 1989, for which state participation is received by 12 percent.

(B) Increase the basic rate, as adjusted pursuant to subparagraph (A), by an additional 5 percent.

(3) (A) Except as provided in subparagraph (B), effective July 1, 1990, for the 1990–91 fiscal year, the amounts in the schedule of basic rates in subdivision (a) shall be increased by an additional 5 percent.

(B) The rate increase required by subparagraph (A) shall not be applied to rates increased May 1, 1990, pursuant to paragraph (2).

(4) Effective July 1, 1998, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 6 percent. Notwithstanding any other provision of law, the 6-percent increase

provided for in this paragraph shall, retroactive to July 1, 1998, apply to every county, including any county to which paragraph (2) of subdivision (b) applies, and shall apply to foster care for every age group.

(5) Notwithstanding any other provision of law, any increase that takes effect after July 1, 1998, shall apply to every county, including any county to which paragraph (2) of subdivision (b) applies, and shall apply to foster care for every age group.

(6) The increase in the basic foster family home rate shall apply only to children placed in a licensed foster family home receiving the basic rate or in an approved home of a relative or nonrelative extended family member, as described in Section 362.7, a supervised independent living setting, as defined in subdivision (w) of Section 11400, or a nonrelated legal guardian receiving the basic rate. The increased rate shall not be used to compute the monthly amount that may be paid to licensed foster family agencies for the placement of children in certified foster homes.

(d) (1) (A) Beginning with the 1991–92 fiscal year, the schedule of basic rates in subdivision (a) shall be adjusted by the percentage changes in the California Necessities Index, computed pursuant to the methodology described in Section 11453, subject to the availability of funds.

(B) In addition to the adjustment in subparagraph (A) effective January 1, 2000, the schedule of basic rates in subdivision (a) shall be increased by 2.36 percent rounded to the nearest dollar.

(C) Effective January 1, 2008, the schedule of basic rates in subdivision (a), as adjusted pursuant to subparagraph (B), shall be increased by 5 percent, rounded to the nearest dollar. The increased rate shall not be used to compute the monthly amount that may be paid to licensed foster family agencies for the placement of children in certified foster family homes, and shall not be used to recompute the foster care maintenance payment that would have been paid based on the age-related, state-approved foster family home care rate and any applicable specialized care increment, for any adoption assistance agreement entered into prior to October 1, 1992, or in any subsequent reassessment for adoption assistance agreements executed before January 1, 2008.

(2) (A) Any county that, as of the 1991–92 fiscal year, receives state participation for a basic rate that exceeds the amount set forth in the schedule of basic rates in subdivision (a) shall receive an

increase each year in state participation for that basic rate of one-half of the percentage adjustments specified in paragraph (1) until the difference between the county's adjusted state participation level for its basic rate and the adjusted schedule of basic rates is eliminated.

(B) Notwithstanding subparagraph (A), all counties for the 1999–2000 fiscal year and the 2007–08 fiscal year shall receive an increase in state participation for the basic rate of the entire percentage adjustment described in paragraph (1).

(3) If a county has, after receiving the adjustments specified in paragraph (2), a state participation level for a basic rate that is below the amount set forth in the adjusted schedule of basic rates for that fiscal year, the state participation level for that rate shall be further increased to the amount specified in the adjusted schedule of basic rates.

(e) (1) As used in this section, "specialized care increment" means an approved amount paid with state participation on behalf of an AFDC-FC child requiring specialized care to a home listed in subdivision (a) in addition to the basic rate. Notwithstanding subdivision (a), the specialized care increment shall not be paid to a nonminor dependent placed in a supervised independent living setting as defined in subdivision (w) of Section 11400. On the effective date of this section, the department shall continue and maintain the current ratesetting system for specialized care.

(2) Any county that, as of the effective date of this section, has in effect specialized care increments that have been approved by the department, shall continue to receive state participation for those payments.

(3) Any county that, as of the effective date of this section, has in effect specialized care increments that exceed the amounts that have been approved by the department, shall continue to receive the same level of state participation as it received on the effective date of this section.

(4) (A) Except for subparagraph (B), beginning January 1, 1990, specialized care increments shall be adjusted in accordance with the methodology for the schedule of basic rates described in subdivisions (c) and (d). No county shall receive state participation for any increases in a specialized care increment which exceeds the adjustments made in accordance with this methodology.

(B) Notwithstanding subdivision (e) of Section 11460, for the 1993–94 fiscal year, an amount equal to 5 percent of the State Treasury appropriation for family homes shall be added to the total augmentation for the AFDC-FC program in order to provide incentives and assistance to counties in the area of specialized care. This appropriation shall be used, but not limited to, encouraging counties to implement or expand specialized care payment systems, to recruit and train foster parents for the placement of children with specialized care needs, and to develop county systems to encourage the placement of children in family homes. It is the intent of the Legislature that in the use of these funds, federal financial participation shall be claimed whenever possible.

(C) (i) Notwithstanding subparagraph (A), the specialized care increment shall not receive a cost-of-living adjustment in the 2011–12 or 2012–13 fiscal years.

(ii) Notwithstanding clause (i), a county may choose to apply a cost-of-living adjustment to its specialized care increment during the 2011–12 or 2012–13 fiscal years. To the extent that a county chooses to apply a cost-of-living adjustment during that time, the state shall not participate in the costs of that adjustment.

(iii) To the extent that federal financial participation is available for a cost-of-living adjustment made by a county pursuant to clause (ii), it is the intent of the Legislature that the federal funding shall be utilized.

(f) (1) As used in this section, "clothing allowance" means the amount paid with state participation in addition to the basic rate for the provision of additional clothing for an AFDC-FC child, including, but not limited to, an initial supply of clothing and school or other uniforms.

(2) Any county that, as of the effective date of this section, has in effect clothing allowances shall continue to receive the same level as it received on the effective date of this section.

(3) (A) Commencing in the 2007–08 fiscal year, for children whose foster care payment is the responsibility of Colusa, Plumas, and Tehama Counties, the amount of the clothing allowance may be up to two hundred seventy-four dollars ($274) per child per year.

(B) Each county listed in subparagraph (A) that elects to receive the clothing allowance shall submit a Clothing Allowance Program

Notification to the department within 60 days after the effective date of the act that adds this paragraph.

(C) The Clothing Allowance Program Notification shall identify the specific amounts to be paid and the disbursement schedule for these clothing allowance payments.

(4) (A) Beginning January 1, 1990, except as provided in paragraph (5), clothing allowances shall be adjusted annually in accordance with the methodology for the schedule of basic rates described in subdivisions (c) and (d). No county shall be reimbursed for any increases in clothing allowances which exceed the adjustments made in accordance with this methodology.

(B) (i) Notwithstanding subparagraph (A), the clothing allowance shall not receive any cost-of-living adjustment in the 2011–12 or 2012–13 fiscal years.

(ii) Notwithstanding paragraph (1), a county may choose to apply a cost-of-living adjustment to its clothing allowance during the 2011–12 or 2012–13 fiscal years. To the extent that a county chooses to apply a cost-of-living adjustment during that time, the state shall not participate in the costs of that adjustment.

(iii) To the extent that federal financial participation is available for a cost-of-living adjustment made by a county pursuant to paragraph (2), it is the intent of the Legislature that the federal funding shall be utilized.

(5) (A) For the 2000–01 fiscal year and each fiscal year thereafter, without a county share of cost, notwithstanding subdivision (c) of Section 15200, each child shall be entitled to receive a supplemental clothing allowance of one hundred dollars ($100) per year subject to the availability of funds. The clothing allowance shall be used to supplement, and not supplant, the clothing allowance specified in paragraph (1).

(B) Notwithstanding subparagraph (A), the state shall no longer participate in the supplemental clothing allowance commencing with the 2011–12 fiscal year.

(g) (1) Notwithstanding subdivisions (a) to (d), inclusive, for a child, or on and after January 1, 2012, a nonminor dependent, placed in a licensed or approved family home with a capacity of six or less, or placed in an approved home of a relative or the approved home of a nonrelative extended family member as described in Section 362.7, or placed on and after January 1, 2012, in a supervised independent living setting, as defined in subdivision

(w) of Section 11400, the per child per month basic rate in the following schedule shall be in effect for the period commencing July 1, 2011, or the date specified in the final order, for which the time to appeal has passed, issued by a court of competent jurisdiction in California State Foster Parent Association v. William Lightbourne, et al. (U.S. Dist. Ct. C 07-08056 WHA), whichever is earlier, through June 30, 2012:

Age	Basic rate
0–4	$ 609
5–8	$ 660
9–11	$ 695
12–14	$ 727
15–20	$ 761

(2) Commencing July 1, 2011, the basic rate set forth in this subdivision shall be annually adjusted on July 1 by the annual percentage change in the California Necessities Index applicable to the calendar year within which each July 1 occurs.

(3) Subdivisions (e) and (f) shall apply to payments made pursuant to this subdivision.

SEC. 207. Section 11463 of the Welfare and Institutions Code is amended to read:

11463. (a) (1) The department, with the advice, assistance, and cooperation of the counties and foster care providers, shall develop, implement, and maintain a ratesetting system for foster family agencies.

(2) No county shall be reimbursed for any percentage increases in payments, made on behalf of AFDC-FC funded children who are placed with foster family agencies, that exceed the percentage cost-of-living increase provided in any fiscal year beginning on January 1, 1990, as specified in subdivision (c) of Section 11461.

(b) The department shall develop regulations specifying the purposes, types, and services of foster family agencies, including the use of those agencies for the provision of emergency shelter care. A distinction, for ratesetting purposes, shall be drawn between foster family agencies that provide treatment of children in foster families and those that provide nontreatment services.

(c) The department shall develop and maintain regulations specifying the procedure for the appeal of department decisions about the setting of an agency's rate.

(d) On and after July 1, 1998, the schedule of rates, and the components used in the rate calculations specified in the department's regulations, for foster family agencies shall be increased by 6 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new schedule of rates for foster family agencies.

(e) (1) On and after July 1, 1999, the schedule of rates and the components used in the rate calculations specified in the department's regulations for foster family agencies shall be adjusted by an amount equal to the California Necessities Index computed pursuant to Section 11453, rounded to the nearest dollar, subject to the availability of funds. The resultant amounts shall constitute the new schedule of rates for foster family agencies, subject to further adjustment pursuant to paragraph (2).

(2) In addition to the adjustment specified in paragraph (1), commencing January 1, 2000, the schedule of rates and the components used in the rate calculations specified in the department's regulations for foster family agencies shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new schedule of rates for foster family agencies.

(f) For the 1999–2000 fiscal year, foster family agency rates that are not determined by the schedule of rates set forth in the department's regulations shall be increased by the same percentage as provided in subdivision (e).

(g) For the 2000–01 fiscal year and each fiscal year thereafter, without a county share of cost, notwithstanding subdivision (c) of Section 15200, the foster family agency rate shall be supplemented by one hundred dollars ($100) for clothing per year per child in care, subject to the availability of funds. The supplemental payment shall be used to supplement, and shall not be used to supplant, any clothing allowance paid in addition to the foster family agency rate.

(h) In addition to the adjustment made pursuant to subdivision (e), the component for social work activities in the rate calculation specified in the department's regulations for foster family agencies shall be increased by 10 percent, effective January 1, 2001. This

additional funding shall be used by foster family agencies solely to supplement staffing, salaries, wages, and benefit levels of staff performing social work activities. The schedule of rates shall be recomputed using the adjusted amount for social work activities. The resultant amounts shall constitute the new schedule of rates for foster family agencies. The department may require a foster family agency receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(i) The increased rate provided by subparagraph (C) of paragraph (1) of subdivision (d) of Section 11461 shall not be used to compute the monthly amount that may be paid to licensed foster family agencies for the placement of children in certified foster homes.

(j) The total foster family agency rate by age group in effect as of January 1, 2008, paid to licensed foster family agencies for the placement of children in certified foster family homes, shall be reduced by 10 percent, effective October 1, 2009. The foster family agency shall have flexibility in applying the reduction; however, no more than 10 percent shall be deducted from the child base and increment, as defined in departmental regulations. When the rate is restored to at least the rate in effect on September 1, 2009, the director shall issue the declaration described in Section 1506.3 of the Health and Safety Code.

(k) Effective October 1, 2009, the total foster family agency rate by age group, in effect for those agency rates that are not determined by the schedule of rates set forth in the department's regulations, shall be reduced by the same percentage and in the same manner as provided for in subdivision (j).

(*l*) (1) The department shall determine, consistent with the requirements of this section and other relevant requirements under law, the rate category for each foster family agency on a biennial basis. Submission of the biennial rate application shall be according to a schedule determined by the department.

(2) The department shall adopt regulations to implement this subdivision. The adoption, amendment, repeal, or readoption of a regulation authorized by this subdivision is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby

exempted from the requirement to describe specific facts showing the need for immediate action.

SEC. 208. Section 12301.03 of the Welfare and Institutions Code is amended to read:

12301.03. (a) (1) The Legislature finds and declares as follows:

(A) Authorized hours under the In-Home Supportive Services program were reduced in the 1992–93 fiscal year, and included a supplemental assessment process that was intended to ensure that recipients remained safely in their homes.

(B) The reduction in authorized hours as provided for in Chapter 8 of the Statutes of 2011 includes a supplemental assessment process that is similarly intended to ensure that recipients remain safely in their homes.

(2) Notwithstanding any other provision of law, if the Department of Finance determines that a reduction in authorized hours of service is necessary, pursuant to subdivision (d) of Section 14132.957, the State Department of Social Services shall implement a reduction in authorized hours of service to each in-home supportive services recipient as specified in this section, which shall be applied to the recipient's hours as authorized pursuant to his or her most recent assessment.

(3) The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled. However, hours authorized pursuant to a reassessment shall be subject to the reduction required by this section.

(4) For those recipients who have a documented unmet need, excluding protective supervision, because of the limitations contained in Section 12303.4, this reduction shall be applied first to the unmet need before being applied to the authorized hours. If the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction, the recipient may apply for a restoration of the reduction of authorized service hours, pursuant to Section 12301.05.

(5) A recipient of services under this article may direct the manner in which the reduction of hours is applied to the recipient's previously authorized services.

(6) The reduction in service hours made pursuant to paragraph (2) shall not apply to in-home supportive services recipients who

also receive services under Section 9560, subdivision (t) of Section 14132, and Section 14132.99.

(b) The department shall work with the counties to develop a process to allow for counties to preapprove IHSS Care Supplements described in Section 12301.05, to the extent that the process is permissible under federal law. The preapproval process shall be subject to the following conditions:

(1) The preapproval process shall rely on the criteria for assessing IHSS Care Supplement applications, developed pursuant to Section 12301.05.

(2) Preapproval shall be granted only to individuals who would otherwise be granted a full restoration of their hours pursuant to Section 12301.05.

(3) With respect to existing recipients as of the effective date of this section, all efforts shall be made to ensure that counties complete the process on or before a specific date, as determined by the department, in consultation with counties in order to allow for the production, printing, and mailing of notices to be issued to remaining recipients who are not granted preapproval and who thereby are subject to the reduction pursuant to this section.

(4) The department shall work with counties to determine how to apply a preapproval process with respect to new applicants to the IHSS program who apply after the effective date of this section.

(c) The notice of action informing each recipient who is not preapproved for an IHSS Care Supplement pursuant to subdivision (b) shall be mailed at least 15 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:

(1) The aggregate number of authorized hours before the reduction pursuant to paragraph (2) of subdivision (a) and the aggregate number of authorized hours after the reduction.

(2) That the recipient may direct the manner in which the reduction of authorized hours is applied to the recipient's previously authorized services.

(3) How all or part of the reduction may be restored, as set forth in Section 12301.05, if the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction.

(d) The department shall inform providers of any reduction to recipient hours through a statement on provider timesheets, after consultation with counties.

(e) The IHSS Care Supplement application process described in Section 12301.05 shall be completed before a request for a state hearing is submitted. If the IHSS Care Supplement application is filed within 15 days of the notice of action required by subdivision (c), or before the effective date of the reduction, the recipient shall be eligible for aid paid pending. A revised notice of action shall be issued by the county following evaluation of the IHSS Care Supplement application.

(f) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than October 1, 2013. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing this section and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no

more than 180 days, by which time final regulations may be adopted.

(g) If the Director of Health Care Services determines that federal approval is necessary to implement this section, Section 12301.05, or both, these sections shall be implemented only after any state plan amendments required pursuant to Section 14132.95 are approved.

(h) This section shall become operative on the first day of the first month following 90 days after the effective date of Chapter 8 of the Statutes of 2011, or October 1, 2012, whichever is later.

SEC. 209. Section 12301.07 of the Welfare and Institutions Code is amended to read:

12301.07. (a) (1) Notwithstanding any other provision of law, if subdivision (b) of Section 3.94 of the Budget Act of 2011 is operative, the department shall implement a 20-percent reduction in authorized hours of service to each in-home supportive services recipient as specified in this section, effective January 1, 2012, which shall be applied to the recipient's hours as authorized pursuant to his or her most recent assessment.

(2) The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled. However, hours authorized pursuant to a reassessment shall be subject to the reduction required by this section.

(3) For those recipients who have a documented unmet need, excluding protective supervision, because of the limitations contained in Section 12303.4, this reduction shall be applied first to the unmet need before being applied to the authorized hours. If the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction, the recipient may apply for a restoration of the reduction of authorized service hours, pursuant to subdivision (f).

(4) A recipient of services under this article may direct the manner in which the reduction of hours is applied to the recipient's previously authorized services.

(5) The reduction in service hours made pursuant to paragraph (1) shall not apply to in-home supportive services recipients who also receive services under Section 9560, subdivision (t) of Section 14132, and Section 14132.99.

(b) The department shall work with the counties to develop a process to allow for counties to preapprove IHSS Care Supplements

described in subdivision (f), to the extent that the process is permissible under federal law. The preapproval process shall be subject to the following conditions:

(1) The preapproval process shall rely on the criteria for assessing IHSS Care Supplement applications, developed pursuant to subdivision (f).

(2) Preapproval shall be granted only to individuals who would otherwise be granted a full restoration of their hours pursuant to subdivision (f).

(3) With respect to existing recipients as of the effective date of this section, all efforts shall be made to ensure that counties complete the process on or before a specific date, as determined by the department, in consultation with counties in order to allow for the production, printing, and mailing of notices to be issued to remaining recipients who are not granted preapproval and who thereby are subject to the reduction pursuant to this section.

(4) The department shall work with counties to determine how to apply a preapproval process with respect to new applicants to the IHSS program who apply after the effective date of this section.

(c) The notice of action informing each recipient who is not preapproved for an IHSS Care Supplement pursuant to subdivision (b) shall be mailed at least 15 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:

(1) The aggregate number of authorized hours before the reduction pursuant to paragraph (1) of subdivision (a) and the aggregate number of authorized hours after the reduction.

(2) That the recipient may direct the manner in which the reduction of authorized hours is applied to the recipient's previously authorized services.

(3) How all or part of the reduction may be restored, as set forth in subdivision (f), if the recipient believes he or she will be at

serious risk of out-of-home placement as a consequence of the reduction.

(d) The department shall inform providers of any reduction to recipient hours through a statement on provider timesheets, after consultation with counties.

(e) The IHSS Care Supplement application process described in subdivision (f) shall be completed before a request for a state hearing is submitted. If the IHSS Care Supplement application is filed within 15 days of the notice of action required by subdivision (c), or before the effective date of the reduction, the recipient shall be eligible for aid paid pending. A revised notice of action shall be issued by the county following evaluation of the IHSS Care Supplement application.

(f) (1) Any aged, blind, or disabled individual who is eligible for services under this article who receives a notice of action indicating that his or her services will be reduced under subdivision (a) but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored may submit an IHSS Care Supplement application. When a recipient submits an IHSS Care Supplement application within 15 days of receiving the reduction notice or prior to the implementation of the reduction, the recipient's in-home supportive services shall continue at the level authorized by the most recent assessment, prior to any reduction, until the county finds that the recipient does or does not require restoration of any hours through the IHSS Care Supplement. If the recipient disagrees with the county's determination concerning the need for the IHSS Care Supplement, the recipient may request a hearing on that determination.

(2) The department shall develop an assessment tool, in consultation with stakeholders, to be used by the counties to determine if a recipient is at serious risk of out-of-home placement as a consequence of the reduction of services pursuant to this section. The assessment tool shall be developed utilizing standard of care criteria for relevant out-of-home placements that serve individuals who are aged, blind, or who have disabilities and who would qualify for IHSS if living at home, including, but not limited to, criteria set forth in Chapter 7.0 of the Manual of Criteria for Medi-Cal Authorization published by the State Department of Health Care Services, as amended April 15, 2004, and the IHSS uniform assessment guidelines.

(3) Counties shall give a high priority to prompt screening of persons specified in this section to determine their need for an IHSS Care Supplement.

(g) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than March 1, 2013. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing this section and one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(h) If the Director of Health Care Services determines that federal approval is necessary to implement this section, this section shall be implemented only after any state plan amendments required pursuant to Section 14132.95 are approved.

SEC. 210. Section 12305.87 of the Welfare and Institutions Code is amended to read:

12305.87. (a) (1) Commencing 90 days following the effective date of the act that adds this section, a person specified in paragraph (2) shall be subject to the criminal conviction exclusions provided for in this section, in addition to the exclusions required under Section 12305.81.

(2) This section shall apply to a person who satisfies either of the following conditions:

(A) He or she is a new applicant to provide services under this article.

(B) He or she is an applicant to provide services under this article whose application has been denied on the basis of a conviction and for whom an appeal of that denial is pending.

(b) Subject to subdivisions (c), (d), and (e), an applicant subject to this section shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, any of the following:

(1) A violent or serious felony, as specified in subdivision (c) of Section 667.5 of the Penal Code and subdivision (c) of Section 1192.7 of the Penal Code.

(2) A felony offense for which a person is required to register under subdivision (c) of Section 290 of the Penal Code. For purposes of this paragraph, the 10-year time period specified in this section shall commence with the date of conviction for, or incarceration following a conviction for, the underlying offense, and not the date of registration.

(3) A felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of Section 10980.

(c) Notwithstanding subdivision (b), an application shall not be denied under this section if the applicant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or if the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(d) (1) Notwithstanding subdivision (b), a recipient of services under this article who wishes to employ a provider applicant who has been convicted of an offense specified in subdivision (b) may submit to the county an individual waiver of the exclusion provided for in this section. This paragraph shall not be construed to allow a recipient to submit an individual waiver with respect to a conviction or convictions for offenses specified in Section 12305.81.

(2) The county shall notify a recipient who wishes to hire a person who is applying to be a provider and who has been convicted of an offense subject to exclusion under this section of that applicant's relevant criminal offense convictions that are

covered by subdivision (b). The notice shall include both of the following:

(A) A summary explanation of the exclusions created by subdivision (b), as well as the applicable waiver process described in this subdivision and the process for an applicant to seek a general exception, as described in subdivision (e). This summary explanation shall be developed by the department for use by all counties.

(B) An individual waiver form, which shall also be developed by the department and used by all counties. The waiver form shall include both of the following:

(i) A space for the county to include a reference to any Penal Code sections and corresponding offense names or descriptions that describe the relevant conviction or convictions that are covered by subdivision (b) and that the provider applicant has in his or her background.

(ii) A statement that the service recipient, or his or her authorized representative, if applicable, is aware of the applicant's conviction or convictions and agrees to waive application of this section and employ the applicant as a provider of services under this article.

(3) To ensure that the initial summary explanation referenced in this subdivision is comprehensible for recipients and provider applicants, the department shall consult with representatives of county welfare departments and advocates for, or representatives of, recipients and providers in developing the summary explanation and offense descriptions.

(4) The individual waiver form shall be signed by the recipient, or by the recipient's authorized representative, if applicable, and returned to the county welfare department by mail or in person. Except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or a spouse or registered domestic partner of a recipient, a provider applicant shall not sign his or her own individual waiver form as the recipient's authorized representative. The county shall retain the waiver form and a copy of the provider applicant's criminal offense record information search response until the date that the convictions that are the subject of the waiver request are no longer within the 10-year period specified in subdivision (b).

(5) An individual waiver submitted pursuant to this subdivision shall entitle a recipient to hire a provider applicant who otherwise

meets all applicable enrollment requirements for the In-Home Supportive Services program. A provider hired pursuant to an individual waiver may be employed only by the recipient who requested that waiver, and the waiver shall only be valid with respect to convictions that are specified in that waiver. A new waiver shall be required if the provider is subsequently convicted of an offense to which this section otherwise would apply. A provider who wishes to be listed on a provider registry or to provide supportive services to a recipient who has not requested an individual waiver shall be required to apply for a general exception, as provided for in subdivision (e).

(6) Nothing in this section shall preclude a provider who is eligible to receive payment for services provided pursuant to an individual waiver under this subdivision from being eligible to receive payment for services provided to one or more additional recipients who obtain waivers pursuant to this same subdivision.

(7) The state and a county shall be immune from any liability resulting from granting an individual waiver under this subdivision.

(e) (1) Notwithstanding subdivision (b), an applicant who has been convicted of an offense identified in subdivision (b) may seek from the department a general exception to the exclusion provided for in this section.

(2) Upon receipt of a general exception request, the department shall request a copy of the applicant's criminal offender record information search response from the applicable county welfare department. Notwithstanding any other provision of law, the county shall provide a copy of the criminal offender record information search response, as provided to the county by the Department of Justice, to the department. The county shall provide this information in a manner that protects the confidentiality and privacy of the criminal offender record information search response. The state or federal criminal history record information search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(3) The department shall consider the following factors when determining whether to grant a general exception under this subdivision:

(A) The nature and seriousness of the conduct or crime under consideration and its relationship to employment duties and responsibilities.

(B) The person's activities since conviction, including, but not limited to, employment or participation in therapy, education, or community service, that would indicate changed behavior.

(C) The number of convictions and the time that has elapsed since the conviction or convictions.

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

(E) Any evidence of rehabilitation, including character references, submitted by the person, or by others on the person's behalf.

(F) Employment history and current or former employer recommendations. Additional consideration shall be given to employer recommendations provided by a person who has received or has indicated a desire to receive supportive or personal care services from the applicant, including, but not limited to, those services, specified in Section 12300.

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

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

(f) If the department makes a determination to deny an application to provide services pursuant to a request for a general exception, the department shall notify the applicant of this determination by either personal service or registered mail. The notice shall include the following information:

(1) A statement of the department's reasons for the denial that evaluates evidence of rehabilitation submitted by the applicant, if any, and that specifically addresses any evidence submitted relating to the factors in paragraph (3) of subdivision (e).

(2) A copy of the applicant's criminal offender record information search response, even if the applicant already has received a copy pursuant to Section 12301.6 or 12305.86. The department shall provide this information in a manner that protects the confidentiality and privacy of the criminal offender record information search response.

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

(B) The department shall retain a copy of each individual's criminal offender record information search response until the date that the convictions that are the subject of the exception are no longer within the 10-year period specified in subdivision (b), and shall record the date the copy of the response was provided to the individual and the department.

(C) The criminal offender record information search response shall not be made available by the department to any individual other than the provider applicant.

(g) (1) Upon written notification that the department has determined that a request for exception shall be denied, the applicant may request an administrative hearing by submitting a written request to the department within 15 business days of receipt of the written notification. Upon receipt of a written request, the department shall hold an administrative hearing consistent with the procedures specified in Section 100171 of the Health and Safety Code, except where those procedures are inconsistent with this section.

(2) A hearing under this subdivision shall be conducted by a hearing officer or administrative law judge designated by the director. A written decision shall be sent by certified mail to the applicant.

(h) The department shall revise the provider enrollment form developed pursuant to Section 12305.81 to include both of the following:

(1) The text of subdivision (c) of Section 290 of the Penal Code, subdivision (c) of Section 667.5 of the Penal Code, subdivision (c) of Section 1192.7 of the Penal Code, and paragraph (2) of subdivisions (c) and (g) of Section 10980 of this code.

(2) A statement that the provider understands that if he or she has been convicted, or incarcerated following conviction for, any of the crimes specified in the provisions identified in subdivision (b) in the last 10 years, and has not received a certificate of rehabilitation or had the information or accusation dismissed, as provided in subdivision (c), he or she shall only be authorized to receive payment for providing in-home supportive services under an individual waiver or general exception as described in this section, and upon meeting all other applicable criteria for enrollment as a provider in the program.

(i) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instructions from the department until regulations are adopted. The department shall adopt emergency regulations implementing these provisions no later than July 1, 2011. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations pursuant to this section and one readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(j) In developing the individual waiver form and all-county letters or information notices or similar instructions, the department shall consult with stakeholders, including, but not limited to, representatives of the county welfare departments, and representatives of consumers and providers. The consultation shall include at least one in-person meeting prior to the finalization of the individual waiver form and all-county letters or information notices or similar instructions.

SEC. 211. Section 14053.8 of the Welfare and Institutions Code is amended to read:

14053.8. (a) Notwithstanding any other provision of law, the department shall develop a process to allow counties to receive any available federal financial participation for acute inpatient hospital services and inpatient psychiatric services provided to juvenile inmates who are admitted as inpatients in a medical institution off the grounds of the correctional facility, and who, but for their institutional status as inmates, are otherwise eligible

for Medi-Cal benefits pursuant to this chapter. This process shall be coordinated, to the extent possible, with the processes and procedures established pursuant to Section 14053.7 of this code and Section 5072 of the Penal Code. This subdivision shall not be construed to alter or abrogate any obligation of the state pursuant to an administrative action or a court order that is final and no longer subject to appeal to fund and reimburse counties for any medical services provided to a juvenile inmate.

(b) A juvenile inmate who is an inpatient in a medical institution off the grounds of the correctional facility shall not be denied eligibility for Medi-Cal benefits under this section because of his or her institutional status as an inmate of a public institution.

(c) The department shall consult with counties in the development of the process pursuant to this section.

(d) This section shall not be construed to limit the department's authority to suspend or terminate Medi-Cal eligibility pursuant to Section 14011.10, except during such times that the juvenile inmate is receiving acute inpatient hospital services or inpatient psychiatric services pursuant to subdivision (b).

(e) This section shall be implemented only if and to the extent that existing levels of federal financial participation are not otherwise jeopardized. To the extent that the department determines that existing levels of federal financial participation are jeopardized, this section shall no longer be implemented.

(f) The department shall seek any federal approvals necessary to implement the process developed pursuant to this section. This section shall be implemented only if and to the extent that any necessary federal approvals have been obtained, and only to the extent that federal financial participation is available.

(g) Notwithstanding any other provision of law, as part of the process developed pursuant to this section, the department may exempt juvenile inmates from enrollment into new or existing managed care health plans.

(h) The process developed pursuant to this section shall be implemented in only those counties that elect to provide the nonfederal share of the state's administrative costs associated with implementation of this section and the nonfederal share of expenditures for acute inpatient hospital services and inpatient psychiatric services provided to eligible juvenile inmates described in subdivision (a).

(i) The federal financial participation received pursuant to the process implemented under this section shall be paid to the participating counties for services rendered to the juvenile inmates. If a federal audit disallowance and interest results from claims made under the process created pursuant to this section, the department shall recoup from the county that received the disallowed funds the amount of the disallowance and any applicable interest.

(j) (1) If there is a final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party, or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services (CMS), that disallows, defers, or alters the implementation of this section or, to the extent applicable, Section 14053.7 of this code or Section 5072 of the Penal Code, including the rate methodology or payment process established by the department that limits or affects the department's authority to select the facilities used to provide acute inpatient hospital services and inpatient psychiatric services to juvenile inmates, then any provision of this section that is inconsistent with the final judicial or CMS determination shall have no force or effect.

(2) In addition, the department may, at its discretion, cease to implement any other part of this section that is implicated by the final judicial or CMS determination.

(k) For the purposes of Medi-Cal eligibility pursuant to this section, "juvenile inmate" means an individual under 21 years of age who is involuntarily residing in a public institution, including state and local institutions.

(*l*) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may, without taking any further regulatory action, implement this section by means of all-county letters or similar instructions.

SEC. 212. Section 14053.9 of the Welfare and Institutions Code is amended to read:

14053.9. (a) Notwithstanding any other provision of law, the department shall develop a process to allow the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or any successor, to receive any available federal financial

participation for acute inpatient hospital services and inpatient psychiatric services provided to any juvenile inmates in the Division of Juvenile Facilities who are admitted as inpatients in a medical institution off the grounds of the correctional facility, and who, but for their institutional status as juvenile inmates, are otherwise eligible for Medi-Cal benefits pursuant to this chapter. This process shall be coordinated, to the extent possible, with the processes and procedures established pursuant to Section 14053.7 of this code and Section 5072 of the Penal Code.

(b) Any juvenile inmate in the Division of Juvenile Facilities who is an inpatient in a medical institution off the grounds of the correctional facility shall not be denied eligibility for Medi-Cal benefits under this section because of his or her institutional status as an inmate in the Division of Juvenile Facilities.

(c) The department shall consult with the Division of Juvenile Facilities in the development of the process pursuant to this section.

(d) The department shall seek any federal approvals necessary to implement the process developed pursuant to this section. This section shall be implemented only if and to the extent that any necessary federal approvals have been obtained, and only to the extent that federal financial participation is available.

(e) Notwithstanding any other provision of law, as part of the process developed pursuant to this section, the department may exempt any juvenile inmate in a facility operated by the Division of Juvenile Facilities from enrollment into new or existing managed care health plans.

(f) The process developed pursuant to this section shall be implemented only to the extent that the Division of Juvenile Facilities agrees voluntarily to provide the nonfederal share of any costs to the department associated with the administration of this section and the nonfederal share of expenditures for acute inpatient hospital services and inpatient psychiatric services provided off the grounds of the correctional facility to any juvenile inmate of the Division of Juvenile Facilities who is eligible for Medi-Cal benefits pursuant to this section.

(g) The federal financial participation received pursuant to this section shall be paid to the Department of Corrections and Rehabilitation for services rendered to any juvenile inmate in the Division of Juvenile Facilities.

(h) Reimbursement pursuant to this section shall be limited to only those services for which federal financial participation is available.

(i) (1) If there is a final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party, or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services (CMS), that disallows, defers, or alters the implementation of this section or, to the extent applicable, Section 14053.7 of this code or Section 5072 of the Penal Code, including the rate methodology or payment process established by the department that limits or affects the department's authority to select the facilities used to provide acute inpatient hospital services and inpatient psychiatric services to juvenile inmates in the Division of Juvenile Facilities, then any provision of this section that is inconsistent with the final judicial or CMS determination shall have no force or effect.

(2) In addition, the department may, at its discretion, cease to implement any other part of this section that is implicated by the final judicial or CMS determination.

(j) For the purposes of Medi-Cal eligibility pursuant to this section, "juvenile inmate" means an individual under 21 years of age who is involuntarily residing in a public institution, including state and local institutions.

(k) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may, without taking any further regulatory action, implement this section by means of all-county letters or similar instructions.

SEC. 213. Section 14105.09 of the Welfare and Institutions Code is amended to read:

14105.09. Notwithstanding any other provision of law, if subdivision (b) of Section 3.94 of the Budget Act of 2011 is operative, effective on or after January 1, 2012, the payment reductions in Sections 14105.07, 14105.192, 14126.033, 14131.05, and 14131.07 shall apply to managed care health plans that contract with the department pursuant to Chapter 8.75 (commencing with Section 14591) and to contracts with the Senior Care Action Network and AIDS Healthcare Foundation, to the extent that the services are provided through any of these contracts, payments

shall be reduced by the actuarial equivalent amount of the payment reductions pursuant to contract amendments or change orders effective on July 1, 2011, or thereafter.

SEC. 214. Section 14105.193 of the Welfare and Institutions Code is amended to read:

14105.193. (a) (1) Notwithstanding paragraph (7) of subdivision (j) of Section 14105.192 and any other law, beginning June 1, 2011, reimbursement rates for freestanding pediatric subacute care units, as defined in Section 51215.8 of Title 22 of the California Code of Regulations, shall be the applicable rate for the 2008–09 rate year, reduced by 5.75 percent, plus the projected cost of complying with new state or federal mandates.

(2) The department shall recalculate and publish the rates specified in paragraph (1) for any of the following reasons:

(A) If the federal Centers for Medicare and Medicaid Services (CMS) does not approve exemption changes to the facilities subject to the skilled nursing facility quality assurance fee pursuant to paragraph (4) of subdivision (c) of Section 1324.20 of the Health and Safety Code.

(B) If CMS does not approve any proposed modification to the methodology for calculation of the skilled nursing quality assurance fee pursuant to Article 7.6 (commencing with Section 1324.20) of Chapter 2 of Division 2 of the Health and Safety Code.

(C) To ensure that the state does not incur any additional General Fund expenses for reimbursement to pediatric subacute care units for dates of service on and after June 1, 2011.

(D) If the difference in the projected skilled nursing quality assurance fee collections for the 2011–12 rate year, pursuant to Article 7.6 (commencing with Section 1324.20) of Chapter 2 of Division 2 of the Health and Safety Code, would result in any additional General Fund expense to pay for the 2011–12 rate year reimbursement rate.

(b) The reductions described in this section shall apply only to payments for services when the General Fund share of the payment is paid with funds directly appropriated to the department in the annual Budget Act and shall not apply to payments for services paid with funds appropriated to other departments or agencies.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement and administer this section by

means of provider bulletins, or similar instructions, without taking regulatory action.

(d) The payment reductions and adjustments provided for in this section shall be implemented only if the director determines that the payments that result from the application of this section will comply with applicable federal Medicaid requirements and that federal financial participation will be available.

(1) In determining whether federal financial participation is available, the director shall determine whether the payments comply with applicable federal Medicaid requirements, including those set forth in Section 1396a(a)(30)(A) of Title 42 of the United States Code.

(2) To the extent that the director determines that the payments do not comply with the federal Medicaid requirements or that federal financial participation is not available with respect to any payment that is reduced pursuant to this section, the director retains the discretion not to implement the particular payment reduction or adjustment and may adjust the payment as necessary to comply with federal Medicaid requirements.

(e) The department shall seek any necessary federal approvals for the implementation of this section.

(f) This section shall not be implemented until federal approval is obtained. When federal approval is obtained, the payments resulting from the application of this section shall be implemented retroactively to June 1, 2011, or on any other date or dates as may be applicable.

SEC. 215. Section 14132.957 of the Welfare and Institutions Code is amended to read:

14132.957. (a) (1) It is the intent of the Legislature to adopt measures that will assist individuals who are living in the community to remain within their home environment and avoid unnecessary emergency room usage and hospital and nursing facility admissions due to those individuals' not taking medications as prescribed.

(2) The Legislature finds and declares that certain seniors, persons with disabilities, and other Medi-Cal recipients are at high risk of not taking medications as prescribed and that measures to assist them in taking prescribed medications will advance the state's objectives to save lives, reduce health care costs, and assist individuals to continue living independently in their homes.

(3) The Legislature has determined that the achievement of these objectives will result in a net annual savings of one hundred forty million dollars ($140,000,000) to the General Fund, after fully offsetting costs for implementing and administrating the pilot project.

(4) The Legislature therefore authorizes the establishment of the Home and Community Based Medication Dispensing Machine Pilot Project for utilization of an automated medication dispensing machine with associated monitoring and telephonic reporting services to assist Medi-Cal recipients with taking prescribed medications. All Medi-Cal recipients who participate in the pilot project shall do so voluntarily and shall be selected using criteria that demonstrates their susceptibility to not taking their medications as prescribed without monitoring or assistance.

(b) On and after the effective date of this section, the department, in consultation with the State Department of Social Services, shall begin implementation of the pilot project described in subdivision (a) and shall do all of the following:

(1) Establish criteria to identify at-risk Medi-Cal recipients who demonstrate susceptibility to not taking medications as prescribed. These criteria shall be based on Medi-Cal, In-Home Supportive Services program, and Medicare data and may include factors such as age, disability, multiple prescribed medications, and experience with or a high risk of experience with, numerous emergency department visits or hospital or nursing facility admissions within a specified time period as a result of not taking medications as prescribed.

(2) Identify an at-risk portion of Medi-Cal recipients of a sufficient number to achieve the intended savings. Recipients identified for this pilot project shall be limited to individuals who obtain Medi-Cal benefits through fee for service, who are not required to be enrolled on a mandatory basis in a Medi-Cal managed care health plan, and who are able to manage the medication dispensing machine independently or with the assistance of a family member or care provider and have a home environment capable of supporting the machine and associated telephonic reporting service that includes an active telephone line.

(3) To the extent necessary, the department shall do all of the following:

(A) Select and procure the automated medication dispensing machines, including costs for installation in a participant's home, as well as monitoring and repair services associated with operation of the machines.

(B) Provide an in-home, automated medication dispensing machine with telephonic reporting service for monitoring and assisting with taking medication, including installation, maintenance, alerts, training, and supplies at no cost to the recipient.

(4) Seek federal funding from the federal Centers for Medicare and Medicaid Services Innovation Center for the cost of the pilot project and other expenses, and to receive Medicare shared savings realized from the pilot project.

(5) Assess the potential for federal financial participation for these machines and any other expenses associated with this pilot project as well as receipt of federal reimbursement for savings accrued to the Medicare program. If the department determines that federal financial participation is available under Title XI or XIX of the federal Social Security Act, the department shall seek a waiver or other federal approval, or submit a Medicaid State Plan amendment to implement the pilot project.

(c) (1) The department shall provide quarterly reports, beginning October 1, 2011, to the Department of Finance and the appropriate fiscal and policy committees of the Legislature, describing the number of recipients participating in the pilot project, the number of medication dispensing machines in use, costs of implementing and administering the pilot project, and any available data regarding medical and pharmacy utilization.

(2) The department shall also conduct an evaluation of the pilot project, including effects on service utilization, spending, outcomes, projected savings to the Medi-Cal program and the federal Medicare program, recommendations for improving the pilot project and maximizing savings to the state, and identification of other means of General Fund savings related to improving quality and cost-effectiveness of care, and shall report the evaluation to the appropriate policy and fiscal committees of the Legislature by December 31, 2013.

(3) (A) If the Department of Finance determines that the quarterly reports do not demonstrate the ability of the pilot project to achieve at least the estimated net annual savings of one hundred

forty million dollars ($140,000,000) to the General Fund, after fully offsetting implementation and administrative costs, the Director of Finance shall notify the Chairperson of the Senate Committee on Budget and Fiscal Review and the Chairperson of the Assembly Committee on Budget of this determination, in writing, by April 10, 2012. Within 10 days following this notification, the Department of Finance shall convene a meeting with legislative staff to review the estimates related to its determination.

(B) Subsequent to the meeting pursuant to subparagraph (A), the Department of Finance shall request that the Legislature enact legislation on or before July 1, 2012, to either modify the pilot project, if necessary, or provide alternative options to achieve the balance of the net annual savings of one hundred forty million dollars ($140,000,000) to the General Fund, after fully offsetting implementation and administrative costs, or both.

(d) (1) Notwithstanding any other provision of law, if the Department of Finance determines after July 1, 2012, that the actions pursuant to subdivisions (b) and (c) will fail to achieve the net annual savings of one hundred forty million dollars ($140,000,000) to the General Fund, after fully offsetting implementation and administrative costs, the Department of Finance shall notify the State Department of Social Services and the department, and the State Department of Social Services, in consultation with the department, shall implement a reduction in authorized hours for in-home supportive services recipients beginning October 1, 2012, in accordance with Section 12301.03, to achieve a net annual savings of one hundred forty million dollars ($140,000,000) to the General Fund, after fully offsetting implementation and administrative costs of the pilot project and after taking into account any savings achieved pursuant to subdivisions (b) and (c).

(2) No earlier than 30 days after submission of the evaluation required by paragraph (2) of subdivision (c), the Department of Finance may adjust the amount of the reduction to meet net annual savings of one hundred forty million dollars ($140,000,000) to the General Fund after fully offsetting implementation and administrative costs and after taking into account any savings achieved pursuant to subdivisions (b) and (c). The calculations shall be based on updated data contained in the evaluation.

(e) For the purpose of implementing this section, the director may enter into exclusive or nonexclusive contracts on a bid or negotiated basis, or utilize existing provider enrollment or payment mechanisms. Any contract, contract amendment, or change order entered into for the purpose of implementing this section shall be exempt from Chapter 5.6 (commencing with Section 11545) of Part 1 of Division 3 of Title 2 of the Government Code, the Public Contract Code, and any associated policies, procedures, or regulations under these provisions, and shall be exempt from review or approval by any division of the Department of General Services and the California Technology Agency.

(f) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section through all-county letters, provider bulletins, or similar instructions, without taking regulatory action.

(g) (1) Notwithstanding paragraph (2) of subdivision (c), the department may terminate operation of the pilot project if and to the extent that any of the following events occurs:

(A) Funding to implement and administer the pilot project is not appropriated in the 2012–13 fiscal year or annually thereafter.

(B) The Director of Finance notifies the Legislature that the pilot project is not projected to achieve a net annual savings or results in an overall increased cost.

(C) The pilot project conflicts with one or more provisions of state or federal law necessary to implement the pilot project.

(D) The department is unable to obtain from the Medicare program the data necessary to implement this pilot project, and the high-risk Medi-Cal only population is insufficient to conduct the pilot project.

(E) The department receives substantiated reports of adverse clinical outcomes indicating that continuing the pilot project poses unacceptable health risks to participants.

(2) Termination of the pilot project pursuant to paragraph (1) does not provide the department or the State Department of Social Services with authority to implement a reduction in authorized hours pursuant to Section 12301.03. Any reduction in authorized hours pursuant to Section 12301.03 shall comply with the requirements of subdivision (d).

(3) The department shall notify the appropriate fiscal and policy committees of the Legislature 30 days prior to terminating the pilot project.

SEC. 216. Section 14165 of the Welfare and Institutions Code is amended to read:

14165. (a) There is hereby created in the Governor's office the California Medical Assistance Commission, for the purpose of contracting with health care delivery systems for the provision of health care services to recipients under the California Medical Assistance program.

(b) Notwithstanding any other provision of law, the commission created pursuant to subdivision (a) shall continue through June 30, 2012, after which, it shall be dissolved and the term of any commissioner serving at that time shall end.

(1) Upon dissolution of the commission, all powers, duties, and responsibilities of the commission shall be transferred to the Director of Health Care Services. These powers, duties, and responsibilities shall include, but are not limited to, those exercised in the operation of the selective provider contracting program pursuant to Article 2.6 (commencing with Section 14081).

(2) On or before July 1, 2012, the position of executive director described in Section 14165.5 and all other staff positions serving the commission shall be transferred to the State Department of Health Care Services. The State Department of Health Care Services shall consult with the commission, the Department of Finance, and the Department of Personnel Administration to develop a staff transition plan that will be included in the 2012–13 Governor's Budget. The transition plan shall outline the transition of staff positions serving the commission to the State Department of Health Care Services.

(3) Upon a determination by the Director of Health Care Services that a payment system based on diagnosis-related groups as described in Section 14105.28 that is sufficient to replace the contract-based payment system described in subdivision (a) has been developed and implemented, the powers, duties, and responsibilities conferred on the commission and transferred to the Director of Health Care Services shall no longer be exercised.

(4) Protections afforded to the negotiations and contracts of the commission by the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the

Government Code) shall be applicable to the negotiations and contracts conducted or entered into pursuant to this section by the State Department of Health Care Services.

(c) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, or any other provision of law, the State Department of Health Care Services may implement and administer this section by means of provider bulletins or other similar instructions, without taking regulatory action. The authority to implement this section as set forth in this subdivision shall include the authority to give notice by provider bulletin or other similar instruction of a determination made pursuant to paragraph (3) of subdivision (b) and to modify or supersede existing regulations in Title 22 of the California Code of Regulations that conflict with implementation of this section.

SEC. 217. Section 14165.56 of the Welfare and Institutions Code is amended to read:

14165.56. (a) The department shall establish, implement, and maintain the Nondesignated Public Hospital Intergovernmental Transfer Program to provide supplemental payments to nondesignated public hospitals in a manner that maximizes federal financial participation in the resulting supplemental payments. The department shall develop and implement the program subject to receiving all federal approvals.

(b) Upon receiving federal approval, the department shall fully implement this section beginning with the 2010–11 fiscal year. The department shall perform all acts necessary to secure the maximum level of federal financial participation for payments resulting from the Nondesignated Public Hospital IGT Pool. The department shall make every effort to implement this section for the 2010–11 fiscal year so that all allocations will be determined, all intergovernmental transfers will be received by the state, and federal financial participation will be drawn in order for the department to make payments due to each nondesignated public hospital prior to July 1, 2011.

(c) By August 1 of each fiscal year, beginning with the 2011–12 fiscal year and every year thereafter, the department shall provide an estimate of the Non-State Government Owned Hospital (Inpatient) UPL associated with the inpatient fee-for-service payments to nondesignated public hospitals in order to establish

both the UPL and the available room under the UPL. The department may make supplemental inpatient fee-for-service payments to nondesignated public hospitals using some or all of the shortfall level below the UPL. The amount identified by the department as available for those payments shall be multiplied by 100 percent minus the annual federal medical assistance percentage, as defined in Part 433 of Title 42 of the Code of Federal Regulations and shall be the amount available in the Nondesignated Public Hospital Intergovernmental Transfer Pool. The payments made pursuant to this article may be funded using public entity intergovernmental transfers and associated federal financial participation.

(d) Once the department has estimated the UPL and the potential supplemental payment relating to nondesignated public hospitals, the department shall use the IGT allocation formula described in Section 14165.57 to determine the estimated IGT allocation for each nondesignated public hospital from the Nondesignated Public Hospital IGT Pool using the most recent data publicly available from the federal Centers for Medicare and Medicaid Services (CMS), and the federal Health Resources and Services Administration (HRSA).

SEC. 218. Section 14165.57 of the Welfare and Institutions Code is amended to read:

14165.57. (a) The IGT allocation formula shall use data from each nondesignated public hospital's latest Hospital Annual Financial Disclosure Report on file with OSHPD as of March 1 of each prior fiscal year and shall be as follows:

(1) The Nondesignated Public Hospital IGT Pool shall be allocated into two allocations: the Contract Hospitals allocation and the Non-Contract Hospitals allocation. This allocation shall be made to each group, respectively, based upon the ratio of Medi-Cal fee-for-service acute patient days listed in the latest OSHPD Annual Financial Disclosure Report for Contract Hospitals and Non-Contract Hospitals to the total Medi-Cal fee-for-service acute patient days provided by all Contract Hospitals and Non-Contract Hospitals. Medi-Cal fee-for-service acute patient days for converted hospitals and new hospitals will not be included in this allocation.

(2) The department shall determine if a nondesignated public hospital provides services in either a federally recognized Health

Professional Shortage Area or to a federally recognized Medically Underserved Area or Population. The department shall also determine if the nondesignated public hospital is federally recognized as either a Critical Access Hospital or a Sole Community Provider. If any of these conditions apply, the hospital shall score one point. Otherwise, the hospital shall score zero points.

(3) The department shall calculate for each nondesignated public hospital the charity care charges as a percentage of the hospital's total gross revenue. If the charity care charges are greater than or equal to 3 percent of the total gross revenue, the hospital shall score three points. If the charity care charges are less than 3 percent, but more than or equal to 1 percent, of the total gross revenue, the hospital shall score two points. If the charity care charges are less than 1 percent, but greater than 0 percent, of the total gross revenue, the hospital shall score one point. If charity care charges are less than or equal to 0 percent, of the total gross revenue, the hospital shall score zero points.

(4) The department shall calculate for each nondesignated public hospital the bad debt charges as a percentage of the hospital's other payer's gross revenue, as disclosed in the Hospital Annual Financial Disclosure Report. If the bad debt charges are greater than or equal to 40 percent of the other gross revenue, the hospital shall score two points. If the bad debt charges are less than 40 percent, but greater than 0 percent, of the other gross revenue, the hospital shall score one point. If the bad debt charges are less than or equal to 0 percent, of the other gross revenue, the hospital shall score zero points.

(5) The department shall calculate for each nondesignated public hospital the Medi-Cal charges as a percentage of the hospital's total gross revenue. If the Medi-Cal charges are greater than or equal to 25 percent of the total gross revenue, the hospital shall score three points. If the Medi-Cal charges are less than 25 percent, but more than or equal to 12 percent, of the total gross revenue, the hospital shall score two points. If the Medi-Cal charges are less than 12 percent, but greater than 0 percent, of the total gross revenue, the hospital shall score one point. If the Medi-Cal charges are less than or equal to 0 percent of total gross revenue, the hospital shall score zero points.

(6) The sum of each nondesignated public hospital's points accumulated pursuant to paragraphs (2) to (5), inclusive, shall constitute the hospital's IGT Formula Score. The IGT Formula Score for a new hospital or a converted hospital shall be equal to zero.

(7) The Contract Hospital allocation shall be allocated among Contract Hospitals and the Non-Contract Hospital allocation shall be allocated among Non-Contract Hospitals to determine preliminary allocations in accordance with the following:

(A) Each Contract Hospital that has an IGT Formula Score of between seven and nine, inclusive, shall be allocated three times the amount of the Contract Hospital allocation that is allocated to each Contract Hospital that has a score of one to three, inclusive.

(B) Each Contract Hospital that has an IGT Formula Score of between four and six, inclusive, shall be allocated two times the amount of the Contract Hospital allocation that is allocated to each Contract Hospital that has an IGT Formula Score of one to three, inclusive.

(C) Each Non-Contract Hospital that has an IGT Formula Score of between seven and nine, inclusive, shall be allocated three times the amount of the Non-Contract Hospital allocation that is allocated to each Non-Contract Hospital that has an IGT Formula Score of one to three, inclusive.

(D) Each Non-Contract Hospital that has an IGT Formula Score of between four and six, inclusive, shall be allocated two times the amount of the Non-Contract Hospital allocation that is allocated to each Non-Contract Hospital that has an IGT Formula Score of one to three, inclusive.

(E) No amount shall be allocated to a nondesignated public hospital with an IGT Formula Score of zero points.

(8) The sum of the preliminary allocation determined under paragraph (7) for all hospitals within each IGT Formula Group shall be reallocated among the hospitals within each IGT Formula Group based on the ratio of each hospital's staffed acute beds listed in the latest OSHPD Annual Financial Disclosure Report, to the total staffed acute beds of all hospitals in the IGT Formula Group.

(b) By no later than September 1 of the 2011–12 fiscal year or as soon thereafter as federal approvals are obtained, and by no later than September 1 of each fiscal year thereafter, the department shall provide each nondesignated public hospital with an estimated

IGT allocation notice that includes the calculations and data sources used to calculate the estimated IGT allocation, as described in this section.

(c) Each nondesignated public hospital shall have 30 days from receipt of the estimated IGT allocation notice from the department to review the department's hospital-specific estimated IGT allocation and to notify the department of any data or calculation errors. If the hospital does not respond within 30 days, the information will be deemed accurate. No later than November 30 of each fiscal year, the department shall incorporate all appropriate corrections or data updates for all of the nondesignated public hospitals and then recalculate the IGT allocations using the IGT allocation formula to obtain a final IGT allocation for each nondesignated public hospital.

(d) Beginning with the 2011–12 fiscal year, on or before December 1 or as soon thereafter as federal approvals are obtained, and by no later than December 1 of each fiscal year thereafter, the department shall send each nondesignated public hospital a notice of eligibility indicating the final IGT allocation for the nondesignated public hospital. The nondesignated public hospital shall have 20 business days after receipt of the notice to either accept or decline the offer. If a nondesignated public hospital accepts the offer, the nondesignated public hospital may enter into an IGT agreement with the department. If the department receives no response, the offer will be considered declined.

(e) Before the later of December 31 of the 2011–12 fiscal year, the date upon which all federal approvals are obtained, and by no later than January 15 of each state fiscal year thereafter, the department shall document all nondesignated public hospital IGT allocation offers that are either accepted or declined. After the department has recorded all IGT allocations as being either accepted or declined, any remaining unsubscribed IGT allocations will be allocated to all the other participating nondesignated public hospitals on a pro rata basis based on the final IGT allocations calculated pursuant to subdivision (b) during January of each fiscal year. The department shall inform each nondesignated public hospital participating in the program of the revised final IGT allocation assigned to that hospital by January 30. At that time, the department shall give each nondesignated public hospital

participant five days to accept or decline participation in the program.

(f) The state may accept all public funds in the amount of the final IGT allocation from a transferring entity pursuant to this section, provided that any funds from a transferring entity must be permitted by law to be used for these purposes. The transferring entity shall certify to the department that the funds it proposes to transfer satisfy the requirements of this subdivision, and are in compliance with all federal rules and regulations.

(g) The state shall deposit the funds received from the transferring entities pursuant to this article into the Medi-Cal Inpatient Payment Adjustment Fund established in accordance with Section 14163.

(h) Nondesignated public hospitals participating in the program shall inform the public entity funding the IGT to transfer the appropriate IGT allocation, by February 5 of each fiscal year, to the state according to the time schedule specified in the written agreement specified in subdivision (d). By March 31 of each fiscal year, the department shall make the supplemental payment to the nondesignated public hospital including the associated federal financial participation. The deadlines set forth in this subdivision shall be implemented beginning with the 2011–12 fiscal year or as soon thereafter as federal approvals are obtained.

(i) The department shall establish written policies and procedures for transferring entity intergovernmental transfers and payments made to nondesignated public hospitals pursuant to this section. The department shall effectively communicate these policies and procedures to nondesignated public hospitals and the public entities that will be funding the IGTs in order to facilitate a smooth process using local public entity moneys for purposes of drawing down federal financial participation for supplemental payments to nondesignated public hospitals.

(j) The state shall retain 9 percent of each IGT amount to reimburse the department, or transfer to the General Fund, for the administrative costs of operating the Nondesignated Public Hospital Intergovernmental Transfer Program and for the benefit of Medi-Cal children's health care programs.

(k) Participation in the intergovernmental transfers under this article is voluntary on the part of the transferring entities for the purpose of all applicable federal laws.

(*l*) (1) The department shall report annually to the Legislature on the Nondesignated Public Hospital Intergovernmental Transfer Program. This report shall include, but not be limited to, the amount of funds available within the UPL, the total amount of IGT allocation funds transferred by public entities, the total amount of federal financial participation received by nondesignated public hospitals, and information on the effectiveness of the IGT allocation formula to distribute available federal matching funds among participating nondesignated public hospitals.

(2) The requirement for submitting a report to the Legislature on the Nondesignated Public Hospital Intergovernmental Transfer Program imposed under paragraph (1) is inoperative four years after the date the first report is due.

(3) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(m) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this article by means of policy letters or similar instructions, without taking further regulatory action.

SEC. 219. Section 14166.12 of the Welfare and Institutions Code is amended to read:

14166.12. (a) The California Medical Assistance Commission shall negotiate payment amounts, in accordance with the selective provider contracting program established pursuant to Article 2.6 (commencing with Section 14081), from the Private Hospital Supplemental Fund established pursuant to subdivision (b) for distribution to private hospitals that satisfy the criteria of Section 14085.6, 14085.7, 14085.8, or 14085.9.

(b) The Private Hospital Supplemental Fund is hereby established in the State Treasury. For purposes of this section, "fund" means the Private Hospital Supplemental Fund.

(c) Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to the department for the purposes specified in this section.

(d) Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) One hundred eighteen million four hundred thousand dollars ($118,400,000), which shall be transferred annually from General

Fund amounts appropriated in the annual Budget Act for the Medi-Cal program, except as follows:

(A) For the 2008–09 fiscal year, this amount shall be reduced by thirteen million six hundred thousand dollars ($13,600,000) and by an amount equal to one-half of the difference between eighteen million three hundred thousand dollars ($18,300,000) and the amount of any reduction in the additional payments for distressed hospitals calculated pursuant to subparagraph (B) of paragraph (3) of subdivision (b) of Section 14166.20.

(B) For the 2012–13 fiscal year, this amount shall be reduced by seventeen million five hundred thousand dollars ($17,500,000).

(C) For the 2013–14 fiscal year, this amount shall be reduced by eight million seven hundred fifty thousand dollars ($8,750,000).

(2) Any additional moneys appropriated to the fund.

(3) All stabilization funding transferred to the fund pursuant to paragraph (2) of subdivision (a) of Section 14166.14.

(4) Any moneys that any county, other political subdivision of the state, or other governmental entity in the state may elect to transfer to the department for deposit into the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal Medicaid laws.

(5) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal Medicaid laws.

(6) Any interest that accrues on amounts in the fund.

(e) Any public agency transferring moneys to the fund may, for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public moneys or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(f) The department may accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal financial participation to the full extent permitted by law. With respect to funds transferred or donated from private individuals or entities, the department shall accept only those funds that are certified by the transferring or donating entity that qualify for federal financial participation under the terms of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments

of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable. The department may return any funds transferred or donated in error.

(g) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section.

(h) Any funds remaining in the fund at the end of a fiscal year shall be carried forward for use in the following fiscal year.

(i) Moneys shall be allocated from the fund by the department and shall be applied to obtain federal financial participation in accordance with customary Medi-Cal accounting procedures for purposes of payments under this section. Distributions from the fund shall be supplemental to any other Medi-Cal reimbursement received by the hospitals, including amounts that hospitals receive under the selective provider contracting program (Article 2.6 (commencing with Section 14081)), and shall not affect provider rates paid under the selective provider contracting program.

(j) Each private hospital that was a private hospital during the 2002–03 fiscal year, received payments for the 2002–03 fiscal year from any of the prior supplemental funds, and, during the project year, satisfies the criteria in Section 14085.6, 14085.7, 14085.8, or 14085.9 to be eligible to negotiate for distributions under any of those sections, shall receive no less from the Private Hospital Supplemental Fund for the project year than 100 percent of the amount the hospital received from the prior supplemental funds for the 2002–03 fiscal year. Each private hospital described in this subdivision shall be eligible for additional payments from the fund pursuant to subdivision (k).

(k) All amounts that are in the fund for a project year in excess of the amount necessary to make the payments under subdivision (j) shall be available for negotiation by the California Medical Assistance Commission, along with corresponding federal financial participation, for supplemental payments to private hospitals, which for the project year satisfy the criteria under Section 14085.6, 14085.7, 14085.8, or 14085.9 to be eligible to negotiate for distributions under any of those sections, and paid for services rendered during the project year pursuant to the selective provider contracting program established under Article 2.6 (commencing with Section 14081).

(*l*) The amount of any stabilization funding transferred to the fund, or the amount of intergovernmental transfers deposited to

the fund pursuant to subdivision (o), together with the associated federal reimbursement, with respect to a particular project year, may, in the discretion of the California Medical Assistance Commission, be paid for services furnished in the same project year regardless of when the stabilization funds or intergovernmental transfer funds, and the associated federal reimbursement, become available, provided the payment is consistent with other applicable federal or state law requirements and does not result in a hospital exceeding any applicable reimbursement limitations.

(m) The department shall pay amounts due to a private hospital from the fund for a project year, with the exception of stabilization funding, in up to four installment payments, unless otherwise provided in the hospital's contract negotiated with the California Medical Assistance Commission, except that hospitals that are not described in subdivision (j) shall not receive the first installment payment. The first payment shall be made as soon as practicable after the issuance of the tentative disproportionate share hospital list for the project year, and in no event later than January 1 of the project year. The second and subsequent payments shall be made after the issuance of the final disproportionate hospital list for the project year, and shall be made only to hospitals that are on the final disproportionate share hospital list for the project year. The second payment shall be made by February 1 of the project year or as soon as practicable after the issuance of the final disproportionate share hospital list for the project year. The third payment, if scheduled, shall be made by April 1 of the project year. The fourth payment, if scheduled, shall be made by June 30 of the project year. This subdivision does not apply to hospitals that are scheduled to receive payments from the fund because they meet the criteria under Section 14085.7 and do not meet the criteria under Section 14085.6, 14085.8, or 14085.9, which shall be paid in accordance with the applicable contract or contract amendment negotiated by the California Medical Assistance Commission.

(n) The department shall pay stabilization funding transferred to the fund in amounts negotiated by the California Medical Assistance Commission and shall pay the scheduled payments in accordance with the applicable contract or contract amendment.

(o) Payments to private hospitals that are eligible to receive payments pursuant to Section 14085.6, 14085.7, 14085.8, or 14085.9 may be made using funds transferred from governmental

entities to the state, at the option of the governmental entity. Any payments funded by intergovernmental transfers shall remain with the private hospital and shall not be transferred back to any unit of government. An amount equal to 25 percent of the amount of any intergovernmental transfer made in the project year that results in a supplemental payment made for the same project year to a project year private DSH hospital designated by the governmental entity that made the intergovernmental transfer shall be deposited in the fund for distribution as determined by the California Medical Assistance Commission. An amount equal to 75 percent shall be deposited in the fund and distributed to the private hospitals designated by the governmental entity.

(p) A private hospital that receives payment pursuant to this section for a particular project year shall not submit a notice for the termination of its participation in the selective provider contracting program established pursuant to Article 2.6 (commencing with Section 14081) until the later of the following dates:

(1) On or after December 31 of the next project year.

(2) The date specified in the hospital's contract, if applicable.

(q) (1) For the 2007–08, 2008–09, and 2009–10 project years, the County of Los Angeles shall make intergovernmental transfers to the state to fund the nonfederal share of increased Medi-Cal payments to those private hospitals that serve the South Los Angeles population formerly served by Los Angeles County Martin Luther King, Jr.-Harbor Hospital. The intergovernmental transfers required under this subdivision shall be funded by county tax revenues and shall total five million dollars ($5,000,000) per project year, except that, in the event that the director determines that any amount is due to the County of Los Angeles under the demonstration project for services rendered during the portion of a project year during which Los Angeles County Martin Luther King, Jr.-Harbor Hospital was operational, the amount of intergovernmental transfers required under this subdivision shall be reduced by a percentage determined by reducing 100 percent by the percentage reduction in Los Angeles County Martin Luther King, Jr.-Harbor Hospital's baseline, as determined under subdivision (c) of Section 14166.5 for that project year.

(2) Notwithstanding subdivision (o), an amount equal to 100 percent of the county's intergovernmental transfers under this

subdivision shall be deposited in the fund and, within 30 days after receipt of the intergovernmental transfer, shall be distributed, together with related federal financial participation, to the private hospitals designated by the county in the amounts designated by the county. The director shall disregard amounts received pursuant to this subdivision in calculating the OBRA 1993 payment limitation, as defined in paragraph (24) of subdivision (a) of Section 14105.98, for purposes of determining the amount of disproportionate share hospital replacement payments due a private hospital under Section 14166.11.

(r) (1) The reductions in supplemental payments under this section that result from the reductions in the amounts transferred from the General Fund to the Private Hospital Supplemental Fund for the 2012–13 and 2013–14 fiscal years under subparagraphs (B) and (C) of paragraph (1) of subdivision (d) shall be allocated equally in the aggregate between children's hospitals eligible for supplemental payments under this section and other hospitals eligible for supplemental payments under this section. When negotiating payment amounts to a hospital under this section for the 2012–13 and 2013–14 fiscal years, the California Medical Assistance Commission, or its successor agency, shall identify both a payment amount that would have been made absent the funding reductions in subparagraphs (B) and (C) of paragraph (1) of subdivision (d) and the payment amount that will be made taking into account the funding reductions under subparagraphs (B) and (C) of paragraph (1) of subdivision (d). For purposes of this subdivision, "children's hospital" shall have the meaning set forth in paragraph (13) of subdivision (a) of Section 14105.98.

(2) This subdivision shall not preclude the department from including some or all of the reductions under this section within the payments made under a new diagnosis-related group payment methodology for the 2012–13 fiscal year or the 2013–14 fiscal year. In the event the department includes some or all of the amounts, including reductions, within the payments made under a new diagnosis-related group payment methodology for the 2012–13 fiscal year or the 2013–14 fiscal year, the department, in implementing the reductions in paragraph (1) of subdivision (d), shall, to the extent feasible, utilize the allocation specified in paragraph (1).

SEC. 220. Section 14166.20 of the Welfare and Institutions Code is amended to read:

14166.20. (a) With respect to each project year through October 31, 2010, the total amount of stabilization funding shall be the sum of the following:

(1) (A) Federal Medicaid funds available in the Health Care Support Fund, established pursuant to Section 14166.21, reduced by the amount necessary to meet the baseline funding amount, or the adjusted baseline funding amount, as appropriate, for project years after the 2005–06 project year for each designated public hospital, project year private DSH hospitals in the aggregate, and nondesignated public hospitals in the aggregate as determined in Sections 14166.5, 14166.13, and 14166.18, respectively, taking into account all other payments to each hospital under this article. This amount shall be not less than zero.

(B) For purposes of subparagraph (A), federal Medicaid funds available in the Health Care Support Fund shall not include health care coverage initiative amounts identified under paragraph (2) of subdivision (e) of Section 14166.9.

(C) The federal financial participation amount arising from the certified public expenditures that has been paid to designated public hospitals, or the governmental entities with which they are affiliated, pursuant to subdivision (g) of Section 14166.221, shall be disregarded for purposes of this section.

(2) The state general funds that were made available due to the receipt of federal funding for previously state-funded programs through the safety net care pool and any federal Medicaid hospital reimbursements resulting from these expenditures, unless otherwise recognized under paragraph (1), to the extent those funds are in excess of the amount necessary to meet the baseline funding amount, or the adjusted baseline funding amount, as appropriate, for project years after the 2005–06 project year for each designated public hospital, for project year private DSH hospitals in the aggregate, and for nondesignated public hospitals in the aggregate, as determined in Sections 14166.5, 14166.13, and 14166.18, respectively.

(3) To the extent not included in paragraph (1) or (2), the amount of the increase in state General Fund expenditures for Medi-Cal inpatient hospital services for the project year for project year private DSH hospitals and nondesignated public hospitals,

including amounts expended in accordance with paragraph (1) of subdivision (c) of Section 14166.23, that exceeds the expenditure amount for the same purpose and the same hospitals necessary to provide the aggregate baseline funding amounts applicable to the project determined pursuant to Sections 14166.13 and 14166.18, and any direct grants to designated public hospitals for services under the demonstration project.

(4) To the extent not included in paragraph (2), federal Medicaid funds received by the state as a result of the General Fund expenditures described in paragraph (3).

(5) The federal Medicaid funds received by the state as a result of federal financial participation with respect to Medi-Cal payments for inpatient hospital services made to project year private DSH hospitals and to nondesignated public hospitals for services rendered during the project year, the state share of which was derived from intergovernmental transfers or certified public expenditures of any public entity that does not own or operate a public hospital.

(6) Federal safety net care pool funds claimed and received for inpatient hospital services rendered under the health care coverage initiative identified under paragraph (3) of subdivision (e) of Section 14166.9.

(b) With respect to the 2005–06, 2006–07, and subsequent project years through October 31, 2010, the stabilization funding determined under subdivision (a) shall be allocated as follows:

(1) Eight million dollars ($8,000,000) shall be paid to San Mateo Medical Center. All or a portion of this amount may be paid as disproportionate share hospital payments in addition to the hospital's allocation that would otherwise be determined under Section 14166.6. The amount provided for in this paragraph shall be disregarded in the application of the limitations described in paragraph (3) of subdivision (a) of Section 14166.6, and in paragraph (1) of subdivision (a) of Section 14166.7.

(2) (A) Ninety-six million two hundred twenty-eight thousand dollars ($96,228,000) shall be allocated to designated public hospitals to be paid in accordance with Section 14166.75.

(B) Forty-two million two hundred twenty-eight thousand dollars ($42,228,000) shall be allocated to private DSH hospitals to be paid in accordance with Section 14166.14.

(C) Five hundred forty-four thousand dollars ($544,000) shall be allocated to nondesignated public hospitals to be paid in accordance with Section 14166.17.

(D) In the event that stabilization funding is less than one hundred forty-seven million dollars ($147,000,000), the amounts allocated to designated public hospitals, private DSH hospitals, and nondesignated public hospitals under this paragraph shall be reduced proportionately.

(3) (A) An amount equal to the lesser of 10 percent of the total amount determined under subdivision (a) or twenty-three million five hundred thousand dollars ($23,500,000), but at least fifteen million three hundred thousand dollars ($15,300,000), shall be made available for additional payments to distressed hospitals that participate in the selective provider contracting program under Article 2.6 (commencing with Section 14081), including designated public hospitals, in amounts to be determined by the California Medical Assistance Commission. The additional payments to designated public hospitals shall be negotiated by the California Medical Assistance Commission, but shall be paid by the department in the form of a direct grant rather than as Medi-Cal payments.

(B) Notwithstanding subparagraph (A) and solely for the 2006–07 fiscal year, if the amount that otherwise would be made available for additional payments to distressed hospitals under subparagraph (A) is equal to or greater than eighteen million three hundred thousand dollars ($18,300,000), that amount shall be reduced by eighteen million three hundred thousand dollars ($18,300,000) and the state's obligation to make these payments shall be reduced by this amount. In the event the amount that otherwise would be made available under subparagraph (A) is less than eighteen million three hundred thousand dollars ($18,300,000), but greater than or equal to the minimum amount of fifteen million three hundred thousand dollars ($15,300,000), then the amount available under this paragraph shall be zero and the state's obligation to make these payments shall be zero.

(C) Notwithstanding subparagraph (A) and solely for the 2008–09 and 2009–10 fiscal years, the amount to be made available shall be reduced by fifteen million three hundred thousand dollars ($15,300,000) in each of the two years. The funds generated from this reduction shall be retained in the General Fund.

(4) An amount equal to 0.64 percent of the total amount determined under subdivision (a), to nondesignated public hospitals to be paid in accordance with Section 14166.19.

(5) The amount remaining after subtracting the amount determined in paragraphs (1) and (2), subparagraph (A) of paragraph (3), and paragraph (4), without taking into account subparagraphs (B) and (C) of paragraph (3), shall be allocated as follows:

(A) Sixty percent to designated public hospitals to be paid in accordance with Section 14166.75.

(B) Forty percent to project year private DSH hospitals to be paid in accordance with Section 14166.14.

(c) By April 1 of the year following the project year for which the payment is made, and after taking into account final amounts otherwise paid or payable to hospitals under this article, the director shall calculate in accordance with subdivision (a), allocate in accordance with subdivision (b), and pay to hospitals in accordance with Sections 14166.75, 14166.14, and 14166.19, as applicable, the stabilization funding.

(d) For purposes of determining amounts paid or payable to hospitals under subdivision (c), the department shall apply the following:

(1) In determining amounts paid or payable to designated public hospitals that are based on allowable costs incurred by the hospital, or the governmental entity with which it is affiliated, the following shall apply:

(A) If the final payment amount is based on the hospital's Medicare cost report, the department shall rely on the cost report filed with the Medicare fiscal intermediary for the project year for which the calculation is made, reduced by a percentage that represents the average percentage change from total reported costs to final costs for the three most recent cost reporting periods for which final determinations have been made, taking into account all administrative and judicial appeals. Protested amounts shall not be considered in determining the average percentage change unless the same or similar costs are included in the project year cost report.

(B) If the final payment amount is based on costs not included in subparagraph (A), the reported costs as of the date the

determination is made under subdivision (c), shall be reduced by 10 percent.

(C) In addition to adjustments required in subparagraphs (A) and (B), the department shall adjust amounts paid or payable to designated public hospitals by any applicable deferrals or disallowances identified by the federal Centers for Medicare and Medicaid Services as of the date the determination is made under subdivision (c) not otherwise reflected in subparagraphs (A) and (B).

(2) Amounts paid or payable to project year private DSH hospitals and nondesignated public hospitals shall be determined by the most recently available Medi-Cal paid claims data increased by a percentage to reflect an estimate of amounts remaining unpaid.

(e) The department shall consult with hospital representatives regarding the appropriate calculation of stabilization funding before stabilization funds are paid to hospitals. The calculation may be comprised of multiple steps involving interim computations and assumptions as may be necessary to determine the total amount of stabilization funding under subdivision (a) and the allocations under subdivision (b). No later than 30 days after this consultation, the department shall establish a final determination of stabilization funding that shall not be modified for any reason other than mathematical errors or mathematical omissions on the part of the department.

(f) The department shall distribute 75 percent of the estimated stabilization funding on an interim basis throughout the project year.

(g) The allocation and payment of stabilization funding shall not reduce the amount otherwise paid or payable to a hospital under this article or any other provision of law, unless the reduction is required by the demonstration project's Special Terms and Conditions or by federal law.

(h) It is the intent of the Legislature that the amendments made to Section 14166.12 and to this section by the act that added this subdivision in the 2007–08 Regular Session shall not be construed to amend or otherwise alter the ongoing structure of the department's Medicaid Demonstration Project and Waiver approved by the federal Centers for Medicare and Medicaid Services to begin on September 1, 2005.

(i) The provisions of this section shall only apply with respect to the demonstration project term, and shall not apply with respect to the successor demonstration project term.

SEC. 221. Section 14168.1 of the Welfare and Institutions Code is amended to read:

14168.1. For the purposes of this article, the following definitions shall apply:

(a) "Acute psychiatric days" means the total number of Short-Doyle administrative days, Short-Doyle acute care days, acute psychiatric administrative days, and acute psychiatric acute days identified in the Final Medi-Cal Utilization Statistics for the 2008–09 state fiscal year as calculated by the department on September 15, 2008.

(b) "Converted hospital" means a private hospital that becomes a designated public hospital or a nondesignated public hospital on or after January 1, 2011, a nondesignated public hospital that becomes a private hospital or a designated public hospital on or after January 1, 2011, or a designated public hospital that becomes a private hospital or a nondesignated public hospital on or after January 1, 2011.

(c) "Days data source" means the following:

(1) For a hospital that did not submit an Annual Financial Disclosure Report to the Office of Statewide Health Planning and Development for a fiscal year ending during 2007, but submitted that report for a fiscal period ending in 2008 that includes at least 10 months of 2007, the Annual Financial Disclosure Report submitted by the hospital to the Office of Statewide Health Planning and Development for the fiscal period in 2008 that includes at least 10 months of 2007.

(2) For a hospital owned by Kaiser Foundation Hospitals that submitted corrections to reported patient days to the Office of Statewide Health Planning and Development for its fiscal year ending in 2007 before July 31, 2009, the corrected data.

(3) For all other hospitals, the hospital's Annual Financial Disclosure Report in the Office of Statewide Health Planning and Development files as of October 31, 2008, for its fiscal year ending during 2007.

(d) "Designated public hospital" shall have the meaning given in subdivision (d) of Section 14166.1 as of January 1, 2011.

(e) "General acute care days" means the total number of Medi-Cal general acute care days paid by the department to a hospital in the 2008 calendar year, as reflected in the state paid claims files on July 10, 2009.

(f) "High acuity days" means Medi-Cal coronary care unit days, pediatric intensive care unit days, intensive care unit days, neonatal intensive care unit days, and burn unit days paid by the department during the 2008 calendar year, as reflected in the state paid claims files on July 10, 2009.

(g) "Hospital inpatient services" means all services covered under Medi-Cal and furnished by hospitals to patients who are admitted as hospital inpatients and reimbursed on a fee-for-service basis by the department directly or through its fiscal intermediary. Hospital inpatient services include outpatient services furnished by a hospital to a patient who is admitted to that hospital within 24 hours of the provision of the outpatient services that are related to the condition for which the patient is admitted. Hospital inpatient services do not include services for which a managed health care plan is financially responsible.

(h) "Hospital outpatient services" means all services covered under Medi-Cal furnished by hospitals to patients who are registered as hospital outpatients and reimbursed by the department on a fee-for-service basis directly or through its fiscal intermediary. Hospital outpatient services do not include services for which a managed health care plan is financially responsible, or services rendered by a hospital-based federally qualified health center for which reimbursement is received pursuant to Section 14132.100.

(i) "Individual hospital acute psychiatric supplemental payment" means the total amount of acute psychiatric hospital supplemental payments to a subject hospital for a quarter for which the supplemental payments are made. The "individual hospital acute psychiatric supplemental payment" shall be calculated for subject hospitals by multiplying the number of acute psychiatric days for the individual hospital for which a mental health plan was financially responsible by four hundred eighty-five dollars ($485) and dividing the result by four.

(j) (1) "Managed health care plan" means a health care delivery system that manages the provision of health care and receives prepaid capitated payments from the state in return for providing services to Medi-Cal beneficiaries.

(2) (A) Managed health care plans include county organized health systems and entities contracting with the department to provide services pursuant to two-plan models and geographic managed care. Entities providing these services contract with the department pursuant to any of the following:

(i) Article 2.7 (commencing with Section 14087.3).

(ii) Article 2.8 (commencing with Section 14087.5).

(iii) Article 2.81 (commencing with Section 14087.96).

(iv) Article 2.91 (commencing with Section 14089).

(B) Managed health care plans do not include any of the following:

(i) Mental health plans contracting to provide mental health care for Medi-Cal beneficiaries pursuant to Part 2.5 (commencing with Section 5775) of Division 5.

(ii) Health plans not covering inpatient services such as primary care case management plans operating pursuant to Section 14088.85.

(iii) Program of All-Inclusive Care for the Elderly organizations operating pursuant to Chapter 8.75 (commencing with Section 14591).

(k) "Medi-Cal managed care days" means the total number of general acute care days, including well baby days, listed for the county organized health system and prepaid health plans identified in the Final Medi-Cal Utilization Statistics for the 2008–09 fiscal year, as calculated by the department on September 15, 2008, except that the general acute care days, including well baby days, for the Santa Barbara Health Care Initiative shall be derived from the Final Medi-Cal Utilization Statistics for the 2007–08 fiscal year.

(*l*) "Medicaid inpatient utilization rate" means Medicaid inpatient utilization rate as defined in Section 1396r-4 of Title 42 of the United States Code and as set forth in the final disproportionate share hospital eligibility list for the 2008–09 fiscal year released by the department on October 22, 2008.

(m) "Mental health plan" means a mental health plan that contracts with the State Department of Mental Health to furnish or arrange for the provision of mental health services to Medi-Cal beneficiaries pursuant to Part 2.5 (commencing with Section 5775) of Division 5.

(n) "New hospital" means a hospital operation, business, or facility functioning under current or prior ownership as a private hospital that does not have a days data source or a hospital that has a days data source in whole, or in part, from a previous operator where there is an outstanding monetary liability owed to the state in connection with the Medi-Cal program and the new operator did not assume liability for the outstanding monetary obligation.

(o) "New noncontract hospital" means a private hospital that was a contract hospital on March 1, 2011, and elects to become a noncontract hospital at any time between March 1, 2011, and the end of the program period.

(p) "Nondesignated public hospital" means either of the following:

(1) A public hospital that is licensed under subdivision (a) of Section 1250 of the Health and Safety Code, is not designated as a specialty hospital in the hospital's annual financial disclosure report for the hospital's latest fiscal year ending in 2007, and satisfies the definition in paragraph (25) of subdivision (a) of Section 14105.98, excluding designated public hospitals.

(2) A tax-exempt nonprofit hospital that is licensed under subdivision (a) of Section 1250 of the Health and Safety Code, is not designated as a specialty hospital in the hospital's annual financial disclosure report for the hospital's latest fiscal year ending in 2007, is operating a hospital owned by a local health care district, and is affiliated with the health care district hospital owner by means of the district's status as the nonprofit corporation's sole corporate member.

(q) "Outpatient base amount" means the total amount of payments for hospital outpatient services made to a hospital in the 2007 calendar year, as reflected in the state paid claims files on January 26, 2008.

(r) "Private hospital" means a hospital that meets all of the following conditions:

(1) Is licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(2) Is in the Charitable Research Hospital peer group, as set forth in the 1991 Hospital Peer Grouping Report published by the department, or is not designated as a specialty hospital in the hospital's Office of Statewide Health Planning and Development

Annual Financial Disclosure Report for the hospital's latest fiscal year ending in 2007.

(3) Does not satisfy the Medicare criteria to be classified as a long-term care hospital.

(4) Is a nonpublic hospital, nonpublic converted hospital, or converted hospital as those terms are defined in paragraphs (26) to (28), inclusive, respectively, of subdivision (a) of Section 14105.98.

(s) "Program period" means the period from January 1, 2011, to June 30, 2011, inclusive.

(t) "Subject fiscal quarter" means a state fiscal quarter beginning on or after January 1, 2011, and ending before July 1, 2011.

(u) "Subject hospital" means a hospital that meets all of the following conditions:

(1) Is licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(2) Is in the Charitable Research Hospital peer group, as set forth in the 1991 Hospital Peer Grouping Report published by the department, or is not designated as a specialty hospital in the hospital's Office of Statewide Health Planning and Development Annual Financial Disclosure Report for the hospital's latest fiscal year ending in 2007.

(3) Does not satisfy the Medicare criteria to be classified as a long-term care hospital.

(v) "Subject month" means a calendar month beginning on or after January 1, 2011, and ending before July 1, 2011.

(w) "Upper payment limit" means a federal upper payment limit on the amount of the Medicaid payment for which federal financial participation is available for a class of service and a class of health care providers, as specified in Part 447 of Title 42 of the Code of Federal Regulations.

SEC. 222. Section 14168.11 of the Welfare and Institutions Code is amended to read:

14168.11. The department shall make disbursements from the Hospital Quality Assurance Revenue Fund consistent with the following:

(a) Fund disbursements shall be made periodically within 15 days of each date on which quality assurance fees are due from hospitals.

(b) The funds shall be disbursed in accordance with the order of priority set forth in subdivision (b) of Section 14168.33, subject to the following:

(1) The amount disbursed for children's health coverage shall not exceed one hundred five million dollars ($105,000,000) until at least one-half of the aggregate supplemental payments to hospitals due under Sections 14168.2 and 14168.3 are made.

(2) Funds may be set aside for increased capitation payments to managed health care plans pursuant to subdivision (f) of Section 14168.5.

(c) The funds shall be disbursed in each payment cycle in accordance with the order of priority set forth in subdivision (b) of Section 14168.33 as modified by subdivision (b), and so that the supplemental payments to hospitals, increased capitation payments to managed health care plans, increased payments to mental health plans, and direct payments to hospitals of acute psychiatric supplemental payments are made to the maximum extent for which funds are available.

(d) To the maximum extent possible, consistent with the availability of funds in the quality assurance fund and the timing of federal approvals, the supplemental payments to hospitals, increased capitation payments to managed health care plans, and increased payments to mental health plans under this article shall be made before July 1, 2011.

(e) The aggregate amount of funds to be disbursed to private hospitals shall be determined under Sections 14168.2 and 14168.3. The aggregate amount of funds to be disbursed to managed health care plans shall be determined under Section 14168.5.

SEC. 223. Section 14169.1 of the Welfare and Institutions Code is amended to read:

14169.1. For the purposes of this article, the following definitions shall apply:

(a) "Acute psychiatric days" means the total number of Short-Doyle administrative days, Short-Doyle acute care days, acute psychiatric administrative days, and acute psychiatric acute days identified in the Tentative Medi-Cal Utilization Statistics for the 2011–12 state fiscal year as calculated by the department as of July 21, 2011.

(b) "Converted hospital" means a private hospital that becomes a designated public hospital or a nondesignated public hospital on or after July 1, 2011.

(c) "Days data source" means the hospital's Annual Financial Disclosure Report filed with the Office of Statewide Health Planning and Development as of May 5, 2011, for its fiscal year ending during 2009.

(d) "Designated public hospital" shall have the meaning given in subdivision (d) of Section 14166.1 as of July 1, 2011.

(e) "General acute care days" means the total number of Medi-Cal general acute care days paid by the department to a hospital for services in the 2009 calendar year, as reflected in the state paid claims file on July 15, 2011.

(f) "High acuity days" means Medi-Cal coronary care unit days, pediatric intensive care unit days, intensive care unit days, neonatal intensive care unit days, and burn unit days paid by the department during the 2009 calendar year, as reflected in the state paid claims file prepared by the department on July 15, 2011.

(g) "Hospital inpatient services" means all services covered under Medi-Cal and furnished by hospitals to patients who are admitted as hospital inpatients and reimbursed on a fee-for-service basis by the department directly or through its fiscal intermediary. Hospital inpatient services include outpatient services furnished by a hospital to a patient who is admitted to that hospital within 24 hours of the provision of the outpatient services that are related to the condition for which the patient is admitted. Hospital inpatient services do not include services for which a managed health care plan is financially responsible.

(h) "Hospital outpatient services" means all services covered under Medi-Cal furnished by hospitals to patients who are registered as hospital outpatients and reimbursed by the department on a fee-for-service basis directly or through its fiscal intermediary. Hospital outpatient services do not include services for which a managed health care plan is financially responsible, or services rendered by a hospital-based federally qualified health center for which reimbursement is received pursuant to Section 14132.100.

(i) "Individual hospital acute psychiatric supplemental payment" means the total amount of acute psychiatric hospital supplemental payments to a subject hospital for a quarter for which the supplemental payments are made. The "individual hospital acute

psychiatric supplemental payment" shall be calculated for subject hospitals by multiplying the number of acute psychiatric days for the individual hospital for which a mental health plan was financially responsible by the amount calculated in accordance with paragraph (2) of subdivision (b) of Section 14169.3 and dividing the result by four.

(j) (1) "Managed health care plan" means a health care delivery system that manages the provision of health care and receives prepaid capitated payments from the state in return for providing services to Medi-Cal beneficiaries.

(2) (A) Managed health care plans include county organized health systems and entities contracting with the department to provide services pursuant to two-plan models and geographic managed care. Entities providing these services contract with the department pursuant to any of the following:

(i) Article 2.7 (commencing with Section 14087.3).

(ii) Article 2.8 (commencing with Section 14087.5).

(iii) Article 2.81 (commencing with Section 14087.96).

(iv) Article 2.91 (commencing with Section 14089).

(B) Managed health care plans do not include any of the following:

(i) Mental health plans contracting to provide mental health care for Medi-Cal beneficiaries pursuant to Part 2.5 (commencing with Section 5775) of Division 5.

(ii) Health plans not covering inpatient services such as primary care case management plans operating pursuant to Section 14088.85.

(iii) Program for All-Inclusive Care for the Elderly organizations operating pursuant to Chapter 8.75 (commencing with Section 14591).

(k) "Medi-Cal managed care days" means the total number of general acute care days, including well baby days, listed for the county organized health system and prepaid health plans identified in the Tentative Medi-Cal Utilization Statistics for the 2011–12 fiscal year, as calculated by the department as of July 21, 2011.

(*l*) "Medicaid inpatient utilization rate" means Medicaid inpatient utilization rate as defined in Section 1396r-4 of Title 42 of the United States Code and as set forth in the final disproportionate share hospital eligibility list for the 2010–11 fiscal year released by the department as of May 1, 2011.

(m) "Mental health plan" means a mental health plan that contracts with the state to furnish or arrange for the provision of mental health services to Medi-Cal beneficiaries pursuant to Part 2.5 (commencing with Section 5775) of Division 5.

(n) "New hospital" means a hospital operation, business, or facility functioning under current or prior ownership as a private hospital that does not have a days data source or a hospital that has a days data source in whole, or in part, from a previous operator where there is an outstanding monetary liability owed to the state in connection with the Medi-Cal program and the new operator did not assume liability for the outstanding monetary obligation.

(o) "New noncontract hospital" means a private hospital that was a contract hospital on March 1, 2011, and elects to become a noncontract hospital at any time between March 1, 2011, and the end of the program period.

(p) "Nondesignated public hospital" means either of the following:

(1) A public hospital that is licensed under subdivision (a) of Section 1250 of the Health and Safety Code, is not designated as a specialty hospital in the hospital's Annual Financial Disclosure Report for the hospital's latest fiscal year ending in 2009, and satisfies the definition in paragraph (25) of subdivision (a) of Section 14105.98, excluding designated public hospitals.

(2) A tax-exempt nonprofit hospital that is licensed under subdivision (a) of Section 1250 of the Health and Safety Code, is not designated as a specialty hospital in the hospital's Annual Financial Disclosure Report for the hospital's latest fiscal year ending in 2009, is operating a hospital owned by a local health care district, and is affiliated with the health care district hospital owner by means of the district's status as the nonprofit corporation's sole corporate member.

(q) "Outpatient base amount" means the total amount of payments for hospital outpatient services made to a hospital in the 2009 calendar year, as reflected in the state paid claims files prepared by the department on June 2, 2011.

(r) "Private hospital" means a hospital that meets all of the following conditions:

(1) Is licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(2) Is in the Charitable Research Hospital peer group, as set forth in the 1991 Hospital Peer Grouping Report published by the department, or is not designated as a specialty hospital in the hospital's Office of Statewide Health Planning and Development Annual Financial Disclosure Report for the hospital's latest fiscal year ending in 2009.

(3) Does not satisfy the Medicare criteria to be classified as a long-term care hospital.

(4) Is a nonpublic hospital, nonpublic converted hospital, or converted hospital as those terms are defined in paragraphs (26) to (28), inclusive, respectively, of subdivision (a) of Section 14105.98.

(s) "Program period" means the period from July 1, 2011, to December 31, 2013, inclusive.

(t) "Subject fiscal quarter" means a state fiscal quarter beginning on or after July 1, 2011, and ending before January 1, 2014.

(u) "Subject fiscal year" means a state fiscal year that ends after July 1, 2011, and begins before January 1, 2014.

(v) "Subject hospital" means a hospital that meets all of the following conditions:

(1) Is licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(2) Is in the Charitable Research Hospital peer group, as set forth in the 1991 Hospital Peer Grouping Report published by the department, or is not designated as a specialty hospital in the hospital's Office of Statewide Health Planning and Development Annual Financial Disclosure Report for the hospital's latest fiscal year ending in 2009.

(3) Does not satisfy the Medicare criteria to be classified as a long-term care hospital.

(w) "Subject month" means a calendar month beginning on or after July 1, 2011, and ending before January 1, 2014.

(x) "Upper payment limit" means a federal upper payment limit on the amount of the Medicaid payment for which federal financial participation is available for a class of service and a class of health care providers, as specified in Part 447 of Title 42 of the Code of Federal Regulations. The applicable upper payment limit shall be separately calculated for inpatient and outpatient hospital services.

SEC. 224. Section 14182 of the Welfare and Institutions Code is amended to read:

14182. (a) (1) In furtherance of the waiver or demonstration project developed pursuant to Section 14180, the department may require seniors and persons with disabilities who do not have other health coverage to be assigned as mandatory enrollees into new or existing managed care health plans. To the extent that enrollment is required by the department, an enrollee's access to fee-for-service Medi-Cal shall not be terminated until the enrollee has been assigned to a managed care health plan.

(2) For purposes of this section:

(A) "Other health coverage" means health coverage providing the same full or partial benefits as the Medi-Cal program, health coverage under another state or federal medical care program, or health coverage under contractual or legal entitlement, including, but not limited to, a private group or indemnification insurance program.

(B) "Managed care health plan" means an individual, organization, or entity that enters into a contract with the department pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.81 (commencing with Section 14087.96), Article 2.91 (commencing with Section 14089), or Chapter 8 (commencing with Section 14200).

(b) In exercising its authority pursuant to subdivision (a), the department shall do all of the following:

(1) Assess and ensure the readiness of the managed care health plans to address the unique needs of seniors or persons with disabilities pursuant to the applicable readiness evaluation criteria and requirements set forth in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 14087.48.

(2) Ensure the managed care health plans provide access to providers that comply with applicable state and federal laws, including, but not limited to, physical accessibility and the provision of health plan information in alternative formats.

(3) Develop and implement an outreach and education program for seniors and persons with disabilities, not currently enrolled in Medi-Cal managed care, to inform them of their enrollment options and rights under the demonstration project. Contingent upon available private or public dollars other than moneys from the General Fund, the department or its designated agent for enrollment and outreach may partner or contract with community-based, nonprofit consumer or health insurance assistance organizations

with expertise and experience in assisting seniors and persons with disabilities in understanding their health care coverage options. Contracts entered into or amended pursuant to this paragraph shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and any implementing regulations or policy directives.

(4) At least three months prior to enrollment, inform beneficiaries who are seniors or persons with disabilities, through a notice written at no more than a sixth grade reading level, about the forthcoming changes to their delivery of care, including, at a minimum, how their system of care will change, when the changes will occur, and whom they can contact for assistance with choosing a delivery system or with problems they encounter. In developing this notice, the department shall consult with consumer representatives and other stakeholders.

(5) Implement an appropriate cultural awareness and sensitivity training program regarding serving seniors and persons with disabilities for managed care health plans and plan providers and staff in the Medi-Cal Managed Care Division of the department.

(6) Establish a process for assigning enrollees into an organized delivery system for beneficiaries who do not make an affirmative selection of a managed care health plan. The department shall develop this process in consultation with stakeholders and in a manner consistent with the waiver or demonstration project developed pursuant to Section 14180. The department shall base plan assignment on an enrollee's existing or recent utilization of providers, to the extent possible. If the department is unable to make an assignment based on the enrollee's affirmative selection or utilization history, the department shall base plan assignment on factors, including, but not limited to, plan quality and the inclusion of local health care safety net system providers in the plan's provider network.

(7) Review and approve the mechanism or algorithm that has been developed by the managed care health plan, in consultation with the plan's stakeholders and consumers, to identify, within the earliest possible timeframe, persons with higher risk and more complex health care needs pursuant to paragraph (11) of subdivision (c).

(8) Provide managed care health plans with historical utilization data for beneficiaries upon enrollment in a managed care health

plan so that the plans participating in the demonstration project are better able to assist beneficiaries and prioritize assessment and care planning.

(9) Develop and provide managed care health plans participating in the demonstration project with a facility site review tool for use in assessing the physical accessibility of providers, including specialists and ancillary service providers that provide care to a high volume of seniors and persons with disabilities, at a clinic or provider site, to ensure that there are sufficient physically accessible providers. Every managed care health plan participating in the demonstration project shall make the results of the facility site review tool publicly available on their Internet Web site and shall regularly update the results to the department's satisfaction.

(10) Develop a process to enforce legal sanctions, including, but not limited to, financial penalties, withholding of Medi-Cal payments, enrollment termination, and contract termination, in order to sanction any managed care health plan in the demonstration project that consistently or repeatedly fails to meet performance standards provided in statute or contract.

(11) Ensure that managed care health plans provide a mechanism for enrollees to request a specialist or clinic as a primary care provider. A specialist or clinic may serve as a primary care provider if the specialist or clinic agrees to serve in a primary care provider role and is qualified to treat the required range of conditions of the enrollee.

(12) Ensure that managed care health plans participating in the demonstration project are able to provide communication access to seniors and persons with disabilities in alternative formats or through other methods that ensure communication, including assistive listening systems, sign language interpreters, captioning, written communication, plain language or written translations and oral interpreters, including for those who are limited English-proficient, or non-English speaking, and that all managed care health plans are in compliance with applicable cultural and linguistic requirements.

(13) Ensure that managed care health plans participating in the demonstration project provide access to out-of-network providers for new individual members enrolled under this section who have an ongoing relationship with a provider if the provider will accept the health plan's rate for the service offered, or the applicable

Medi-Cal fee-for-service rate, whichever is higher, and the health plan determines that the provider meets applicable professional standards and has no disqualifying quality of care issues.

(14) Ensure that managed care health plans participating in the demonstration project comply with continuity of care requirements in Section 1373.96 of the Health and Safety Code.

(15) Ensure that the medical exemption criteria applied in counties operating under Chapter 4.1 (commencing with Section 53800) or Chapter 4.5 (commencing with Section 53900) of Subdivision 1 of Division 3 of Title 22 of the California Code of Regulations are applied to seniors and persons with disabilities served under this section.

(16) Ensure that managed care health plans participating in the demonstration project take into account the behavioral health needs of enrollees and include behavioral health services as part of the enrollee's care management plan when appropriate.

(17) Develop performance measures that are required as part of the contract to provide quality indicators for the Medi-Cal population enrolled in a managed care health plan and for the subset of enrollees who are seniors and persons with disabilities. These performance measures may include measures from the Healthcare Effectiveness Data and Information Set (HEDIS) or measures indicative of performance in serving special needs populations, such as the National Committee for Quality Assurance (NCQA) Structure and Process measures, or both.

(18) Conduct medical audit reviews of participating managed care health plans that include elements specifically related to the care of seniors and persons with disabilities. These medical audits shall include, but not be limited to, evaluation of the delivery model's policies and procedures, performance in utilization management, continuity of care, availability and accessibility, member rights, and quality management.

(19) Conduct financial audit reviews to ensure that a financial statement audit is performed on managed care health plans annually pursuant to the Generally Accepted Auditing Standards, and conduct other risk-based audits for the purpose of detecting fraud and irregular transactions.

(c) Prior to exercising its authority under this section and Section 14180, the department shall ensure that each managed care health

plan participating in the demonstration project is able to do all of the following:

(1) Comply with the applicable readiness evaluation criteria and requirements set forth in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 14087.48.

(2) Ensure and monitor an appropriate provider network, including primary care physicians, specialists, professional, allied, and medical supportive personnel, and an adequate number of accessible facilities within each service area. Managed care health plans shall maintain an updated, accurate, and accessible listing of a provider's ability to accept new patients and shall make it available to enrollees, at a minimum, by telephone, written material, and Internet Web site.

(3) Assess the health care needs of beneficiaries who are seniors or persons with disabilities and coordinate their care across all settings, including coordination of necessary services within and, where necessary, outside of the plan's provider network.

(4) Ensure that the provider network and informational materials meet the linguistic and other special needs of seniors and persons with disabilities, including providing information in an understandable manner in plain language, maintaining toll-free telephone lines, and offering member or ombudsperson services.

(5) Provide clear, timely, and fair processes for accepting and acting upon complaints, grievances, and disenrollment requests, including procedures for appealing decisions regarding coverage or benefits. Each managed care health plan participating in the demonstration project shall have a grievance process that complies with Section 14450, and Sections 1368 and 1368.01 of the Health and Safety Code.

(6) Solicit stakeholder and member participation in advisory groups for the planning and development activities related to the provision of services for seniors and persons with disabilities.

(7) Contract with safety net and traditional providers as defined in subdivisions (hh) and (jj) of Section 53810 of Title 22 of the California Code of Regulations, to ensure access to care and services. The managed care health plan shall establish participation standards to ensure participation and broad representation of traditional and safety net providers within a service area.

(8) Inform seniors and persons with disabilities of procedures for obtaining transportation services to service sites that are offered by the plan or are available through the Medi-Cal program.

(9) Monitor the quality and appropriateness of care for children with special health care needs, including children eligible for, or enrolled in, the California Children's Services Program, and seniors and persons with disabilities.

(10) Maintain a dedicated liaison to coordinate with each regional center operating within the plan's service area to assist members with developmental disabilities in understanding and accessing services and act as a central point of contact for questions, access and care concerns, and problem resolution.

(11) At the time of enrollment apply the risk stratification mechanism or algorithm described in paragraph (7) of subdivision (b) approved by the department to determine the health risk level of beneficiaries.

(12) (A) Managed care health plans shall assess an enrollee's current health risk by administering a risk assessment survey tool approved by the department. This risk assessment survey shall be performed within the following timeframes:

(i) Within 45 days of plan enrollment for individuals determined to be at higher risk pursuant to paragraph (11).

(ii) Within 105 days of plan enrollment for individuals determined to be at lower risk pursuant to paragraph (11).

(B) Based on the results of the current health risk assessment, managed care health plans shall develop individual care plans for higher risk beneficiaries that shall include the following minimum components:

(i) Identification of medical care needs, including primary care, specialty care, durable medical equipment, medications, and other needs with a plan for care coordination as needed.

(ii) Identification of needs and referral to appropriate community resources and other agencies as needed for services outside the scope of responsibility of the managed care health plan.

(iii) Appropriate involvement of caregivers.

(iv) Determination of timeframes for reassessment and, if necessary, circumstances or conditions that require redetermination of risk level.

(13) (A) Establish medical homes to which enrollees are assigned that include, at a minimum, all of the following elements, which shall be considered in the provider contracting process:

(i) A primary care physician who is the primary clinician for the beneficiary and who provides core clinical management functions.

(ii) Care management and care coordination for the beneficiary across the health care system including transitions among levels of care.

(iii) Provision of referrals to qualified professionals, community resources, or other agencies for services or items outside the scope of responsibility of the managed care health plan.

(iv) Use of clinical data to identify beneficiaries at the care site with chronic illness or other significant health issues.

(v) Timely preventive, acute, and chronic illness treatment in the appropriate setting.

(vi) Use of clinical guidelines or other evidence-based medicine when applicable for treatment of beneficiaries' health care issues or timing of clinical preventive services.

(B) In implementing this section, and the Special Terms and Conditions of the demonstration project, the department may alter the medical home elements described in this paragraph as necessary to secure the increased federal financial participation associated with the provision of medical assistance in conjunction with a health home, as made available under the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), and codified in Section 1945 of Title XIX of the federal Social Security Act. The department shall notify the appropriate policy and fiscal committees of the Legislature of its intent to alter medical home elements under this section at least five days in advance of taking this action.

(14) Perform, at a minimum, the following care management and care coordination functions and activities for enrollees who are seniors or persons with disabilities:

(A) Assessment of each new enrollee's risk level and health needs shall be conducted through a standardized risk assessment survey by means such as telephonic, Internet Web-based, or in-person communication or by other means as determined by the department.

(B) Facilitation of timely access to primary care, specialty care, durable medical equipment, medications, and other health services needed by the enrollee, including referrals to address any physical or cognitive barriers to access.

(C) Active referral to community resources or other agencies for needed services or items outside the managed care health plans responsibilities.

(D) Facilitating communication among the beneficiaries' health care providers, including mental health and substance abuse providers when appropriate.

(E) Other activities or services needed to assist beneficiaries in optimizing their health status, including assisting with self-management skills or techniques, health education, and other modalities to improve health status.

(d) Except in a county where Medi-Cal services are provided by a county organized health system, and notwithstanding any other provision of law, in any county in which fewer than two existing managed care health plans contract with the department to provide Medi-Cal services under this chapter, the department may contract with additional managed care health plans to provide Medi-Cal services for seniors and persons with disabilities and other Medi-Cal beneficiaries.

(e) Beneficiaries enrolled in managed care health plans pursuant to this section shall have the choice to continue an established patient-provider relationship in a managed care health plan participating in the demonstration project if his or her treating provider is a primary care provider or clinic contracting with the managed care health plan and agrees to continue to treat that beneficiary.

(f) The department may contract with existing managed care health plans to operate under the demonstration project to provide or arrange for services under this section. Notwithstanding any other provision of law, the department may enter into the contract without the need for a competitive bid process or other contract proposal process, provided the managed care health plan provides written documentation that it meets all qualifications and requirements of this section.

(g) This section shall be implemented only to the extent that federal financial participation is available.

(h) (1) The development of capitation rates for managed care health plan contracts shall include the analysis of data specific to the seniors and persons with disabilities population. For the purposes of developing capitation rates for payments to managed care health plans, the director may require managed care health plans, including existing managed care health plans, to submit financial and utilization data in a form, time, and substance as deemed necessary by the department.

(2) (A) Notwithstanding Section 14301, the department may incorporate, on a one-time basis for a three-year period, a risk-sharing mechanism in a contract with the local initiative health plan in the county with the highest normalized fee-for-service risk score over the normalized managed care risk score listed in Table 1.0 of the Medi-Cal Acuity Study Seniors and Persons with Disabilities (SPD) report written by Mercer Government Human Services Consulting and dated September 28, 2010, if the local initiative health plan meets the requirements of subparagraph (B). The Legislature finds and declares that this risk-sharing mechanism will limit the risk of beneficial or adverse effects associated with a contract to furnish services pursuant to this section on an at-risk basis.

(B) The local initiative health plan shall pay the nonfederal share of all costs associated with the development, implementation, and monitoring of the risk-sharing mechanism established pursuant to subparagraph (A) by means of intergovernmental transfers. The nonfederal share includes the state costs of staffing, state contractors, or administrative costs directly attributable to implementing subparagraph (A).

(C) This subdivision shall be implemented only to the extent federal financial participation is not jeopardized.

(i) Persons meeting participation requirements for the Program of All-Inclusive Care for the Elderly (PACE) pursuant to Chapter 8.75 (commencing with Section 14591), may select a PACE plan if one is available in that county.

(j) Persons meeting the participation requirements in effect on January 1, 2010, for a Medi-Cal primary care case management (PCCM) plan in operation on that date, may select that PCCM plan or a successor health care plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and

Safety Code) to provide services within the same geographic area that the PCCM plan served on January 1, 2010.

(k) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section and any applicable federal waivers and state plan amendments by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action. Prior to issuing any letter or similar instrument authorized pursuant to this section, the department shall notify and consult with stakeholders, including advocates, providers, and beneficiaries. The department shall notify the appropriate policy and fiscal committees of the Legislature of its intent to issue instructions under this section at least five days in advance of the issuance.

(*l*) Consistent with state law that exempts Medi-Cal managed care contracts from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, and in order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process is necessary for contracts entered into or amended pursuant to this section. The contracts and amendments entered into or amended pursuant to this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and the requirements of State Administrative Management Manual Memo 03-10. The department shall make the terms of a contract available to the public within 30 days of the contract's effective date.

(m) In the event of a conflict between the Special Terms and Conditions of the approved demonstration project, including any attachment thereto, and any provision of this part, the Special Terms and Conditions shall control. If the department identifies a specific provision of this article that conflicts with a term or condition of the approved waiver or demonstration project, or an attachment thereto, the term or condition shall control, and the department shall so notify the appropriate fiscal and policy committees of the Legislature within 15 business days.

(n) In the event of a conflict between the provisions of this article and any other provision of this part, the provisions of this article shall control.

(o) Any otherwise applicable provisions of this chapter, Chapter 8 (commencing with Section 14200), or Chapter 8.75 (commencing with Section 14591) not in conflict with this article or with the terms and conditions of the demonstration project shall apply to this section.

(p) To the extent that the director utilizes state plan amendments or waivers to accomplish the purposes of this article in addition to waivers granted under the demonstration project, the terms of the state plan amendments or waivers shall control in the event of a conflict with any provision of this part.

(q) (1) Enrollment of seniors and persons with disabilities into a managed care health plan under this section shall be accomplished using a phased-in process to be determined by the department and shall not commence until necessary federal approvals have been acquired or until June 1, 2011, whichever is later.

(2) Notwithstanding paragraph (1), and at the director's discretion, enrollment in Los Angeles County of seniors and persons with disabilities may be phased in over a 12-month period using a geographic region method that is proposed by Los Angeles County subject to approval by the department.

(r) A managed care health plan established pursuant to this section, or under the Special Terms and Conditions of the demonstration project pursuant to Section 14180, shall be subject to, and comply with, the requirement for submission of encounter data specified in Section 14182.1.

(s) (1) Commencing January 1, 2011, and until January 1, 2014, the department shall provide the fiscal and policy committees of the Legislature with semiannual updates regarding core activities for the enrollment of seniors and persons with disabilities into managed care health plans pursuant to the pilot program. The semiannual updates shall include key milestones, progress toward the objectives of the pilot program, relevant or necessary changes to the program, submittal of state plan amendments to the federal Centers for Medicare and Medicaid Services, submittal of any federal waiver documents, and other key activities related to the mandatory enrollment of seniors and persons with disabilities into managed care health plans. The department shall also include updates on the transition of individuals into managed care health plans, the health outcomes of enrollees, the care management and

coordination process, and other information concerning the success or overall status of the pilot program.

(2) (A) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2015, pursuant to Section 10231.5 of the Government Code.

(B) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(t) The department, in collaboration with the State Department of Social Services and county welfare departments, shall monitor the utilization and caseload of the In-Home Supportive Services (IHSS) program before and during the implementation of the pilot program. This information shall be monitored in order to identify the impact of the pilot program on the IHSS program for the affected population.

(u) Services under Section 14132.95 or 14132.952, or Article 7 (commencing with Section 12300) of Chapter 3 that are provided to individuals assigned to managed care health plans under this section shall be provided through direct hiring of personnel, contract, or establishment of a public authority or nonprofit consortium, in accordance with and subject to the requirements of Section 12301.6 or 12302, as applicable.

(v) The department shall, at a minimum, monitor on a quarterly basis the adequacy of provider networks of the managed care health plans.

(w) The department shall suspend new enrollment of seniors and persons with disabilities into a managed care health plan if it determines that the managed care health plan does not have sufficient primary or specialty providers to meet the needs of their enrollees.

SEC. 225. Section 14589 of the Welfare and Institutions Code is amended to read:

14589. (a) The Legislature finds and declares the following:

(1) During times of economic crisis, it is crucial to find areas within the program where efficiencies can be achieved while continuing to provide community-based services that support independence.

(2) Adult Day Health Care (ADHC) has been vulnerable to fraud and, despite attempts to curtail and prevent fraud, including, but not limited to, a moratorium on new facilities and onsite

treatment authorization request review, fraud continues in this area.

(3) The state has added services and programs to enable vulnerable populations to remain in the community, including, but not limited to, the Money Follows the Person project, California's Section 1115(a) Comprehensive Medi-Cal Demonstration Project Waiver: a Bridge to Reform, and services and supports, including day programs, provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)). It also continues to explore opportunities to add additional services and programs to help individuals remain in the community, including, but not limited to, pilot projects to better meet the health care needs of individuals dually eligible for both Medicare and Medicaid, and exploring the Community First Choice Option as a Medi-Cal benefit.

(4) There are alternative services to meet the needs of Medi-Cal beneficiaries utilizing ADHC, including in-home supportive services, physical, occupational, and speech therapies, nonemergency medical transportation, and home health services.

(b) Therefore, it is the intent of the Legislature for the department to obtain federal approval to eliminate ADHC as an optional Medi-Cal benefit.

SEC. 226. Section 14701 of the Welfare and Institutions Code is amended to read:

14701. (a) The State Department of Health Care Services, in collaboration with the State Department of Mental Health and the California Health and Human Services Agency, shall create a state administrative and programmatic transition plan, either as one comprehensive transition plan or separately, to guide the transfer of the Medi-Cal specialty mental health managed care and the EPSDT Program to the State Department of Health Care Services effective July 1, 2012.

(1) Commencing no later than July 15, 2011, the State Department of Health Care Services, together with the State Department of Mental Health, shall convene a series of stakeholder meetings and forums to receive input from clients, family members, providers, counties, and representatives of the Legislature concerning the transition and transfer of Medi-Cal specialty mental health managed care and the EPSDT Program. This consultation shall inform the creation of a state administrative transition plan

and a programmatic transition plan that shall include, but is not limited to, the following components:

(A) The plan shall ensure it is developed in a way that continues access and quality of service during and immediately after the transition, preventing any disruption of services to clients and family members, providers and counties, and others affected by this transition.

(B) A detailed description of the state administrative functions currently performed by the State Department of Mental Health regarding Medi-Cal specialty mental health managed care and the EPSDT Program.

(C) Explanations of the operational steps, timelines, and key milestones for determining when and how each function or program will be transferred. These explanations shall also be developed for the transition of positions and staff serving Medi-Cal specialty mental health managed care and the EPSDT Program, and how these will relate to, and align with, positions at the State Department of Health Care Services. The State Department of Health Care Services and the California Health and Human Services Agency shall consult with the Department of Personnel Administration in developing this aspect of the transition plan.

(D) A list of any planned or proposed changes or efficiencies in how the functions will be performed, including the anticipated fiscal and programmatic impacts of the changes.

(E) A detailed organization chart that reflects the planned staffing at the State Department of Health Care Services in light of the requirements of subparagraphs (A) to (C), inclusive, and includes focused, high-level leadership for behavioral health issues.

(F) A description of how stakeholders were included in the various phases of the planning process to formulate the transition plans and a description of how their feedback will be taken into consideration after transition activities are underway.

(2) The State Department of Health Care Services, together with the State Department of Mental Health and the California Health and Human Services Agency, shall convene and consult with stakeholders at least twice following production of a draft of the transition plans and before submission of transition plans to the Legislature. Continued consultation with stakeholders shall occur in accordance with the requirement in subparagraph (F) of paragraph (1).

(b) The State Department of Health Care Services shall provide the transition plans described in subdivision (a) to all fiscal committees and appropriate policy committees of the Legislature no later than October 1, 2011. The transition plans may also be updated by the Governor and provided to all fiscal and applicable policy committees of the Legislature upon its completion, but no later than May 15, 2012.

SEC. 227. Section 15657.03 of the Welfare and Institutions Code is amended to read:

15657.03. (a) (1) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(2) A petition may be brought on behalf of an abused elder or dependent adult by a conservator or a trustee of the elder or dependent adult, an attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney, a person appointed as a guardian ad litem for the elder or dependent adult, or other person legally authorized to seek such relief.

(b) For the purposes of this section:

(1) "Conservator" means the legally appointed conservator of the person or estate of the petitioner, or both.

(2) "Petitioner" means the elder or dependent adult to be protected by the protective orders and, if the court grants the petition, the protected person.

(3) "Protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(A) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner.

(B) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the

sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.

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

(4) "Respondent" means the person against whom the protective orders are sought and, if the petition is granted, the restrained person.

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if a declaration shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in paragraph (3) of subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling only on a showing of all of the following:

(1) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(2) That the party to be excluded has assaulted or threatens to assault the petitioner, other named family or household member of the petitioner, or a conservator of the petitioner.

(3) That physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or a conservator of the petitioner.

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

(f) Within 21 days, or, if good cause appears to the court, 25 days, from the date that a request for a temporary restraining order

is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(g) The respondent may file a response that explains or denies the alleged abuse.

(h) The court may issue, upon notice and a hearing, any of the orders set forth in paragraph (3) of subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(i) (1) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

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

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be

properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice.

(j) In a proceeding under this section, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of abuse. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges he or she is a victim of abuse in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings if the person who alleges he or she is a victim of abuse and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(k) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any declarations in support of the petition. Service shall be made at least five days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(*l*) A notice of hearing under this section shall notify the respondent that if he or she does not attend the hearing, the court may make orders against him or her that could last up to five years.

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

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

(n) (1) If a respondent, named in an order issued under this section after a hearing, has not been served personally with the

order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

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

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

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

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

(o) (1) Information on any protective order relating to elder or dependent adult abuse issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement

agency having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner.

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

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

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

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

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

(6) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and where a written copy of the order can be obtained, and the officer shall at that time also enforce the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and

is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(p) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(q) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(r) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, a petitioner shall not be required to pay a fee for law enforcement to serve an order issued under this section.

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

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

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm or ammunition while subject to a protective order issued under this section is punishable pursuant to Section 29825 of the Penal Code.

(4) This subdivision shall not apply in a case in which the protective order issued under this section was made solely on the basis of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(u) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(v) This section does not apply to any action or proceeding governed by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code, by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

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

SEC. 228. Section 15910 of the Welfare and Institutions Code is amended to read:

15910. (a) Subject to federal approval of a demonstration project effective on or after November 1, 2010, the department shall, by no later than July 1, 2011, authorize local LIHPs to provide scheduled health care services, consistent with the Special Terms and Conditions of the demonstration project, to eligible low-income individuals 19 to 64 years of age, inclusive, who are not otherwise eligible for the Medi-Cal program or the Children's Health Insurance Program, with family incomes at or below 133 percent of the federal poverty level. To the extent federal financial participation is made available under the Special Terms and Conditions of the demonstration project pursuant to Section 15910.1, LIHP health care services may be made available to eligible individuals with family incomes above 133 percent through 200 percent of the federal poverty level.

(b) Eligible entities, consistent with the Special Terms and Conditions of the demonstration project, may perform outreach and enrollment activities to target populations, including, but not limited to, people who are homeless, individuals who frequently use hospital inpatient or emergency department services for avoidable reasons, or people with mental health or substance abuse treatment needs.

(c) The LIHP shall be designed and implemented with the systems and program elements necessary to facilitate the transition of those eligible individuals to Medi-Cal coverage, or alternatively, to coverage through the California Health Benefit Exchange, by 2014, pursuant to state and federal law, and the Special Terms and Conditions of the demonstration project.

(d) The department shall authorize a LIHP that meets the requirements set forth in this part and the Special Terms and Conditions of the demonstration project.

(e) (1) By January 1, 2011, or alternatively, 60 days after federal approval of the demonstration project, whichever occurs later, the department shall notify all eligible entities of the opportunity to elect to implement a LIHP, the applicable requirements, and the

process for submitting an application for department approval of a LIHP application.

(2) The director shall approve or deny an eligible entity's LIHP application within 60 days of receipt of the application. If the director denies an application, the denial shall be in writing and shall specify the reasons therefor.

(3) Within 10 days of a denial by the director under this subdivision, a participating entity may submit a written request for reconsideration. The director shall respond in writing to a request for reconsideration within 20 days, confirming or reversing the denial, and specifying the reasons for the reconsidered decision.

(f) If the eligible entity had in operation a Health Care Coverage Initiative program under Part 3.5 (commencing with Section 15900) as of November 1, 2010, and the eligible entity elects to continue funding the program, then the existing Health Care Coverage Initiative program shall, to the extent permitted by the Special Terms and Conditions of the demonstration project, remain in effect and receive federal reimbursement in accordance with the Special Terms and Conditions of the demonstration project until the LIHP is effective, but no later than July 1, 2011.

(g) Health care services provided pursuant to this part shall be available to those eligible, low-income individuals enrolled in the applicable LIHP, subject to the limitations of this part and the Special Terms and Conditions of the demonstration project. However, nothing in this part is intended to create an entitlement program of any kind.

(h) Each LIHP may establish an upper income limit for eligible MCE individuals to enroll in the LIHP, which shall be expressed as a percentage between 0 percent and up to, and including, 133 percent of the federal poverty level. If the LIHP elects to enroll HCCI-eligible individuals with family incomes above 133 percent through 200 percent of the federal poverty level, it may also establish an upper income limit between this range. Notwithstanding any established upper income limit, the LIHP may impose a limit on enrollment in the LIHP, which shall be subject to all of the following provisions:

(1) The Special Terms and Conditions required by the federal Centers for Medicare and Medicaid Services for the approval of the demonstration project described in Section 14180 permit a limitation on enrollment in a LIHP.

(2) Any enrollment limitation by a LIHP shall be administered in accordance with the Special Terms and Conditions required by the federal Centers for Medicare and Medicaid Services.

(3) Any enrollment limitation by a LIHP is subject to approval by the director, and notification to the federal Centers for Medicare and Medicaid Services. A LIHP shall establish an income limit at a level that minimizes the need for imposing a limit on enrollment for the MCE population.

(4) Prior to applying for approval from the director, the LIHP shall submit to the director a resolution from its governing board approving the proposed limitation on enrollment by the LIHP.

(i) LIHPs shall be established and implemented only to the extent that federal financial participation is available and only to the extent that available federal financial participation is not jeopardized.

(j) For the purposes of operating a LIHP approved under this part, and notwithstanding Section 14181, participating entities shall be exempt from the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, shall not be considered Medi-Cal managed care health plans subject to the requirements applicable to the two-plan model and geographic managed care plans, as contained in Article 2.7 (commencing with Section 14087.3), Article 2.81 (commencing with Section 14087.96), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 and the corresponding regulations, and shall not be considered prepaid health plans as defined in Section 14251.

SEC. 229. Section 15911 of the Welfare and Institutions Code is amended to read:

15911. (a) Funding for each LIHP shall be based on all of the following:

(1) The amount of funding that the participating entity voluntarily provides for the nonfederal share of LIHP expenditures.

(2) For a LIHP that had in operation a Health Care Coverage Initiative program under Part 3.5 (commencing with Section 15900) as of November 1, 2010, and elects to continue funding the program, the amount of funds requested to ensure that eligible enrollees continue to receive health care services for persons enrolled in the Health Care Coverage Initiative program as of November 1, 2010.

(3) Any limitations imposed by the Special Terms and Conditions of the demonstration project.

(4) The total allocations requested by participating entities for Health Care Coverage Initiative-eligible individuals.

(5) Whether funding under this part would result in the reduction of other payments under the demonstration project.

(b) Nothing in this part shall be construed to require a political subdivision of the state to participate in a LIHP as set forth in this part, and those local funds expended or transferred for the nonfederal share of LIHP expenditures under this part shall be considered voluntary contributions for purposes of the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), and the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), as amended by the federal Patient Protection and Affordable Care Act.

(c) No state General Fund moneys shall be used to fund LIHP services, nor to fund any related administrative costs incurred by counties or any other political subdivision of the state.

(d) Subject to the Special Terms and Conditions of the demonstration project, if a participating entity elects to fund the nonfederal share of a LIHP, the nonfederal funding and payments to the LIHP shall be provided through one of the following mechanisms, at the option of the participating entity:

(1) On a quarterly basis, the participating entity shall transfer to the department for deposit in the LIHP Fund established for the participating counties and pursuant to subparagraph (A), the amount necessary to meet the nonfederal share of estimated payments to the LIHP for the next quarter under subdivision (g) Section 15910.3.

(A) The LIHP Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated to the department for the purposes specified in this part. The fund shall contain all moneys deposited into the fund in accordance with this paragraph.

(B) The department shall obtain the related federal financial participation and pay the rates established under Section 15910.3, provided that the intergovernmental transfer is transferred in accordance with the deadlines imposed under the Medi-Cal

Checkwrite Schedule, no later than the next available warrant release date. This payment shall be a nondiscretionary obligation of the department, enforceable under a writ of mandate pursuant to Section 1085 of the Code of Civil Procedure. Participating entities may request expedited processing within seven business days of the transfer as made available by the Controller's office, provided that the participating entity prepay the department for the additional administrative costs associated with the expedited processing.

(C) Total quarterly payment amounts shall be determined in accordance with estimates of the number of enrollees in each rate category, subject to annual reconciliation to final enrollment data.

(2) If a participating entity operates its LIHP through a contract with another entity, the participating entity may pay the operating entity based on the per enrollee rates established under Section 15910.3 on a quarterly basis in accordance with estimates of the number of enrollees in each rate category, subject to annual reconciliation to final enrollment data.

(A) (i) On a quarterly basis, the participating entity shall certify the expenditures made under this paragraph and submit the report of certified public expenditures to the department.

(ii) The department shall report the certified public expenditures of a participating entity under this paragraph on the next available quarterly report as necessary to obtain federal financial participation for the expenditures. The total amount of federal financial participation associated with the participating entity's expenditures under this paragraph shall be reimbursed to the participating entity.

(B) At the option of the participating entity, the LIHP may be reimbursed on a cost basis in accordance with the methodology applied to Health Care Coverage Initiative programs established under Part 3.5 (commencing with Section 15900) including interim quarterly payments.

(e) Notwithstanding Section 15910.3 and subdivision (d) of this section, if the participating entity cannot reach an agreement with the department as to the appropriate rate to be paid under Section 15910.3, at the option of the participating entity, the LIHP shall be reimbursed on a cost basis in accordance with the methodology applied to Health Care Coverage Initiative programs established under Part 3.5 (commencing with Section 15900), including interim

quarterly payments. If the participating entity and the department reach an agreement as to the appropriate rate, the rate shall be applied no earlier than the first day of the LIHP year in which the parties agree to the rate.

(f) If authorized under the Special Terms and Conditions of the demonstration project, pending the department's development of rates in accordance with Section 15910.3, the department shall make interim quarterly payments to approved LIHPs for expenditures based on estimated costs submitted for ratesetting.

(g) Participating entities that operate a LIHP directly or through contract with another entity shall be entitled to any federal financial participation available for administrative expenditures incurred in the operation of the Medi-Cal program or the demonstration project, including, but not limited to, outreach, screening and enrollment, program development, data collection, reporting and quality monitoring, and contract administration, but only to the extent that the expenditures are allowable under federal law and only to the extent the expenditures are not taken into account in the determination of the per enrollee rates under Section 15910.3.

(h) On and after January 1, 2014, the state shall implement comprehensive health care reform for the populations targeted by the LIHP in compliance with federal health care reform law, regulation, and policy, including the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), and subsequent amendments.

(i) Subject to the Special Terms and Conditions of the demonstration project, a participating entity may elect to include, in collaboration with the department, as the nonfederal share of LIHP expenditures, voluntary intergovernmental transfers or certified public expenditures of another governmental entity, as long as the intergovernmental transfer or certified public expenditure is consistent with federal law.

(j) Participation in the LIHP under this part is voluntary on the part of the eligible entity for purposes of all applicable federal laws. As part of its voluntary participation under this article, the participating entity shall agree to reimburse the state for the nonfederal share of state staffing and administrative costs directly attributable to the cost of administering that LIHP, including, but not limited to, the state administrative costs related to certified

public expenditures and intergovernmental transfers. This section shall be implemented only to the extent federal financial participation is not jeopardized.

SEC. 230. Section 15916 of the Welfare and Institutions Code is amended to read:

15916. (a) It is the intent of the Legislature that the State Department of Health Care Services and all other departments take all appropriate steps to fully maximize and claim all available expenditures for Designated State Health Programs listed in the Special Terms and Conditions of California's Bridge to Reform Section 1115(a) Demonstration under the safety net care pool (SNCP) for an applicable demonstration year.

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

(1) "California's Bridge to Reform Section 1115(a) Demonstration" means the Section 1115(a) Medicaid demonstration project, No. 11-W-00193/9, as approved by the federal Centers for Medicare and Medicaid Services (CMS), effective for the period of November 1, 2010, to October 31, 2015, inclusive.

(2) "Demonstration year" means a specific period of time during California's Bridge to Reform Section 1115(a) Demonstration as identified in the Special Terms and Conditions.

(3) "Designated public hospital" has the meaning given in subdivision (d) of Section 14166.1.

(4) "Excess certified public expenditures" means the amount of allowable uncompensated care expenditures reported and certified for the applicable demonstration year under Section 14166.8 by designated public hospitals (DPHs), including the governmental entities with which they are affiliated, that is in excess of the amount necessary to draw the maximum amount of federal funding for DPHs for uncompensated care under the safety net care pool and for disproportionate share hospital payments without regard to subdivision (c) or to the amount authorized pursuant to paragraph (5).

(5) "Reserved SNCP funds for DSHP" means the amount of SNCP uncompensated care funds used to fund expenditures for the Designated State Health Programs, as specified in the Special Terms and Conditions of California's Bridge to Reform Section 1115(a) Demonstration.

(6) "Redirected SNCP funds" means the amount of federal funding available for a specified demonstration year that would otherwise be restricted for expenditures associated with the Health Care Coverage Initiative (HCCI) program, for which there are insufficient HCCI expenditures to draw the federal funds and which CMS has authorized to be available for uncompensated care expenditures under the safety net care pool in either the demonstration year for which the funds were initially reserved or a subsequent demonstration year.

(7) "Safety net care pool" or "SNCP" means the federal funds available under the Medi-Cal Hospital/Uninsured Care Demonstration Project and the successor demonstration project, California's Bridge to Reform, to ensure continued government support for the provision of health care services to uninsured populations.

(c) Notwithstanding any other provision of law, the state shall annually seek authority from CMS under the Special Terms and Conditions of California's Bridge to Reform Section 1115(a) Demonstration to redirect to the uncompensated care category within the SNCP the portion of the restricted funds used to fund expenditures under the HCCI that will not be fully utilized by the end of the demonstration year.

(d) Designated public hospitals may utilize the redirected SNCP funds described in subdivision (c) as follows:

(1) Designated public hospitals may opt to utilize excess certified public expenditures to claim the redirected SNCP funds.

(2) As a condition of exercising the option in paragraph (1), DPHs voluntarily agree that to the extent the state is unable to fully claim the maximum annual amount of reserved SNCP funds for DSHP, the excess certified public expenditures are to be allocated equally between the state and the DPHs, such that for every dollar of excess certified public expenditure used by the DPHs, the DPHs will voluntarily allow the state to use a corresponding excess certified public expenditure amount for claiming purposes. The amount in excess certified public expenditures that may be used by the state shall be limited to that amount necessary to enable the state to receive total SNCP uncompensated care funds, in conjunction with its claims for expenditures for DSHP, to the maximum amount described in paragraph (5) of subdivision (b).

(3) After the state achieves its maximum claiming amount described in paragraph (5) of subdivision (b), or to the extent the condition in subdivision (e) is not satisfied, the DPHs may use any remaining excess certified public expenditures to claim SNCP uncompensated care funds as authorized by the Special Terms and Conditions of California's Bridge to Reform Section 1115(a) Demonstration.

(e) As a condition for the state's use of the excess certified public expenditures pursuant to paragraph (2) of subdivision (d), the department shall seek any necessary authorization from the federal Centers for Medicare and Medicaid Services.

(f) Participation in the utilization of the excess certified public expenditures and redirected SNCP funds under this section is voluntary on the part of the DPHs for the purpose of all applicable federal laws.

(g) The department shall consult with DPH representatives regarding the availability of excess certified public expenditures and the appropriate allocation of SNCP funds under paragraph (2) of subdivision (d). The department may make interim determinations and allocations of the SNCP funds, provided that the interim determinations and allocations take into account adjustments to reported expenditures for possible audit disallowances, consistent with the type of adjustments applied in prior projects years under Article 5.2 (commencing with Section 14166). Any interim determinations and allocations of redirected SNCP funds based on excess certified public expenditures shall be subject to interim and final reconciliations.

(h) Notwithstanding any other provision of law, upon the receipt of a notice of disallowance or deferral from the federal government related to any certified public expenditures for uncompensated care incurred by DPHs that are used for federal claiming under the SNCP pursuant to California's Bridge to Reform Section 1115(a) Demonstration after this section is implemented, and subject to the processes described in subdivisions (a) to (d), inclusive, of Section 14166.24, the following shall apply with respect to the disallowance or deferral:

(1) First, the DPH shall be solely responsible for the repayment of the federal portion of any federal disallowance or deferral related to the claiming of a certified public expenditure in a particular year up to the amount claimed pursuant to paragraph (3) of subdivision

(d), after paragraph (2) of subdivision (d) was satisfied for that particular year.

(2) Second, if there are additional disallowances or deferrals beyond those described in paragraph (1), the department and the DPH shall each be responsible for half of the repayment of the federal portion of any federal disallowance or deferral for the applicable demonstration year, up to the amount claimed and allocated pursuant to paragraph (2) of subdivision (d) for that particular year.

(3) Third, if there are additional disallowances or deferrals beyond those described in paragraphs (1) and (2) for the applicable demonstration year, the DPH shall be solely responsible for the repayment of the federal portion of all remaining federal disallowances or deferrals for that particular year.

(i) The department shall obtain federal approvals or waivers as necessary to implement this section and to obtain federal matching funds to the maximum extent permitted by federal law. This section shall be implemented only to the extent federal financial participation is not jeopardized.

SEC. 231. Section 15926 of the Welfare and Institutions Code is amended to read:

15926. (a) The following definitions apply for purposes of this part:

(1) "Accessible" means in compliance with Section 11135 of the Government Code, Section 1557 of the PPACA, and regulations or guidance adopted pursuant to these statutes.

(2) "Limited-English-proficient" means not speaking English as one's primary language and having a limited ability to read, speak, write, or understand English.

(3) "State health subsidy programs" means the programs described in Section 1413(e) of the PPACA.

(b) An individual shall have the option to apply for state health subsidy programs in person, by mail, online, by facsimile, or by telephone.

(c) (1) A single, accessible, standardized paper, electronic, and telephone application for state health subsidy programs shall be developed by the department in consultation with MRMIB and the board governing the Exchange as part of the stakeholder process described in subdivision (b) of Section 15925. The application shall be used by all entities authorized to make an eligibility

determination for any of the state health subsidy programs and by their agents.

(2) The application shall be tested and operational by the date as required by the federal Secretary of California Health and Human Services.

(3) The application form shall, to the extent not inconsistent with federal statutes, regulations, and guidance, satisfy all of the following criteria:

(A) Include simple, user-friendly language and instructions.

(B) Do not ask for information related to a nonapplicant that is not necessary to determine eligibility in the applicant's particular circumstances.

(C) Require only information necessary to support the eligibility and enrollment processes for state health subsidy programs.

(D) May be used for, but shall not be limited to, screening.

(E) Ask, or be used otherwise to identify, if the mother of an infant applicant under one year of age had coverage through a state health subsidy program for the infant's birth, for the purpose of automatically enrolling the infant into the applicable program without the family having to complete the application process for the infant.

(F) Include questions that are voluntary for applicants to answer regarding demographic data categories, including race, ethnicity, primary language, disability status, and other categories recognized by the federal Secretary of Health and Human Services under Section 4302 of the PPACA.

(d) Nothing in this section shall preclude the use of a provider-based application form or enrollment procedures for state health subsidy programs or other health programs that differs from the application form described in subdivision (c), and related enrollment procedures.

(e) The entity making the eligibility determination shall grant eligibility immediately whenever possible and with consent of the applicant in accordance with the state and federal rules governing state health subsidy programs.

(f) (1) If the eligibility, enrollment, and retention system has the ability to prepopulate an application form for insurance affordability programs with personal information from available electronic databases, an applicant shall be given the option, with his or her informed consent, to have the application form

prepopulated. Before a prepopulated renewal form or, if available, prepopulated application is submitted to the entity authorized to make eligibility determinations, the individual shall be given the opportunity to provide additional eligibility information and to correct any information retrieved from a database.

(2) All state health subsidy programs may accept self-attestation, instead of requiring an individual to produce a document, with respect to all information needed to determine the eligibility of an applicant or recipient, to the extent permitted by state and federal law.

(3) An applicant or recipient shall have his or her information electronically verified in the manner required by the PPACA and implementing federal regulations and guidance.

(4) Before an eligibility determination is made, the individual shall be given the opportunity to provide additional eligibility information and to correct information.

(5) An applicant shall not have his or her eligibility delayed or denied for any state health subsidy program without being given a reasonable opportunity, of at least the kind provided for under the Medi-Cal program pursuant to Section 14007.5 and paragraph (7) of subdivision (e) of Section 14011.2, to resolve discrepancies concerning any information provided by a verifying entity.

(6) To the extent federal financial participation is available, an applicant shall be provided benefits in accordance with the rules of the state health subsidy program, as implemented in federal regulations and guidance, for which he or she otherwise qualifies until a determination is made that he or she is not eligible and all applicable notices have been provided.

(g) The eligibility, enrollment, and retention system shall offer an applicant and recipient assistance with his or her application or renewal for a state health subsidy program in person, over the telephone, and online, and in a manner that is accessible to individuals with disabilities and those who are limited English proficient.

(h) (1) During the processing of an application, renewal, or a transition due to a change in circumstances, an entity making eligibility determinations for a public health coverage program shall ensure that an eligible applicant and recipient of state health subsidy programs that meets all program eligibility requirements and complies with all necessary requests for information moves

between programs without any breaks in coverage and without being required to provide any forms, documents, or other information or undergo verification that is duplicative or otherwise unnecessary. The individual shall be informed how to obtain information about the status of his or her application, renewal, or transfer to another program at any time, and the information shall be promptly provided when requested.

(2) An individual screened as not eligible for Medi-Cal on the basis of Modified Adjusted Gross Income (MAGI) household income but who may be potentially eligible for Medi-Cal on another basis shall have his or her application or case forwarded to the Medi-Cal program for an eligibility determination. During the period this application or case is processed for a non-MAGI Medi-Cal eligibility determination, if the applicant or recipient is otherwise eligible for a state health subsidy program, he or she shall be determined eligible for that program.

(3) Renewal procedures shall include all available methods for reporting renewal information, including, but not limited to, face-to-face, telephone, and online renewal.

(4) An applicant who is not eligible for a state health subsidy program for a reason other than income eligibility, or for any reason in the case of applicants and recipients residing in a county that offers a health coverage program for individuals with income above the maximum allowed for the Exchange premium tax credits, shall be referred to the county health coverage program in his or her county of residence.

(i) Notwithstanding subdivisions (e), (f), and (j), before an online applicant who appears to be eligible for the Exchange with a premium tax credit or reduction in cost sharing, or both, may be enrolled in the Exchange, both of the following shall occur:

(1) The applicant shall be informed of the overpayment penalties under the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (P.L. 112-9), if the individual's annual family income increases by a specified amount or more, calculated on the basis of the individual's current family size and current income, and that penalties are avoided by prompt reporting of income increases throughout the year.

(2) The applicant shall be informed of the penalty for failure to have minimum essential health coverage.

(j) The department shall, in coordination with MRMIB and the Exchange board, streamline and coordinate all eligibility rules and requirements among state health subsidy programs using the least restrictive rules and requirements permitted by federal and state law. This process shall include the consideration of methodologies for determining income levels, assets, rules for household size, citizenship and immigration status, and self-attestation and verification requirements.

(k) (1) Forms and notices developed pursuant to this section shall be accessible and standardized, as appropriate, and shall comply with federal and state laws, regulations, and guidance prohibiting discrimination.

(2) Forms and notices developed pursuant to this section shall be developed using plain language and shall be provided in a manner that affords meaningful access to limited-English-proficient individuals, in accordance with applicable state and federal law, and at a minimum, provided in the same threshold languages as Medi-Cal managed care.

(*l*) The department, the California Health and Human Services Agency, MRMIB, and the Exchange board shall establish a process for receiving and acting on stakeholder suggestions regarding the functionality of the eligibility systems supporting the Exchange, including the activities of all entities providing eligibility screening to ensure the correct eligibility rules and requirements are being used. This process shall include consumers and their advocates, be conducted no less than quarterly, and include the recording, review, and analysis of potential defects or enhancements of the eligibility systems. The process shall also include regular updates on the work to analyze, prioritize, and implement corrections to confirmed defects and proposed enhancements, and to monitor screening.

(m) In designing and implementing the eligibility, enrollment, and retention system, the department, MRMIB, and the Exchange board shall ensure that all privacy and confidentiality rights under the PPACA and other federal and state laws are incorporated and followed, including responses to security breaches.

(n) Except as otherwise specified, this section shall be operative on and after January 1, 2014.

SEC. 232. Section 17600 of the Welfare and Institutions Code is amended to read:

17600. (a) There is hereby created the Local Revenue Fund, which shall have all of the following accounts:

(1) The Sales Tax Account.

(2) The Vehicle License Fee Account.

(3) The Vehicle License Collection Account.

(4) The Sales Tax Growth Account.

(5) The Vehicle License Fee Growth Account.

(b) The Sales Tax Account shall have all of the following subaccounts:

(1) The Mental Health Subaccount.

(2) The Social Services Subaccount.

(3) The Health Subaccount.

(4) The CalWORKs Maintenance of Effort Subaccount.

(c) The Sales Tax Growth Account shall have all of the following subaccounts:

(1) The Caseload Subaccount.

(2) The Base Restoration Subaccount.

(3) The Indigent Health Equity Subaccount.

(4) The Community Health Equity Subaccount.

(5) The Mental Health Equity Subaccount.

(6) The State Hospital Mental Health Equity Subaccount.

(7) The County Medical Services Subaccount.

(8) The General Growth Subaccount.

(9) The Special Equity Subaccount.

(d) Notwithstanding Section 13340 of the Government Code, the Local Revenue Fund is hereby continuously appropriated, without regard to fiscal years, for the purpose of this chapter.

(e) The Local Revenue Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be distributed in January and July among the accounts and subaccounts in proportion to the amounts deposited into each subaccount, except as provided in subdivision (f).

(f) If a distribution required by subdivision (e) would cause a subaccount to exceed its limitations imposed pursuant to any of the following, the distribution shall be made among the remaining subaccounts in proportion to the amounts deposited into each subaccount in the six prior months:

(1) Subdivision (a) of Section 17605.

(2) Subdivision (a) of Section 17605.05.

(3) Subdivision (b) of Section 17605.10.

(4) Subdivision (c) of Section 17605.10.

SEC. 233. Section 18220.1 of the Welfare and Institutions Code is amended to read:

18220.1. (a) Of the amount deposited in the Local Safety and Protection Account in the Transportation Fund authorized by Section 10752.2 of the Revenue and Taxation Code, the Controller shall allocate 5.85 percent in the 2009–10 fiscal year and each fiscal year thereafter. The Controller shall allocate these funds on a quarterly basis beginning April 1, 2009, to the Department of Corrections and Rehabilitation. The department shall allocate the funds appropriated in the annual Budget Act and included in the Local Safety and Protection Account among counties that operate juvenile camps and ranches based on the number of occupied beds in each camp as of 12:01 a.m. each day, up to the Corrections Standards Authority rated maximum capacity, as determined by the Corrections Standards Authority.

(b) Commencing with the 2011–12 fiscal year, the Controller shall, on a quarterly basis beginning October 1, allocate 6.47 percent of the funds deposited in the Local Law Enforcement Services Account in the Local Revenue Fund 2011 pursuant to a schedule provided by the Department of Corrections and Rehabilitation. The department's schedule shall provide for the allocation of funds appropriated in the annual Budget Act, and included in the Local Law Enforcement Services Account, among counties that operate juvenile camps and ranches based on the number of occupied beds in each camp as of 12:01 a.m. each day, up to the Corrections Standards Authority rated maximum capacity, as determined by the Corrections Standards Authority.

SEC. 234. Section 59 of Chapter 7 of the Statutes of 2011 is amended to read:

Sec. 59. (a) For the 2011–12 fiscal year only, Items 6440-001-0001, 6440-004-0001, and 6440-005-0001 of Section 2.00 of the Budget Act of 2011 collectively reflect a General Fund budget reduction of five hundred million dollars ($500,000,000), which is offset by revenues associated with the fee increases adopted by the Regents of the University of California (regents) in November 2010, including an 8-percent increase for undergraduates, for a net programmatic reduction of approximately three hundred eighty-four million dollars ($384,000,000), excluding mandatory cost increases. In implementing the General Fund

reduction, the regents shall minimize fee and enrollment impacts on students by targeting actions that lower the costs of instruction and administration.

(b) The regents shall submit recommended budget options, based on input from stakeholders, including, but not limited to, input received as of February 18, 2011, with savings estimates for each identified solution, for implementing the budget reductions to the Legislature, the Governor, and stakeholders, including representatives of students and employees, for review and comment by June 1, 2011, prior to adoption of a final plan by the regents.

(c) The Legislature expects the university to enroll 209,977 state-supported full-time equivalent students (FTES) during the 2011–12 academic year. This enrollment target does not include nonresident students and students enrolled in nonstate-supported summer programs. The regents shall report to the Legislature by May 1, 2012, on whether the university has met the 2011–12 enrollment goal. If the university does not meet its total state-supported enrollment goal by at least 1,050 FTES, the Director of Finance shall revert to the General Fund by May 15, 2012, the total amount of enrollment funding associated with the total share of the enrollment goal that was not met, using the marginal cost per student of ten thousand eleven dollars ($10,011).

(d) Not later than September 1, 2012, the regents shall submit a final detailed report to the Governor, the Department of Finance, and the Legislature identifying the value of all of the solutions implemented to achieve the intent of this provision, including the value of any solutions that were not anticipated in the initially approved plan pursuant to subdivision (b), including the reasons therefor.

SEC. 235. Section 60 of Chapter 7 of the Statutes of 2011 is amended to read:

Sec. 60. (a) For the 2011–12 fiscal year only, Items 6610-001-0001 and 6610-002-0001 of Section 2.00 of the Budget Act of 2011 collectively reflect a General Fund budget reduction of five hundred million dollars ($500,000,000), which is offset by revenues associated with the fee increases adopted by the Trustees of the California State University (trustees) in November 2010, including a 10-percent increase for undergraduates, for a net programmatic reduction of approximately three hundred fifty-three million dollars ($353,000,000), excluding mandatory cost increases.

In implementing this General Fund reduction, the trustees shall minimize fee and enrollment impacts on students by targeting actions that lower the costs of instruction and administration.

(b) The trustees shall submit recommended budget options, based on input from stakeholders, including, but not limited to, input received as of February 18, 2011, with savings estimates for each identified solution, for implementing the budget reductions to the Legislature, the Governor, and stakeholders, including representatives of students and employees for review and comment by June 1, 2011, prior to adoption of a final plan by the trustees.

(c) The Legislature expects the university to enroll 331,716 state-supported full-time equivalent students (FTES) during the 2011–12 academic year. This enrollment target does not include nonresident students and students enrolled in nonstate-supported summer programs. The trustees shall report to the Legislature by May 1, 2012, on whether the university has met the 2011–12 enrollment goal. If the university does not meet its total state-supported enrollment goal by at least 1,659 FTES, the Director of Finance shall revert to the General Fund by May 15, 2012, the total amount of enrollment funding associated with the total share of the enrollment goal that was not met, using the marginal cost per student of seven thousand three hundred five dollars ($7,305).

(d) Not later than September 1, 2012, the trustees shall submit a final detailed report to the Governor, the Department of Finance, and the Legislature identifying the value of all of the solutions implemented to achieve the intent of this provision, including the value of any solutions that were not anticipated in the initially approved plan pursuant to subdivision (b), including the reasons therefor.

SEC. 236. Section 9 of Chapter 136 of the Statutes of 2011 is amended to read:

Sec. 9. (a) Section 7 of this act shall remain operative until July 1, 2012.

(b) Section 8 of this act shall become operative on July 1, 2012.

SEC. 237. Section 34 of Chapter 136 of the Statutes of 2011 is amended to read:

Sec. 34. An amount of one thousand dollars ($1,000) is provided to the Department of Corrections and Rehabilitation for

the purpose of state operations in the 2011–12 fiscal year, payable from the General Fund.

SEC. 238. Section 2 of Chapter 211 of the Statutes of 2011 is amended to read:

Sec. 2. Section 1.5 of this bill incorporates amendments to Section 803 of the Penal Code proposed by both this bill and Assembly Bill 109, which has been chaptered but is conditionally operative on October 1, 2011. Section 1.5 shall become operative only if (1) this bill is enacted and becomes effective on or before January 1, 2012, (2) this bill amends Section 803 of the Penal Code, and (3) Assembly Bill 109 becomes operative, in which case Section 803 of the Penal Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of Assembly Bill 109, at which time Section 1.5 of this bill shall become operative.

SEC. 239. Section 1 of Chapter 404 of the Statutes of 2011 is amended to read:

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

(a) Certain speech-generating devices are classified by the United States Department of Health and Human Services guidelines as durable medical equipment.

(b) The provision of durable medical equipment traditionally has been a function of public and private health insurance programs.

(c) It is the intent of the Legislature that public and private health insurance programs continue to be the provider of first resort for speech-generating devices that are classified as durable medical equipment and that the Public Utilities Commission only provide access to those devices when funding from traditional public and private health insurance policies and programs is unavailable.

SEC. 240. Section 17 of Chapter 13 of the Statutes of 2011, First Extraordinary Session, is amended to read:

Sec. 17. There is hereby appropriated one thousand dollars ($1,000) from the General Fund to the California Emergency Management Agency for program administrative costs incurred in connection with Section 13821 of the Penal Code.

SEC. 241. Section 2 of Chapter 14 of the Statutes of 2011, First Extraordinary Session, is amended to read:

Sec. 2. There is hereby appropriated one thousand dollars ($1,000) from the General Fund to the California Emergency Management Agency for program administrative costs incurred in connection with Section 13821 of the Penal Code.

SEC. 242. Any section of any act enacted by the Legislature during the 2012 calendar year that takes effect on or before January 1, 2013, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2012 calendar year and takes effect on or before January 1, 2013, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

Approved _____, 2012

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Governor