ASSEMBLY BILL No. 2539

Introduced by Committee on Judiciary (Kuehl (Chair), Ackerman (Vice Chair), Aroner, Bates, Bock, Corbett, House, Jackson, Knox, Longville, Robert Pacheco, Shelley, Steinberg, and Wiggins)

February 24, 2000

An act to amend Sections 651, 680, 4112, 4982, 4998, 4998.2, 4998.5, 4998.6, 6086.65, and 17537.11 of the Business and Professions Code, to amend Sections 1102.2, 1103, and 2924c of the Civil Code, to amend Sections 131.4, 703.140, and 704.115 of the Code of Civil Procedure, amend Sections 1201, 2210, 2502, 9528, and 9706 of the Commercial Code, to amend Sections 5222, 7236, 14000, 14030, 14030.1, 14035, 14036, and 25207 of the Corporations Code, to amend Sections 1209, 17210, 17284.5, 17620, 23812, 24255, 35012, 35160.5, 37252, 44225.6, 44227, 44259, 44275.3, 44424, 47611.5, 47612.5, 51871.5, 54685.2, 54685.3, 60200.2, 60855, 66293, and 81149 of, to amend and renumber Section 39006 of, and to amend and renumber the heading of Chapter 8 (commencing with Section 60850) of Part 33 of Division 4 of Title 2 of, the Education Code, to amend Section 8040 of the Elections Code, to amend Sections 243, 2040, 3021, 4065, and 5002 of the Family Code, to amend Section 18210 of the Financial Code, to amend Section 55702 of the Food and Agricultural Code, to amend Sections 3540.1, 7222, 15346.9, 18935, 19827.3, 20395, 20397, 20677, 21070.5, 21071, 21073.7, 21370, 21572, 22825.01, 22875, 31469.5, 51298, 53601, 53635, 54985, 69915, 72114.2, and 91007 of the Government Code, to amend Sections 1357.50, 1368, 1368.04,

1370.4, 1374.32, 1386, 1507.3, 1596.7927, 25390.4, 32121.7, 33333.6, 33334.17, 44287, 51451, 104550, 104556, 104557, 112040, 115813, and 128375 of, and to amend and renumber Section 13933 of, the Health and Safety Code, to amend Sections 384, 791.02, 1035, 1765.1, 1874.81, 10123.68, 10145.3, 10169, 10169.2, 10176.61, 11629.92, and 12967 of, and to amend and renumber Sections 1785.89, 10140, 10141, and 12698 of, the Insurance Code, to amend Sections 1174.5, 1777.5, 1777.7, 3762, 6394.5, 6429, 6434, and 6650 of the Labor Code, to amend Sections 273.84, 296.1, 487c, 666, 830.32, 1463, 2962, 6129, 11166.3, 11170.6, 12000, and 13510 of the Penal Code, to amend Section 2357 of the Probate Code, to amend Section 12102 of the Public Contract Code, to amend Sections 2715.5, 31164, and 42923 of the Public Resources Code, to amend Sections 237, 2512, 2613, 6471, and 6472 of the Revenue and Taxation Code, to amend Sections 426, 1666, 5204, 9980, 12808, 12815, 13377, 16020.1, 21051, 22511.56, 34505.9, and 35790.1 of the Vehicle Code, to amend Sections 361.5, 727.3, 727.31, 827, 1788, 1789.5, 9564, 14105.26, and 25002 of the Welfare and Institutions Code, and to amend Section 1 of Chapter 868 of the Statutes of 1998, and Section 7 of Chapter 84 of the Statutes of 1999, relating to maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2539, as introduced, Committee on Judiciary. 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 restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 2000, and would not make any substantive change in the law.

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

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

SECTION 1. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated~~,~~ any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A ‘‘public communication’’ as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents ‘‘before’’ and ‘‘after’’ views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any ‘‘before’’ and ‘‘after’’ views ~~(1)~~ *(i)* shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and ~~(2)~~ *(ii)* shall contain a statement that the same ‘‘before’’ and ‘‘after’’ results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, ‘‘as low as,’’ ‘‘and up,’’ ‘‘lowest ~~prices’’~~ *prices,”* or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of

bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that

the practitioner limits his or her practice to specific fields. For the purposes of this section, the statement of a practitioner licensed under Chapter 4 (commencing with Section 1600) who limits his or her practice to a specific field or fields~~,~~ shall only include a statement that he or she is certified or is eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term ''board certified'' in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term ''board certified'' in reference to that certification is in accordance with subparagraph (A). A physician ~~or~~ *and* surgeon licensed under Chapter 5 (commencing with

Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term ‘‘board certified’’ unless the full name of the certifying board is also used and given comparable prominence with the term ‘‘board certified’’ in the statement.

For purposes of this subparagraph, a ‘‘multidisciplinary board or association’’ means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant’s education, training, and experience.

For purposes of the term ‘‘board certified,’’ as used in this subparagraph, the terms ‘‘board’’ and ‘‘association’’ mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon’s licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or

association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term ‘‘board certified’’ unless the full name of the certifying board is also used and given comparable prominence with the term ‘‘board certified’’ in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term ‘‘board certified’’ in reference to that certification.

For purposes of this subparagraph, a ‘‘multidisciplinary board or association’’ means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant’s education, training, and experience. For purposes of the term ‘‘board certified,’’ as used in this subparagraph, the terms ‘‘board’’ and ‘‘association’’ mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition

pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) ~~of this section~~ or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with

Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by ~~business~~ *businesses* or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing

with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

SEC. 2. Section 680 of the Business and Professions Code is amended to read:

680. (a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag. If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title ''nurse'' in reference to himself or herself and in any capacity, except for an individual who is a registered nurse~~,~~ or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse assistant from using his or her title.

(b) Facilities licensed by the State Department of Social Services, the State Department of Mental Health, or the State Department of Health Services~~,~~ shall develop and implement policies to ensure that health care practitioners providing care in those facilities are in compliance with subdivision (a). The State Department of Social Services, the State Department of Mental Health, and the State Department of Health Services shall verify through periodic inspections that the policies required pursuant to subdivision (a) have been

developed and implemented by the respective licensed facilities.

(c) For purposes of this article, ‘‘health care practitioner’’ means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

SEC. 3. Section 4112 of the Business and Professions Code is amended to read:

4112. (a) Any pharmacy located outside this state that ships, mails, or delivers, in any manner, controlled substances, dangerous drugs, or dangerous devices into this state shall be considered a nonresident pharmacy.

(b) All nonresident pharmacies shall register with the board. The board may register a nonresident pharmacy that is organized as a limited liability company in the state in which it is licensed.

(c) A nonresident pharmacy shall disclose to the board the location, names, and titles of (1) its agent for service of process in this state, (2) all principal corporate officers, if any, (3) all general partners, if any, and (4) all pharmacists who are dispensing controlled substances, dangerous drugs, or dangerous devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, partner, or pharmacist.

(d) All nonresident pharmacies shall comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(e) All nonresident pharmacies shall maintain records of controlled substances, dangerous drugs, or dangerous devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(f) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free *telephone* number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(g) The board shall adopt regulations that apply the same requirements or standards for oral consultation to a nonresident pharmacy that operates pursuant to this section and ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state, as are applied to an in-state pharmacy that operates pursuant to Section 4037 when the pharmacy ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state. The board shall not adopt any regulations that require face-to-face consultation for a prescription that is shipped, mailed, or delivered to the patient. The regulations adopted pursuant to this subdivision shall not result in any unnecessary delay in patients receiving their medication.

(h) The registration fee shall be the fee specified in subdivision (a) of Section 4400.

(i) The registration requirements of this section shall apply only to a nonresident pharmacy that ships, mails, or delivers controlled substances, dangerous drugs, and dangerous devices into this state pursuant to a prescription.

(j) Nothing in this section shall be construed to authorize the dispensing of contact ~~lens~~ *lenses* by nonresident pharmacists except as provided by Section 4124.

SEC. 4. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing any such person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4211, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage, family, and child counseling services.

(d) Gross negligence or incompetence in the performance of marriage, family, and child counseling.

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

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

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

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

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage, family, and child counselor.

(*l*) Performing, or holding ~~one's self~~ *oneself* out as being able to perform, or offering to perform, or permitting any registered trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

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

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

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner which is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or registered trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding ~~one's self~~ *oneself* out as being able to perform~~,~~ professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a registered trainee or registered intern under one's supervision or control to perform, or permitting the registered trainee or registered intern to hold ~~one's self~~ *himself or herself* out as competent to perform, professional services beyond the registered trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

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

SEC. 5. Section 4998 of the Business and Professions Code is amended to read:

4998. A licensed clinical social worker corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are licensed clinical social workers, physicians and surgeons, psychologists, marriage, family, and child counselors, registered nurses, chiropractors, or acupuncturists are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with

Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs. With respect to a licensed clinical social ~~workers~~ *worker* corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Behavioral Sciences.

SEC. 6. Section 4998.2 of the Business and Professions Code is amended to read:

4998.2. Notwithstanding Section 4996, the name of a licensed clinical social ~~workers~~ *worker* corporation and any name or names under which it may be rendering professional services shall contain the words ‘‘licensed clinical social worker’’ and wording or abbreviations denoting corporate existence.

A licensed clinical social ~~workers~~ *worker* corporation that conducts business under a fictitious business name shall not use any name which is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, that the business is conducted by a licensed clinical social ~~workers~~ *worker* corporation.

SEC. 7. Section 4998.5 of the Business and Professions Code is amended to read:

4998.5. A licensed clinical social ~~workers~~ *worker* corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule, or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by those statutes, rules, and regulations to the same extent as a person holding a license as a licensed clinical social worker.

SEC. 8. Section 4998.6 of the Business and Professions Code is amended to read:

4998.6. The board may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of a licensed clinical social ~~workers~~ *worker* corporation shall

include a provision whereby the capital stock of that corporation owned by a disqualified person, as defined in the Moscone-Knox Professional Corporation Act, or a deceased person~~,~~ shall be sold to the corporation or to the remaining shareholders of that corporation within ~~such~~ *the* time ~~as~~ *that* the rules and regulations may provide, and (b) that a licensed clinical social worker corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

SEC. 9. Section 6086.65 of the Business and Professions Code is amended to read:

6086.65. (a) There is a Review Department of the State Bar Court~~,~~ that consists of the Presiding Judge of the State Bar Court and two Review Department Judges appointed by the Supreme Court. The judges of the Review Department shall be ~~nominated,~~ appointed~~,~~ and subject to discipline as provided ~~by~~ *in* subdivision (a) of Section 6079.1, shall be qualified as provided ~~by~~ *in* subdivision (b) of Section 6079.1, and shall be compensated as provided for the Presiding Judge ~~by~~ *in* subdivision (d) of Section 6079.1. However, the two Review Department Judges may be appointed to, and paid as, positions occupying one-half the time and pay of the Presiding Judge. Candidates shall be rated and screened by the board as provided in subdivision (c) of Section 6079.1.

(b) The board may fix a date no later than September 1, 1989, on which all proceedings pending before the Review Department shall be decided by judges of the Review Department appointed under this section. The Review Department in existence on June 30, 1989, may continue on and after July 1, 1989, to exercise the duties and powers under prior Section 6086.6 as to any matter assigned to it prior to the date set by the board pursuant to this section.

(c) The Presiding Judge of the State Bar Court shall appoint an Executive Committee of the State Bar Court of no fewer than seven persons, including one person who has never been a member of the State Bar or admitted to

practice law before any court in the United States. The Executive Committee may adopt rules of practice for the operation of the State Bar Court as provided in Section 6086.5.

(d) Any decision or order reviewable by the Review Department and issued by a judge of the State Bar Court appointed pursuant to Section 6079.1 may be reviewed only upon timely request of a party to the proceeding and not on the Review Department's own motion. Unless otherwise provided by a rule of practice or procedure approved by the Supreme Court, the party requesting review shall have the burden of showing one of the following:

(1) The Hearing Department did not proceed in the manner required by law.

(2) The findings of the Hearing Department are not supported by substantial evidence.

(3) The decision or recommendation of the Hearing Department is clearly erroneous.

(e) This section shall become operative on November 1, 2000.

SEC. 10. Section 17537.11 of the Business and Professions Code is amended to read:

17537.11. (a) It is unlawful for any person to offer a coupon that is in any manner untrue or misleading.

(b) It is unlawful for any person to offer a coupon described as ''free'' or as a ''gift,'' ''prize,'' or other similar term if (1) the recipient of the coupon ~~has~~ *is required* to pay money or buy any ~~good or service~~ *goods or services* to obtain or use the coupon, and (2) the person offering the coupon or anyone honoring the coupon made the majority of his or her sales in the preceding year in connection with one or more ''free,'' ''gift,'' ''prize,'' or similarly described coupons.

(c) For purposes of this section:

(1) ''Coupon'' includes any coupon, certificate, document, discount, or similar matter that purports to entitle the user of the coupon to obtain goods or services for free or for a special or reduced price.

(2) ''Sale'' includes lease or rent.

SEC. 11. Section 1102.2 of the Civil Code is amended to read:

1102.2. This article does not apply to the following:

(a) Transfers which are required to be preceded by the furnishing to a prospective transferee of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code and transfers which can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code.

(b) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(c) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure, transfers to the legal owner or lienholder of a manufactured home or mobilehome by a registered owner ~~of~~ *or* successor in interest who is in default, or transfers by reason of any foreclosure of a security interest in a manufactured home or mobilehome.

(d) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust. This exemption shall not apply to a transfer if the trustee is a natural person who is sole

trustee of a revocable trust and he or she is a former owner of the property or an occupant in possession of the property within the preceding year.

(e) Transfers from one coowner to one or more other coowners.

(f) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(g) Transfers between spouses resulting from a judgment of dissolution of marriage or of legal separation or from a property settlement agreement incidental to that judgment.

(h) Transfers by the Controller in the course of administering Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(i) Transfers under Chapter 7 (commencing with Section 3691) or Chapter 8 (commencing with Section 3771) of Part 6 of Division 1 of the Revenue and Taxation Code.

(j) Transfers or exchanges to or from any governmental entity.

SEC. 12. Section 1103 of the Civil Code is amended to read:

1103. (a) Except as provided in Section ~~1103.2~~ *1103.1*, this article applies to any transfer by sale, exchange, installment land sale contract, as defined in Section 2985, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of any real property described in subdivision (c), or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

(b) Except as provided in Section ~~1103.2~~ *1103.1*, this article shall apply to a resale transaction entered into on or after January 1, 2000, for a manufactured home, as defined in Section 18007 of the Health and Safety Code, that is classified as personal property intended for use as a residence, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, that is classified as personal property intended for use as a residence, if the real

property on which the manufactured home or mobilehome is located is real property described in subdivision (c).

(c) This article shall apply to the transactions described in subdivisions (a) and (b) only if the transferor or his or her agent are required by one or more of the following to disclose the property's location within a hazard zone:

(1) A person who is acting as an agent for a transferor of real property that is located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a special flood hazard area if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a special flood hazard area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the special flood hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(2) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding, designated pursuant to Section 8589.5 of the Government Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within an inundation area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(3) A transferor of real property that is located within a very high fire hazard severity zone, designated

pursuant to Section 51178 of the Public Resources Code, shall disclose to any prospective transferee the fact that the property is located within a very high fire hazard severity zone and is subject to the requirements of Section 51182 if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a very high fire hazard severity zone.

(B) A map that includes the property has been provided to the local agency pursuant to Section 51178 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the local agency.

(4) A person who is acting as an agent for a transferor of real property that is located within an earthquake fault zone, designated pursuant to Section 2622 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a delineated earthquake fault zone if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a delineated earthquake fault zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2622 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(5) A person who is acting as an agent for a transferor of real property that is located within a seismic hazard zone, designated pursuant to Section 2696 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a seismic hazard zone if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a seismic hazard zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2696 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(6) A transferor of real property that is located within a state responsibility area determined by the board, pursuant to Section 4125 of the Public Resources Code, shall disclose to any prospective transferee the fact that the property is located within a wildland area that may contain substantial forest fire risks and hazards and is subject to the requirements of Section 4291 if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a wildland fire zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 4125 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(d) Any waiver of the requirements of this article is void as against public policy.

SEC. 13. Section 2924c of the Civil Code is amended to read:

2924c. (a) (1) Whenever all or a portion of the principal sum of any obligation secured by deed of trust or mortgage on real property or an estate for years therein hereafter executed has, prior to the maturity date fixed in that obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of trustor or mortgagor to pay, in accordance with the terms of that obligation or of the deed of trust or mortgage, taxes,

assessments, premiums for insurance, or advances made by beneficiary or mortgagee in accordance with the terms of that obligation or of the deed of trust or mortgage, the trustor or mortgagor or his or her successor in interest in the mortgaged or trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any other person having a subordinate lien or encumbrance of record thereon, at any time within the period specified in subdivision (e), if the power of sale therein is to be exercised, or, otherwise at any time prior to entry of the decree of foreclosure, may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount due, at the time payment is tendered, with respect to (A) all amounts of principal, interest, taxes, assessments, insurance premiums, or advances actually known by the beneficiary to be, and that are, in default and shown in the notice of default, under the terms of the deed of trust or mortgage and the obligation secured thereby, (B) all amounts in default on recurring obligations not shown in the notice of default, and (C) all reasonable costs and expenses, subject to subdivision (c), which are actually incurred in enforcing the terms of the obligation, deed of trust, or mortgage, and trustee's or attorney's fees, subject to subdivision (d), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred. This section does not apply to bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility subject to the Public Utilities Code. For the purposes of this subdivision, the term ''recurring obligation'' means all amounts of principal and interest on the loan, or rents, subject to the deed of trust or mortgage in default due after the notice of default is recorded; all amounts of

principal and interest or rents advanced on senior liens or leaseholds which are advanced after the recordation of the notice of default; and payments of taxes, assessments, and hazard insurance advanced after recordation of the notice of default. Where the beneficiary or mortgagee has made no advances on defaults which would constitute recurring obligations, the beneficiary or mortgagee may require the trustor or mortgagor to provide reliable written evidence that the amounts have been paid prior to reinstatement.

(2) If the trustor, mortgagor, or other person authorized to cure the default pursuant to this subdivision does cure the default, the beneficiary or mortgagee or the agent for the beneficiary or mortgagee shall, within 21 days following the reinstatement, execute and deliver to the trustee a notice of rescission which rescinds the declaration of default and demand for sale and advises the trustee of the date of reinstatement. The trustee shall cause the notice of rescission to be recorded within 30 days of receipt of the notice of rescission and of all allowable fees and costs.

No charge, except for the recording fee, shall be made against the trustor or mortgagor for the execution and recordation of the notice which rescinds the declaration of default and demand for sale.

(b) (1) The notice, of any default described in this section, recorded pursuant to Section 2924, and mailed to any person pursuant to Section 2924b, shall begin with the following statement, printed or typed thereon:

‘‘IMPORTANT NOTICE [14-point boldface type if printed or in capital letters if typed]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, [14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the

time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____
(Date)

and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, ~~1)~~ *(1)* provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation

being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

_____

(Name of beneficiary or mortgagee)

_____

(Mailing address)

_____

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. [14-point boldface type if printed or in capital letters if typed]''

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or (4) of subdivision (a) of Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions

Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, including certified and express mail charges, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section 2924g not to exceed fifty dollars ($50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee. For purposes of this subdivision, a trustee or beneficiary may purchase a trustee's sale guarantee at a rate meeting the standards contained in Sections 12401.1 and 12401.3 of the Insurance Code.

(d) Trustee's or attorney's fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in an amount which does not exceed two hundred forty dollars ($240) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars ($50,000) or less, plus one-half of 1 percent of the unpaid principal sum

secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale.

In the event the sale does not take place on the date set forth in the initial recorded notice of sale or a subsequent recorded notice of sale is required to be given, the right of reinstatement shall be revived as of the date of recordation of the subsequent notice of sale, and shall continue from that date until five business days prior to the date of sale set forth in the subsequently recorded notice of sale.

In the event the date of sale is postponed on the date of sale set forth in either an initial or any subsequent notice of sale, or is postponed on the date declared for sale at an immediately preceding postponement of sale, and, the postponement is for a period which exceeds five business days from the date set forth in the notice of sale, or declared at the time of postponement, then the right of reinstatement is revived as of the date of postponement and shall continue from that date until five business days prior to the date of sale declared at the time of the postponement.

Nothing contained herein shall give rise to a right of reinstatement during the period of five business days prior to the date of sale, whether the date of sale is noticed in a notice of sale or declared at a postponement of sale.

Pursuant to the terms of this subdivision, no beneficiary, trustee, mortgagee, or their agents or successors shall be liable in any manner to a trustor, mortgagor, their agents or successors or any beneficiary under a subordinate deed of trust or mortgage or any other person having a subordinate lien or encumbrance of record thereon for the failure to allow a reinstatement of the obligation secured by a deed of trust or mortgage during the period of five business days prior to the sale of the security property, and no such right of reinstatement during this period is created by this section. Any right of reinstatement created by this section is terminated five business days prior to the date of sale set forth in the initial date of sale, and is revived only as prescribed herein and only as of the date set forth herein.

As used in this subdivision, the term ‘‘business day’’ has the same meaning as specified in Section 9.

SEC. 14. Section 131.4 of the Code of Civil Procedure is amended to read:

131.4. Any of the duties of the probation officer may be performed by a deputy probation officer and shall be performed by him *or her* whenever detailed to perform the same by the probation officer; and it shall be the duty of the probation officer to see that the deputy probation officer performs his *or her* duties.

Such probation officer and each deputy probation officer shall have, as to the person so committed to the care of such probation officer or deputy probation officer, the powers of a peace officer.

The probation officers and deputy probation officers ~~appointed under section 131.2 of this code~~ shall serve as such probation officers in all courts having original jurisdiction of criminal actions in this State.

SEC. 15. Section 703.140 of the Code of Civil Procedure is amended to read:

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed fifteen thousand dollars ($15,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a

dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed two thousand four hundred dollars ($2,400) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed four hundred dollars ($400) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand dollars ($1,000) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value eight hundred dollars ($800) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed one thousand five hundred dollars ($1,500) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value eight thousand dollars ($8,000), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment, not to exceed fifteen thousand dollars ($15,000), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

(E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

SEC. 16. Section 704.115 of the Code of Civil Procedure is amended to read:

704.115. (a) As used in this section, ‘‘private retirement plan’’ means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1986, as amended, including individual retirement accounts qualified under Section 408 or 408A of that code, to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under that code.

(b) All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon

returned to any member of a private retirement plan are exempt.

(e) Notwithstanding subdivisions (b) and (d), except as provided in subdivision (f), the amounts described in paragraph (3) of subdivision (a) are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires. In determining the amount to be exempt under this subdivision, the court shall allow the judgment debtor such additional amount as is necessary to pay any federal and state income taxes payable as a result of the applying of an amount described in paragraph (3) of subdivision (a) to the satisfaction of the money judgment.

(f) Where the amounts described in paragraph (3) of subdivision (a) are payable periodically, the amount of the periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law). To the extent a ~~lump sum~~ *lump-sum* distribution from an individual retirement account is treated differently from a periodic distribution under this subdivision, any ~~lump sum~~ *lump-sum* distribution from an account qualified under Section 408A of the Internal Revenue Code shall be treated the same as a ~~lump sum~~ *lump-sum* distribution from an account qualified under Section 408 of the Internal Revenue Code for purposes of determining whether any of that payment may be applied to the satisfaction of a money judgment.

SEC. 17. Section 1201 of the Commercial Code is amended to read:

1201. The following definitions apply for purposes of this code, subject to additional definitions contained in the subsequent divisions of this code that apply to specific divisions or chapters thereof, and unless the context otherwise requires:

(1) ‘‘Action,’’ in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) ‘‘Aggrieved party’’ means a party entitled to resort to a remedy.

(3) ‘‘Agreement’’ means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing, usage of trade, and course of performance as provided in this code (Sections 1205, 2208, and 10207). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable, and otherwise by the law of contracts (Section 1103). (Compare ‘‘contract.’’)

(4) ‘‘Bank’’ means any person engaged in the business of banking.

(5) ‘‘Bearer’’ means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) ‘‘Bill of lading’’ means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and that, by its terms, evidences the intention of the issuer that the person entitled under the document ~~(Section 7403(4))~~, *as defined in Section 7403(4)*, has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a ‘‘bill of lading’’ is conclusive evidence of that intention. ‘‘Bill of lading’’ includes an airbill. ‘‘Airbill’’ means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) ‘‘Branch’’ includes a separately incorporated foreign branch of a bank.

(8) ‘‘Burden of ~~establishing’’ a fact~~ *establishing a fact’’* means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) ‘‘Buyer in ordinary course of business’’ means a person that buys goods in good faith, without knowledge

that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under ~~Article~~ *Division* 2 (commencing with Section 2101) may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) ''Conspicuous.'' A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is ''conspicuous'' if it is in larger or other contrasting type or color, except that in a telegram any stated term is ''conspicuous.'' Whether a term or clause is ''conspicuous'' or not is for decision by the court.

(11) ''Contract'' means the total legal obligation that results from the parties' agreement as affected by this code and any other applicable rules of law. (Compare ''agreement.'')

(12) ''Creditor'' includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) ‘‘Defendant’’ includes a person in the position of defendant in a cross-action or counterclaim.

(14) ‘‘Delivery,’’ with respect to instruments, documents of title, chattel paper, or certificated securities, means the voluntary transfer of possession.

(15) ‘‘Document of title’’ includes a bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, or compress receipt, and any other document that, in the regular course of business or financing, is treated as adequately evidencing that the person entitled under the document ~~(Section 7403(4))~~, *as defined in Section 7403(4),* has the right to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document shall purport to be issued by a bailee and purport to cover goods in the bailee’s possession that either are identified as or are fungible portions of an identified mass.

(16) ‘‘Fault’’ means *a* wrongful act, omission, or breach.

(17) ‘‘Fungible,’’ with respect to goods or securities, means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods that are not fungible shall be deemed fungible for the purposes of this code to the extent that, under a particular agreement or document, unlike units are treated as equivalents.

(18) ‘‘Genuine’’ means free of forgery or counterfeiting.

(19) ‘‘Good faith’’ means honesty in fact in the conduct or transaction concerned.

(20) ‘‘Holder,’’ with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. ‘‘Holder,’’ with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To ‘‘honor’’ is to pay or to accept and pay or, where a credit so engages, to purchase or discount a draft complying with the terms of the credit.

(22) ‘‘Insolvency proceedings’’ includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is ‘‘insolvent’’ who either has ceased to pay his or her debts in the ordinary course of business, cannot pay his or her debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.

(24) ‘‘Money’’ means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has ‘‘notice’’ of a fact when any of the following occurs:

(a) He or she has actual knowledge of it.

(b) He or she has received a notice or notification of it.

(c) From all the facts and circumstances known to him or her at the time in question, he or she has reason to know that it exists. A person ‘‘knows’’ or has ‘‘knowledge’’ of a fact when he or she has actual knowledge of it. ‘‘Discover’’ or ‘‘learn,’’ or a word or phrase of similar import, refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person ‘‘notifies’’ or ‘‘gives’’ a notice or notification to another by taking those steps that may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person ‘‘receives’’ a notice or notification when any of the following occurs:

(a) It comes to his or her attention.

(b) It is duly delivered at the place of business through which the contract was made or at any other place held

out by him or her as the place for receipt of these communications.

(27) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his or her regular duties, or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) ‘‘Organization’’ includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) ‘‘Party,’’ as distinct from ‘‘third party,’’ means a person who has engaged in a transaction or made an agreement within this division.

(30) ‘‘Person’’ includes an individual or an organization. (See Section 1102.)

(31) ‘‘Purchase’’ includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(32) ‘‘Purchaser’’ means a person who takes by purchase.

(33) ‘‘Remedy’’ means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(34) ‘‘Representative’’ includes an agent, an officer of a corporation or association, a trustee, executor, or

administrator of an estate, or any other person empowered to act for another.

(35) ‘‘Rights’’ includes remedies.

(36) (a) ‘‘Security interest’’ means an interest in personal property or fixtures that secures payment or performance of an obligation. The term also includes any interest of a cosignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Division 9 (commencing with Section 9101). The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2401 is not a ‘‘security interest,’’ but a buyer may also acquire a ‘‘security interest’’ by complying with Division 9 (commencing with Section 9101). Except as otherwise provided in Section 2505, the right of a seller or lessor of goods under ~~Article~~ *Division* 2 (commencing with Section 2101) or ~~Article~~ *Division* 10 (commencing with Section 10101) to retain or acquire possession of the goods is not a ‘‘security interest,’’ but a seller or lessor may also acquire a ‘‘security interest’’ by complying with ~~Article~~ *Division* 9 (commencing with Section 9101). The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2401) is limited in effect to a reservation of a ‘‘security interest.’’

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and any of the following conditions applies:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods.

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods.

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional

consideration or nominal additional consideration upon compliance with the lease agreement.

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides one or more of the following:

(i) That the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or greater than the fair market value of the goods at the time the lease is entered into.

(ii) That the lessee assumes *the* risk of loss of the goods, or agrees to pay *the* taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods.

(iii) That the lessee has an option to renew the lease or to become the owner of the goods.

(iv) That the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed.

(v) That the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(vi) In the case of a motor vehicle, as defined in Section 415 of the Vehicle Code, or a trailer, as defined in Section 630 of that code, that is not to be used primarily for personal, family, or household purposes, that the amount of rental payments may be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the vehicle or trailer. Nothing in this subparagraph affects the application or administration of the Sales and Use Tax Law (Part 1 (commencing with Section 6001), Division 2, Revenue and Taxation Code).

(d) For purposes of this subdivision (36), all of the following apply:

(i) Additional consideration is not nominal if (A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(ii) ''Reasonably predictable'' and ''remaining economic life of the goods'' are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(iii) ''Present value'' means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(37) ''Send,'' in connection with any writing or notice, means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there ~~be~~ *is* none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time in which it would have arrived if properly sent has the effect of a proper sending. When a writing or notice is required to be sent by registered or certified mail, proof of mailing is sufficient, and proof of receipt by the addressee is not required unless the words ''with return receipt requested'' are also used.

(38) ‘‘Signed’’ includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(39) ‘‘Surety’’ includes guarantor.

(40) ‘‘Telegram’’ includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(41) ‘‘Term’’ means that portion of an agreement that relates to a particular matter.

(42) ‘‘Unauthorized’’ signature means one made without actual, implied, or apparent authority, and includes a forgery.

(43) ‘‘Value.’’ Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3303, 4210, and 4211), a person gives ‘‘value’’ for rights if he or she acquires them in any of the following ways:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection.

(b) As security for, or in total or partial satisfaction of, a preexisting claim.

(c) By accepting delivery pursuant to a preexisting contract for purchase.

(d) Generally, in return for any consideration sufficient to support a simple contract.

(44) ‘‘Warehouse receipt’’ means a document evidencing the receipt of goods for storage issued by a warehouseman (Section 7102), and that, by its terms, evidences the intention of the issuer that the person entitled under the document ~~(Section 7403(4))~~, *as defined in Section 7403(4),* has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a ‘‘warehouse receipt’’ is conclusive evidence of that intention.

(45) ‘‘Written’’ or ‘‘writing’’ includes printing, typewriting, or any other intentional reduction to tangible form.

SEC. 18. Section 2210 of the Commercial Code is amended to read:

2210. (1) A party may perform his or her duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his or her original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in Section 9406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him or her by his or her contract, or impair materially his or her chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his or her entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of, or increases materially the burden or risk imposed on, the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subdivision (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (A) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (B) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of "the contract" is to be

construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and, unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor, and its acceptance by the assignee constitutes a promise by him or her to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may, without prejudice to his or her rights against the assignor, demand assurances from the assignee (Section 2609).

SEC. 19. Section 2502 of the Commercial Code is amended to read:

2502. (1) Subject to subdivisions (2) and (3), and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he or she has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if either:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract.

(b) In all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under paragraph (a) of subdivision (1) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his or her special property has been made by the buyer, he or she acquires the right to recover the goods only if they conform to the contract for sale.

SEC. 20. Section 9528 of the Commercial Code is amended to read:

9528. Upon *the* request of any person, the Secretary of State shall issue a combined certificate showing the information as to financing statements as specified in Section 9523, the information as to state tax liens as specified in Section 7226 of the Government Code, the information as to attachment liens as specified in Sections 488.375 and 488.405 of the Code of Civil Procedure, the information as to judgment liens as specified in Section 697.580 of the Code of Civil Procedure, and the information as to federal liens as specified in Section 2103 of the Code of Civil Procedure.

SEC. 21. Section 9706 of the Commercial Code is amended to read:

9706. (a) The filing of an initial financing statement in the office specified in Section 9501 continues the effectiveness of a financing statement filed before July 1, 2001, if all of the following conditions are satisfied:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this division.

(2) The ~~pre-effective-date~~ *preeffective date* financing statement was filed in an office in another state or another office in this state.

(3) The initial financing statement satisfies subdivision (c).

(b) The filing of an initial financing statement under subdivision (a) continues the effectiveness of the ~~pre-effective-date~~ *preeffective date* financing statement for the following periods:

(1) If the initial financing statement is filed before July 1, 2001, for the period provided in former Section 9403 with respect to a financing statement.

(2) If the initial financing statement is filed after July 1, 2001, for the period provided in Section 9515 with respect to an initial financing statement.

(c) To be effective for purposes of subdivision (a), an initial financing statement must do all of the following:

(1) Satisfy the requirements of Chapter 5 (commencing with Section 9501) for an initial financing statement.

(2) Identify the ~~pre-effective-date~~ *preeffective date* financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement.

(3) Indicate that the ~~pre-effective-date~~ *preeffective date* financing statement remains effective.

SEC. 22. Section 5222 of the Corporations Code is amended to read:

5222. (a) Subject to subdivisions (b) and (f)~~ of this section~~, any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members pursuant to Section 5310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 5616, no director may be removed (unless the entire board is removed) ~~when~~ *if* the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) ~~When~~ *If* by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) ~~When~~ *If* by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

(d) Except as provided in this section and Sections 5221 and 5223, a director may not be removed prior to the expiration of the director's term of office.

(e) ~~Where~~ *If* a director removed under this section or Section 5221 or 5223 was chosen by designation pursuant to subdivision (d) of Section 5220, then:

(1) ~~Where~~ *If* a different person may be designated pursuant to *a* governing article or bylaw provision, the new designation shall be made.

(2) ~~Where~~ *If* the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) ~~When~~ *If* by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

SEC. 23. Section 7236 of the Corporations Code is amended to read:

7236. (a) Subject to the provisions of Section 7231, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for the benefit of all of the

creditors entitled to institute an action under paragraph (1) or (2) of subdivision (c) or to the corporation in an action by the head organization or members under paragraph (1) or (3) of subdivision (c):

(1) The making of any distribution contrary to Chapter 4 (commencing with Section 7410).

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapter 15 (commencing with Section 8510), *Chapter* 16 (commencing with Section 8610), and *Chapter* 17 (commencing with Section 8710).

(3) The making of any loan or guaranty contrary to Section 7235.

(b) A director who is present at a meeting of the board, or any committee thereof, at which *an* action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a), against any or all directors liable by the persons entitled to sue under subdivision (c) of Section 7420.

(2) Under paragraph (2) or (3) of subdivision (a), against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action who have not consented to the corporate action, whether or not they have reduced their claims to judgment.

(3) Under paragraph (3) of subdivision (a), against any or all directors liable by any one or more members at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 7710.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair

market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guaranty, but not exceeding, in the case of an action for the benefit of creditors, the liabilities of the corporation owed to nonconsenting creditors at the time of the violation.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against the persons who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the persons who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 24. Section 14000 of the Corporations Code is amended to read:

14000. This chapter shall be known and may be cited as the ~~"Small~~ *"California Small* Business *Financial* Development Corporation Law."

SEC. 25. Section 14030 of the Corporations Code is amended to read:

14030. There is hereby created in the State Treasury the *California* Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to lending institutions or financial companies. This fund shall be used to pay for defaulted loan guarantees issued

pursuant to ~~Section 14045~~ *Article 9 (commencing with Section 14070)*, administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund, including each of the loan accounts and corporate funds within the expansion fund, unless the office has permitted a higher leverage ratio for an individual corporation pursuant to subdivision (c) of Section 14037.

SEC. 26. Section 14030.1 of the Corporations Code is amended to read:

14030.1. (a) There is hereby created in the State Treasury the Small Business Disaster Recovery Loan Loss Reserve Account, as part of the expansion fund. This account shall be used to pay for unrecovered losses resulting from loan guarantees issued pursuant to subdivision (a) of Section 14075 and subdivision (b) of this section and disaster loan guarantees issued prior to the effective date of this section that are in default. Any lending institution that issues a low-interest loan that is guaranteed by resources in this account shall be fully reimbursed for the guaranteed portion of principal and interest that result from a loan or loans that are in default. In the event that there are insufficient funds in this account to fully satisfy all claimants, then the full faith of the resources in the General Fund are pledged to satisfy the obligations of this account. This account may only guarantee as much loan dollar value as is specifically authorized by the Director of Finance with the concurrence of the Governor. This account shall receive all moneys transferred pursuant to Section 14037.6, and any unencumbered balances transferred to the *California* Small Business Expansion Fund pursuant to Chapters 11 and 12 of the Statutes of 1989, First Extraordinary Session, and Chapter 1525 of the Statutes of 1990, as of July 1, 1992.

(b) The Governor should utilize this authority to prevent business insolvencies and loss of employment in an area affected by a state of emergency that began in the Los Angeles area on April 29, 1992, and incidents

subsequent thereto, and resulting therefrom, throughout the state and declared a disaster by the President of the United States, or by the Administrator of the United States' Small Business Administration, or by the Governor of California.

SEC. 27. Section 14035 of the Corporations Code is amended to read:

14035. There is hereby continued in the State Treasury in the expansion fund, the *California* Small Business *Financial Development* Loan Guarantee Account as part of the expansion fund.

SEC. 28. Section 14036 of the Corporations Code is amended to read:

14036. The loan account is created solely for the purpose of receiving state, federal, or local government money, and other public or private money, for subsequent allocation by the office, with the approval of the Department of Finance, to the ~~small business development~~ corporate ~~loan guarantee~~ fund.

SEC. 29. Section 25207 of the Corporations Code is amended to read:

25207. A financial institution ~~which~~ *that* undertakes activities with respect to an investment company pursuant to the provisions of Section 1338, ~~6702.5~~ *6524*, 14652.5, or 18022.5 of the Financial Code shall not be subject to Section 25210 or 25230 in connection with such activities but shall be subject to Sections 25218, 25234, 25235, and 25237 and to subdivisions (a), (b), and (d) of Section 25216, and such rules thereunder as the commissioner may specify by rule. Nothing in this section shall affect the status of such a financial institution as a broker-dealer or investment adviser, or the employees of such persons, when engaged in the activities authorized by the provisions of the ~~Fianancial~~ *Financial* Code specified above.

SEC. 30. Section 1209 of the Education Code is amended to read:

1209. A county superintendent of schools shall not increase his or her salary, financial remuneration, benefits, or pension in any manner or for any reason

without bringing the matter to the attention of *the* county board of education for its discussion at a regularly scheduled public meeting of the board and without the approval of the county board of education.

SEC. 31. Section 17210 of the Education Code is amended to read:

17210. As used in this article, the following terms have the following meanings:

(a) ‘‘Administering agency’’ means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) ‘‘Environmental assessor’’ means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, a contractor who conducts Phase I environmental assessments shall have a least two ~~years~~ *years’* experience in the preparation of those assessments and a contractor who conducts a preliminary endangerment assessment shall have at least three ~~years~~ *years’* experience in conducting those assessments.

(c) ‘‘Handle’’ has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) ‘‘Hazardous air emissions’’ means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for

the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) ‘‘Hazardous material’’ has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) ‘‘Operation and maintenance,’’ ‘‘removal action work plan,’’ ‘‘respond,’’ ‘‘response,’’ ‘‘response action’’ and ‘‘site’’ have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) ‘‘Phase I environmental assessment’’ means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A Phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the Phase I environmental assessment.

(h) ‘‘Preliminary endangerment assessment’’ means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children’s health, children’s learning abilities, public health or the environment. A preliminary endangerment assessment

requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site~~,~~ may pose to children's health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled ''Preliminary Endangerment Assessment: Guidance Manual,'' including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) ''Proposed schoolsite'' means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) ''Regulated substance'' means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) ''Release'' has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(*l*) ''Remedial action plan'' means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) ''State act'' means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

SEC. 32. Section 17284.5 of the Education Code is amended to read:

17284.5. ~~(a)~~ Notwithstanding any provision of law to the contrary, any waiver granted by the State Allocation Board to a school district for use of a nonconforming existing private building acquired for conversion for use as a school building, that had not expired prior to January 1, 2000, is hereby extended until January 1, 2001, if the work to make the building a conforming structure

commenced prior to January 1, 2000, but had not been completed by that date.

SEC. 33. Section 17620 of the Education Code is amended to read:

17620. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C) (i) Except ~~at~~ *as* otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the ‘‘resulting increase in assessable space’’ for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, ‘‘construction’’ and ‘‘assessable space’’ have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, ‘‘construction or reconstruction of school facilities’’ does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis

described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, ‘‘fees collected in that fiscal year pursuant to this section’’ does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district’s determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the

governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

SEC. 34. Section 23812 of the Education Code is amended to read:

23812. (a) The surviving spouse of a deceased member who previously lost entitlement to benefits prescribed by this part due to remarriage shall be entitled to resume payment of the ~~benefit~~ *benefits* effective either on January 1, 2000, or the first *day* of the month following receipt by the board of a written application for resumption of benefits, whichever date is later. The amount of the ~~benefit~~ *benefits* payable shall be calculated as though the ~~benefit~~ *benefits* had been paid without interruption from the date of remarriage through the ~~benefit~~ *benefits* resumption effective date.

(b) The board shall be under no requirement to identify, locate, or notify a remarried spouse of a deceased member who previously lost entitlement as a result of remarriage about the resumption of benefits provided in this section. The board shall be under no requirement to provide the name or address or any other information concerning any remarried spouse of a deceased member to any person, agency, or entity for the purpose of notifying those who may be eligible for the resumption of benefits under this section.

(c) Nothing in this section shall be construed to imply or interpreted to mean that the benefits addressed shall be required to be paid retroactively.

SEC. 35. Section 24255 of the Education Code is amended to read:

24255. (a) There is in the State Treasury a trust fund to be known as the Teachers' Replacement Benefits

Program Fund. There shall be deposited directly in that fund, and not transferred from the Teachers' Retirement Fund, that portion of employer contributions determined by the board as necessary to fund the replacement benefits program.

(b) Notwithstanding Section 13340 of the Government Code, moneys in the Teachers' Replacement Benefits Program Fund are continuously appropriated without regard to fiscal years to pay benefits to members and beneficiaries of the defined benefit program, and to pay related administrative expenses.

(c) The board may authorize the transfer and disbursement of funds from the Teachers' Replacement Benefits Program Fund for the purpose of carrying into effect this chapter upon the signature of either or both of its chairperson and vice chairperson or the chief executive officer or any employee of the system designated by the chief executive officer.

(d) Disbursements of money from the Teachers' Replacement Benefits Program Fund of whatever nature shall be made upon claims duly audited in the manner prescribed for the disbursement of other public funds except that, notwithstanding the foregoing, disbursements may be made to return funds deposited in the fund in error.

SEC. 36. Section 35012 of the Education Code is amended to read:

35012. (a) Except as otherwise provided, the governing board of a school district shall consist of five members elected at large by the qualified voters of the district. The terms of the members shall, except as otherwise provided, be for four years and staggered so that as nearly as practicable one-half of the members shall be elected in each odd-numbered year.

(b) A unified school district ~~formed pursuant to the provisions of Chapter 2 (commencing with Section 4200) of Part 3~~ may have a governing board of seven members in the event the proposal for unification has specified a governing board of seven members. The members of the board shall be elected at large or by trustee areas as

designated in the proposal for unification and shall serve four-year terms of office.

(c) Notwithstanding subdivision (a), and except as provided in this subdivision and Section 5018, the governing board of an elementary school district other than a union or joint union elementary school district shall consist of three members selected at large from the territory comprising the district. Whenever, in any such elementary school district the average daily attendance during the preceding fiscal year is 300 or more, the procedures prescribed by Section 5018 shall be undertaken.

(d) There may be submitted to the governing board of a school district maintaining one or more high schools a pupil petition requesting the governing board to appoint one or more nonvoting pupil members to the board pursuant to this section.

There may also be submitted to the governing board of a school district maintaining one or more high schools a pupil petition requesting the governing board to allow preferential voting for the pupil member or members of the board. This request may be made in the original petition for pupil representation on the board or in a separate petition after a pupil member or members have been appointed to the board.

Whether for pupil representation or for preferential voting for the pupil member or members, the petition shall contain the signatures of either (a) not less than 500 pupils regularly enrolled in high schools of the district, or (b) not less than 10 percent of the number of pupils regularly enrolled in high schools of the district, whichever is less.

Upon receipt of a petition for pupil representation, the governing board shall, commencing July 1, 1976, and each year thereafter, order the inclusion within the membership of the governing board, in addition to the number of members otherwise prescribed, at least one nonvoting pupil member. The board may order the inclusion of more than one nonvoting pupil member.

Upon receipt of a petition for preferential voting for the pupil member or members, the governing board shall allow preferential voting for the pupil member or members of the governing board.

Preferential voting, as used in the section, means a formal expression of opinion that is recorded in the minutes and cast prior to the official vote of the governing board. A preferential vote will not serve in determining the final numerical outcome of a vote. No preferential vote will be solicited on matters subject to closed session discussion.

The governing board may adopt a resolution authorizing the nonvoting or preferential voting pupil member or members to make motions that may be acted upon by the governing board, except on matters dealing with employer-employee relations pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

Each pupil member shall have the right to attend each and all meetings of the governing board, except executive sessions.

Any pupil selected to serve as a nonvoting or preferential voting member of the governing board shall be enrolled in a high school of the district, may be less than 18 years of age, and shall be chosen by the pupils enrolled in the high school or high schools of the district in accordance with procedures prescribed by the governing board. The term of a pupil member shall be one year commencing on July 1 of each year.

A nonvoting or preferential voting pupil member shall be entitled to the mileage allowance to the same extent as regular members, but is not entitled to the compensation prescribed by Section 35120.

A nonvoting or preferential voting pupil member shall be seated with the members of the governing board and shall be recognized as a full member of the board at the meetings, including receiving all materials presented to the board members and participating in the questioning of witnesses and the discussion of issues.

The nonvoting or preferential voting pupil member shall not be included in determining the vote required to carry any measure before the board.

The nonvoting or preferential voting pupil member shall not be liable for any acts of the governing board.

SEC. 37. Section 35160.5 of the Education Code is amended to read:

35160.5. (a) The governing board of each school district that maintains one or more schools containing any of grades 7 to 12, inclusive, shall, as a condition for the receipt of an inflation adjustment pursuant to Section 42238.1, establish a school district policy regarding participation in extracurricular and cocurricular activities by pupils in grades 7 to 12, inclusive. The criteria, which shall be applied to extracurricular and cocurricular activities, shall ensure that pupil participation is conditioned upon satisfactory educational progress in the previous grading period. Pupils who are eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 are covered by this section consistent with that subdivision. No person shall classify a pupil as eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 for the purpose of circumventing the intent of this subdivision.

(1) For purposes of this subdivision, ‘‘extracurricular activity’’ means a program that has all of the following characteristics:

(A) The program is supervised or financed by the school district.

(B) Pupils participating in the program represent the school district.

(C) Pupils exercise some degree of freedom in either the selection, planning, or control of the program.

(D) The program includes both preparation for performance and performance before an audience or spectators.

(2) For purposes of this subdivision, an ‘‘extracurricular activity’’ is not part of the regular school

curriculum, is not graded, does not offer credit, and does not take place during classroom time.

(3) For purposes of this subdivision, a ‘‘cocurricular activity’’ is defined as a program that may be associated with the curriculum in a regular classroom.

(4) Any teacher graded or required program or activity for a course that satisfies the entrance requirements for admission to the California State University or the University of California is not an extracurricular or cocurricular activity as defined by this section.

(5) For purposes of this subdivision, ‘‘satisfactory educational progress’’ shall include, but not be limited to, the following:

(A) Maintenance of minimum passing grades, which is defined as at least a 2.0 grade point average in all enrolled courses on a 4.0 scale.

(B) Maintenance of minimum progress toward meeting the high school graduation requirements prescribed by the governing board.

(6) For purposes of this subdivision, ‘‘previous grading period’’ does not include any grading period in which the pupil was not in attendance for all, or a majority of, the grading period due to absences excused by the school for reasons such as serious illness or injury, approved travel, or work. In that event, ‘‘previous grading period’’ is deemed to mean the grading period immediately prior to the grading period or periods excluded pursuant to this paragraph.

(7) A program that has, as its primary goal, the improvement of academic or educational achievements of pupils is not an extracurricular or cocurricular activity as defined by this section.

(8) The governing board of each school district may adopt, as part of its policy established pursuant to this subdivision, provisions that would allow a pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), in the previous grading period to remain eligible to participate in extracurricular and cocurricular activities during a probationary period. The

probationary period shall not exceed one semester in length, but may be for a shorter period of time, as determined by the governing board of the school district. A pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), during the probationary period shall not be allowed to participate in extracurricular and cocurricular activities in the subsequent grading period.

(9) Nothing in this subdivision shall preclude the governing board of a school district from imposing a more stringent academic standard than that imposed by this subdivision. If the governing board of a school district imposes a more stringent academic standard, the governing board shall establish the criteria for participation in extracurricular and cocurricular activities at a meeting open to the public pursuant to Section 35145.

The governing board of each school district shall annually review the school district policies adopted pursuant to the requirements of this section.

(b) (1) On or before July 1, 1994, the governing board of each school district shall, as a condition for the receipt of school apportionments from the state school fund, adopt rules and regulations establishing a policy of open enrollment within the district for residents of the district. This requirement does not apply to any school district that has only one school or any school district with schools that do not serve any of the same grade levels.

(2) The policy shall include all of the following elements:

(A) It shall provide that the parents or guardian of each schoolage child who is a resident in the district may select the schools the child shall attend, irrespective of the particular locations of his or her residence within the district, except that school districts shall retain the authority to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation plans.

(B) It shall include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that selection of pupils to enroll in the school is made through a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon his or her academic or athletic performance. For purposes of this subdivision, the governing board of the school district shall determine the capacity of the schools in its district. However, school districts may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants. This subdivision shall not be construed to prohibit school districts from using academic performance to determine eligibility for, or placement in, programs for gifted and talented pupils established pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

(C) It shall provide that no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.

(3) Notwithstanding the requirement of subparagraph (B) of paragraph (2) that the policy include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that the selection is made through a random, unbiased process, the policy may include any of the following elements:

(A) It may provide that special circumstances exist that might be harmful or dangerous to a particular pupil in the current attendance area of the pupil, including, but not limited to, threats of bodily harm or threats to the emotional stability of the pupil, that serve as a basis for granting a priority of attendance outside the current attendance area of the pupil. A finding of harmful or dangerous special circumstances shall be based upon either of the following:

(i) A written statement from a representative of the appropriate state or local agency, including, but not limited to, a law enforcement official or a social worker, or properly licensed or registered professionals,

including, but not limited to, psychiatrists, psychologists, or marriage, family and child counselors.

(ii) A court order, including a temporary restraining order and injunction, issued by a judge.

A finding of harmful or dangerous special circumstances pursuant to this subparagraph may be used by a school district to approve transfers within the district to schools that have been deemed by the school district to be at capacity and otherwise closed to transfers that are not based on harmful or dangerous special circumstances.

(B) It may provide that any pupil attending a school prior to July 1, 1994, may be considered a current resident of that school for purposes of this section until the pupil is promoted or graduates from that school.

(C) It may provide that no pupil who was on a waiting list for a school or specialized program, on or before July 1, 1994, pursuant to a then-existing district policy on transfers within the district, shall be displaced by pupils transferring after July 1, 1994, from outside the attendance area, as long as the continued maintenance on a waiting list remains consistent with the former policy.

(D) It may provide that schools receiving requests for admission shall give priority for attendance to siblings of ~~children~~ *pupils* already in attendance in that school and to ~~children~~ *pupils* whose parent or legal guardian is assigned to that school as his or her primary place of employment.

(E) It may include a process by which the school district informs parents or guardians that certain schools or grade levels within a school are currently, or are likely to be, at capacity and, therefore, those schools or grade levels are unable to accommodate any new pupils under the open enrollment policy.

(4) It is the intent of the Legislature that, upon the request of the pupil's parent or guardian and demonstration of financial need, each school district provide transportation assistance to the pupil to the extent that the district otherwise provides transportation assistance to pupils.

SEC. 38. Section 37252 of the Education Code is amended to read:

37252. (a) The governing board of each district maintaining any or all of grades 7 to 12, inclusive, shall offer and a charter school that maintains any or all of grades 7 to 12, inclusive, may offer summer school instructional programs, using the amount computed pursuant to Section 42239, for pupils enrolled in grades 7 to 12, inclusive, who do not demonstrate sufficient progress toward passing the exit examination required for high school graduation pursuant to Chapter 8 (commencing with Section 60850) of Part 33. Sufficient progress shall be determined on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.

(2) The pupils' grades and other indicators of academic achievement designated by the district.

(b) The summer school programs shall also be offered to pupils who were enrolled in grade 12 during the prior school year after the completion of grade 12.

(c) (1) For purposes of this section a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade.

(2) For the purposes of this section, pupils who do not possess sufficient English language skills to be assessed as set forth in Sections 60850 and 60853, shall be considered pupils who do not demonstrate sufficient progress towards passing the exit examination required for high school graduation and shall receive supplemental instruction designed to assist ~~the~~ pupils *to* succeed on the high school exit examination.

(d) Instructional programs may be offered pursuant to this section during the summer, after school, Saturday, or during intersession, or in any combination of summer, after school, Saturday, or intersession instruction, but shall be in addition to the regular schoolday.

(e) This section shall become operative January 1, 2000.

SEC. 39. Section 39006 of the Education Code is amended and renumbered to read:

~~39006.~~

17215.5. (a) Prior to commencing the acquisition of real property for a new schoolsite in an area designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production, the governing board of a school district shall make all of the following findings:

(1) The school district has notified and consulted with the city, county, or city and county within which the prospective schoolsite is to be located.

(2) The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.

(3) The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the schoolsite.

(b) Subdivision (a) shall not apply to any schoolsite approved by the State Department of Education prior to January 1, 1997.

SEC. 40. Section 44225.6 of the Education Code is amended to read:

44225.6. (a) By January 10 of each year, the commission shall report to the Legislature and the Governor on the number of classroom teachers who received credentials, internships, and emergency permits in the previous fiscal year. This report shall include the following information:

(1) The number of individuals recommended for credentials by institutions of higher education.

(2) The number of individuals recommended by school districts operating district internship programs.

(3) The number of individuals receiving an initial credential based on a program completed outside of California.

(4) The number of individuals serving in the following capacities by subject matter, county, and school district:

(A) University internship.

(B) District internship.

(C) Pre-Internship.

(D) Emergency permit.

(E) Credential waiver.

(5) The specific subjects and teaching areas in which there are a sufficient number of new holders of credentials to fill the positions currently held by individuals with emergency permits.

(b) The commission shall make this report available to school districts and county offices of education to assist them in the recruitment of credentialed teachers.

(c) A common measure of whether teacher preparation programs are meeting the challenge of preparing increasing numbers of new teachers is the number of teaching credentials awarded. The number of teaching credentials recommended by these programs and awarded by the commission are indicators of the productivity of teacher preparation programs. The commission shall include in the report prepared for the Legislature and Governor pursuant to subdivision (a) the total number of ~~teacher~~ *teaching* credentials recommended by all accredited teacher preparation programs authorized by the commission and the number recommended by each of the following:

(1) The University of California system.

(2) The California State University system.

(3) Independent colleges and universities that offer teacher preparation programs approved by the commission.

(4) Other institutions that offer teacher preparation programs approved by the commission.

SEC. 41. Section 44227 of the Education Code is amended to read:

44227. (a) The commission may approve any institution of higher education whose teacher education program meets the standards prescribed by the commission, to recommend to the commission the

issuance of credentials to persons who have successfully completed those programs.

(b) Notwithstanding any provision of law to the contrary, the commission may approve for credit any coursework completed for credential purposes or for step increases in programs offered in California by out-of-state institutions of higher education that meet the requirements prescribed by Section 94761 only if the program of courses is offered by a regionally accredited institution and evidence of satisfactory evaluation by both that accrediting body and the Western Association of Schools and Colleges is submitted by the out-of-state institution to the commission for purposes of seeking approval of the program and any courses within that program for the purposes of obtaining a credential in California.

(c) Out-of-state applicants shall meet the following requirements for the preliminary multiple or single subject teaching credential:

(1) A baccalaureate or higher degree from an accredited institution of postsecondary education.

(2) The completion of a teacher training program approved by the applicable state agency.

(3) The verification of subject matter competence either through an examination~~,~~ or by the completion of an approved program or the equivalent of an approved program.

(4) The completion of a course or, for multiple subject credentials, a course or an examination, on the various methods of teaching reading.

(5) Passage of the state basic skills proficiency test.

(6) The completion of a course or an examination on the United States Constitution.

(7) Commencing January 1, 2000, successful completion of a commission-approved program, course, or examination in the use of computers in the classroom, as set forth in Section 44259.

(d) Out-of-state applicants shall meet the following requirements for the clear multiple or single subject teaching credential:

(1) A fifth year of study~~,~~ or an approved induction program pursuant to Section 44259.

(2) The study of education, including the study of physiological and sociological effects of the abuse of alcohol, narcotics, drugs, and tobacco.

(3) The completion of the study and practice of methods of teaching individuals with exceptional needs.

(e) The commission shall assess the records of out-of-state teachers who have been granted a five-year preliminary credential for purposes of determining any additional coursework that may be required as a condition for the issuance of a clear credential. The assessment shall determine the equivalency of out-of-state coursework in comparison to California coursework requirements~~,~~ and, where applicable, shall specify additional coursework to be taken. In determining the equivalency of out-of-state coursework to California requirements, the commission shall do all of the following:

(1) Accept a master's degree or higher degree from an accredited postsecondary educational institution demonstrating completion of an educationally related and organized program involving at least 30 semester units of postbaccalaureate coursework from an accredited postsecondary educational institution for purposes of meeting the fifth year of study requirement.

(2) Upon direct application, grant a clear credential if the out-of-state teacher has met the requirements of paragraphs (1) to (3), inclusive, of subdivision (d).

(3) Notify the out-of-state teacher who has completed the ~~fifth year~~ *fifth-year* equivalency requirement, but who has not met the requirements of paragraph (2) or (3) of subdivision (d), that upon the submission of verification that he or she has completed these requirements, he or she may submit an application to the commission for a clear credential.

(4) Notify out-of-state applicants who have not completed the fifth year of study requirement that they must obtain an evaluation of a postsecondary educational institution with an approved ~~fifth year~~ *fifth-year*

program. If there is a significant difference of opinion as to the content or units credited to out-of-state coursework, either the applicant or the postsecondary educational institution may solicit the opinion of the commission. Upon the completion of the coursework specified in the postsecondary educational institution's evaluation, the institution may recommend the applicant for a clear credential.

(f) If an applicant is unable to secure the recommendation of a postsecondary educational institution for the issuance of a clear credential, the applicant may submit a direct application to the commission documenting that he or she has completed all of the requirements for a clear credential. If the commission determines that all of the requirements have been met, the commission shall grant the clear credential.

SEC. 42. Section 44259 of the Education Code is amended to read:

44259. (a) Except as provided in subparagraphs (A) and (C) of paragraph (3) of subdivision (b), each program of professional preparation for multiple or single subject teaching credentials shall not include more than one year of, or the equivalent of one-fifth of a five-year program in, professional preparation.

(b) The minimum requirements for the preliminary multiple or single subject teaching credential~~,~~ are all of the following:

(1) A baccalaureate degree or higher degree from a regionally accredited institution of postsecondary education. Except as provided in subdivision (c) of Section 44227, the baccalaureate degree shall not be in professional education. The commission shall encourage accredited institutions to offer undergraduate minors in education and special education to students who intend to become teachers.

(2) Passage of the state basic skills examination that is developed and administered by the commission pursuant to Section 44252.5.

(3) Satisfactory completion of a program of professional preparation that has been accredited by the

committee on accreditation on the basis of standards of program quality and effectiveness that have been adopted by the commission. Subject to the availability of funds in the annual Budget Act for this purpose, and in accordance with the commission's assessment and performance standards, each program shall include a teaching performance assessment as set forth in Section 44320.2 which is aligned with the California Standards for the Teaching Profession. The commission shall ensure that each candidate recommended for a credential or certificate has demonstrated satisfactory ability to assist ~~students~~ *pupils* to meet or exceed state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605. Programs that meet this requirement for professional preparation shall include any of the following:

(A) Integrated programs of subject matter preparation and professional preparation pursuant to subdivision (a) of Section 44259.1.

(B) Postbaccalaureate programs of professional preparation, pursuant to subdivision (b) of Section 44259.1.

(C) Internship programs of professional preparation, pursuant to Section 44321, Article 7.5 (commencing with Section 44325), Article 11 (commencing with Section 44380), and Article 3 (commencing with Section 44450) of Chapter 3.

(4) Study of alternative methods of developing English language skills, including the study of reading as described in subparagraphs (A) and (B), among all pupils, including those for whom English is a second language, in accordance with the commission's standards of program quality and effectiveness. The study of reading shall meet the following requirements:

(A) Commencing January 1, 1997, satisfactory completion of comprehensive reading instruction that is research-based and includes all of the following:

(i) The study of organized, systematic, explicit skills including phonemic awareness, direct, systematic, explicit phonics, and decoding skills.

(ii) A strong literature, language, and comprehension component with a balance of oral and written language.

(iii) Ongoing diagnostic techniques that inform teaching and assessment.

(iv) Early intervention techniques.

(v) Guided practice in a clinical setting.

(B) For the purposes of this section, ‘‘direct, systematic, explicit phonics’’ means phonemic awareness, spelling patterns, the direct instruction of sound/symbol codes and practice in connected text and the relationship of direct, systematic, explicit phonics to the components set forth in clauses (i) to (v), inclusive.

A program for the multiple subjects credential also shall include the study of integrated methods of teaching language arts.

(5) Completion of a subject matter program that has been approved by the commission on the basis of standards of program quality and effectiveness pursuant to Article 6 (commencing with Section 44310) or passage of a subject matter examination pursuant to Article 5 (commencing with Section 44280). The commission shall ensure that subject matter standards and examinations are aligned with the state content and performance standards ~~adopted~~ for pupils *adopted* pursuant to subdivision (a) of Section 60605.

(6) Demonstration of a knowledge of the principles and provisions of the Constitution of the United States pursuant to Section 44335.

(7) Commencing January 1, 2000, demonstration, in accordance with the commission’s standards of program quality and effectiveness, of basic competency in the use of computers in the classroom as determined by one of the following:

(A) Successful completion of a commission-approved program or course.

(B) Successful passage of an assessment that is developed, approved, and administered by the commission.

(c) The minimum requirements for the professional clear multiple or single subject teaching credential shall include all of the following requirements:

(1) Possession of a valid preliminary teaching credential, as prescribed in subdivision (b), possession of a valid equivalent credential or certificate, or completion of equivalent requirements as determined by the commission. A candidate who has satisfied the requirements of subdivision (b) for a preliminary credential, including completion of an accredited internship program of professional preparation, shall be determined by the commission to have fulfilled the requirements of paragraph (2) for beginning teacher induction if the accredited internship program has fulfilled induction standards and been approved as set forth in this subdivision.

(2) Subject to the availability of funds in the annual Budget Act to provide statewide access to eligible beginning teachers, as defined in subdivision (d) of Section 44279.1, completion of a program of beginning teacher induction, including any of the following:

(A) A program of beginning teacher support and assessment approved by the commission and the Superintendent of Public Instruction pursuant to Section 44279.1, a provision of the Marian Bergeson Beginning Teacher Support and Assessment System.

(B) An alternative program of beginning teacher induction that is provided by one or more local education agencies and has been approved by the commission and the superintendent on the basis of initial review and periodic evaluations of the program in relation to appropriate standards of credential program quality and effectiveness that have been adopted by the commission, the superintendent, and the State Board of Education pursuant to this subdivision. The standards for alternative programs shall encourage innovation and experimentation in the continuous preparation and induction of beginning teachers. Any alternative program of beginning teacher induction that has met

state standards pursuant to this subdivision may apply for state funding pursuant to Sections 44279.1 and 44279.2.

(C) An alternative program of beginning teacher induction that is sponsored by a regionally accredited college or university, in cooperation with one or more local school districts, that addresses the individual professional needs of beginning teachers and meets the commission's standards of induction. The commission shall ensure that preparation and induction programs that qualify candidates for professional credentials extend and refine each beginning teacher's professional skills in relation to the California Standards for the Teaching Profession and the standards of ~~student~~ *pupil* performance adopted pursuant to Section 60605.

(3) Preparation, in accordance with commission standards, that addresses the following:

(A) Study of health education, including study of nutrition, cardiopulmonary resuscitation, and the physiological and sociological effects of abuse of alcohol, narcotics, and drugs and the use of tobacco. Training in cardiopulmonary resuscitation shall also meet the standards established by the American Heart Association or the American Red Cross.

(B) Study and field experience in methods of delivering appropriate educational services to ~~students~~ *pupils* with exceptional needs in regular education programs.

(C) Study, in accordance with the commission's standards of program quality and effectiveness, of advanced computer-based technology, including the uses of technology in educational settings.

(4) The commission shall develop and implement standards of program quality that provide for the areas of study listed in subparagraphs (A) to (C), inclusive of paragraph (3), starting in professional preparation and continuing through induction.

(5) Completion of an approved fifth-year program after completion of a baccalaureate degree at a regionally accredited institution, except that the commission shall eliminate this requirement for any candidate who has

completed an induction program that has been approved for the professional clear credential pursuant to paragraph (2).

(d) A credential that was issued prior to the effective date of this section shall remain in force as long as it is valid under the laws and regulations that were in effect on the date it was issued. The commission may not, by regulation, invalidate an otherwise valid credential unless it issues to the holder of the credential, in substitution, a new credential authorized by another provision in this chapter that is no more restrictive than the credential for which it was substituted with respect to the kind of service authorized and the grades, classes, or types of schools in which it authorizes service.

(e) A credential program that is approved by the commission may not deny an individual access to that program solely on the grounds that the individual obtained a teaching credential through completion of an internship program when that internship program has been accredited by the commission.

(f) Notwithstanding this section, persons who were performing teaching services as of January 1, 1999, pursuant to the language of this section that was in effect prior to that date, may continue to perform those services without complying with any requirements that may be added by the amendments adding this subdivision.

(g) Subparagraphs (A) and (B) of paragraph (4) of subdivision (b) do not apply to any person who, as of January 1, 1997, holds a multiple or single subject teaching credential, or to any person enrolled in a program of professional preparation for a multiple or single subject teaching credential as of January 1, 1997, who subsequently completes that program. It is the intent of the Legislature that the requirements of subparagraphs (A) and (B) of paragraph (4) of subdivision (b) be applied only to persons who enter a program of professional preparation on or after January 1, 1997.

(h) The commission shall grant teaching credentials based on the requirements for those credentials that were in effect on December 31, 1998, to candidates who were

in the process of meeting those requirements for teaching credentials before the effective date of the commission's implementation of this section.

SEC. 43. Section 44275.3 of the Education Code is amended to read:

44275.3. Notwithstanding any other provision of law:

(a) (1) It is the intent of the Legislature that both of the following occur:

(A) That this section provide flexibility to enable school districts to recruit credentialed out-of-state elementary, secondary, and special education teachers to relocate to California.

(B) That any and all teachers hired in California pursuant to this section fully meet the requirements of the State of California.

(2) It is not the intent of the Legislature either to address the issue of interstate reciprocity of credentialing requirements or to dilute current California requirements for credentialed teachers.

(b) Any teacher from a state other than California may be employed by a school district pursuant to this section to provide instructional services if each of the following conditions are met:

(1) The teacher holds a valid credential that requires the teacher to meet requirements equivalent to the multiple or single subject teaching credential requirements in paragraphs (1) and (2) of subdivision (c) of Section 44227 or the special education credential requirements described in Section 44265.

(2) The credential from the state other than California is valid at the time the teacher commences to provide instructional services for the school district.

(3) The teacher is hired after the successful completion of a criminal background check conducted pursuant to Section 44332.6~~,~~ by the governing board of the school district offering the teacher employment.

(c) The Commission on Teacher Credentialing shall grant a five-year preliminary multiple or single subject teaching credential or education specialist credential to a teacher meeting the requirements of subdivision (b) if

the teacher has received an offer of employment from a California school district, county office of education, nonpublic, nonsectarian school or agency, or school operating under the direction of a California state agency.

(d) At or before the completion of one school year of teaching pursuant to this section, a teacher shall pass the state basic skills proficiency test, pursuant to Section 44252, administered by the Commission on Teacher Credentialing in order to be eligible to continue teaching pursuant to this section.

(e) At or before the completion of four school years of teaching pursuant to this section, a teacher shall, to the satisfaction of the Commission on Teacher Credentialing, meet the requirements for subject matter competence, for completion of a course, or for multiple subject credentials, a course or an examination, on the various methods of teaching reading, and for completion of a course or examination on the Constitution of the United States, within the meaning of paragraphs (3), (4), and (6), respectively, of subdivision (c) of Section 44227, in order to be eligible to continue teaching pursuant to this section. Additionally, to be eligible to continue teaching on an education specialist credential, the teacher shall also complete the requirements for nonspecial education pedagogy and a supervised field experience program in general education.

(f) At or before the completion of five school years of teaching pursuant to this section, a teacher shall meet the requirements for completion of the study of health education, for completion of study and field experience in methods of delivering appropriate educational services to pupils with exceptional needs in regular education programs, and for completion of the study of computer-based technology, within the meaning of paragraphs (1), (2), (3), and (4), respectively, of subdivision (c) of Section 44259. A teacher holding a specialist credential pursuant to this section shall complete a program for the Professional Level II credential accredited by the Committee on

Accreditation, established pursuant to Section 44373, including the requirements specified in this subdivision and subdivision (e).

(g) If a teacher fails to meet any of the requirements of subdivisions (b), (c), (d), (e), and (f), the Commission on Teacher Credentialing shall inactivate a preliminary credential granted pursuant to this section until the requirement is met. The time requirements contained in subdivisions (e) and (f) shall not be stayed by the inactivation of a preliminary credential under this subdivision.

(h) The Commission on Teacher Credentialing shall issue a professional clear credential to a teacher who meets the requirements of subdivisions (b), (c), (d), (e), and (f) and submits an application with appropriate fees and documentation of the completion of all requirements pursuant to this section.

SEC. 44. Section 44424 of the Education Code is amended to read:

44424. (a) Upon the conviction of the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing of a violation, or attempted violation, of a violent or serious felony as described in Section 44346.1, or any one or more of Penal Code Sections 187 to 191, *inclusive,* 192 insofar as ~~said~~ *this* section relates to voluntary manslaughter, 193, 194 to 217.1, ~~both~~ inclusive, 220, 222, 244, 245, 261 to 267, ~~both~~ inclusive, 273a, 273ab, 273d, 273f, 273g, 278, 285 to 288a, ~~both~~ inclusive, 424, 425, 484 to 488, ~~both~~ inclusive, insofar as ~~said~~ *these* sections relate to felony convictions, 503 and 504, or of any offense involving lewd and lascivious conduct under Section 272 of the Penal Code, or any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the offenses specified in this section, becoming final, the commission shall forthwith revoke the credential.

(b) Upon a plea of nolo ~~contendre~~ *contendere* as a misdemeanor to one or more of the crimes set forth in

subdivision (a), all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The commission shall revoke a credential issued to a person whose employment has been denied or terminated pursuant to Section 44830.1.

(d) Notwithstanding subdivision (a), a credential shall not be revoked solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

SEC. 45. Section 47611.5 of the Education Code is amended to read:

47611.5. (a) Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code shall apply to charter schools.

(b) A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of the Government Code.

(c) If the charter of a charter school does not specify that it shall comply with those statutes and regulations governing public school employers that establish and regulate tenure or a merit or civil service system, the

scope of representation for that charter school shall also include discipline and dismissal of charter school employees.

(d) The Public Employment Relations Board shall take into account the Charter Schools Act of 1992 (Part 26.8 (commencing with Section 47600)) when deciding cases brought before it related to charter schools.

(e) The approval or a denial of a charter petition by a granting agency pursuant *to* subdivision (b) of Section 47605 shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board.

(f) By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.

SEC. 46. Section 47612.5 of the Education Code is amended to read:

47612.5. (a) Notwithstanding any other provision of law, a charter school shall do all of the following:

(1) Offer, at a minimum, the same number of minutes of instruction set forth in paragraph (3) of subdivision (a) of Section 46201 for the appropriate grade levels.

(2) Maintain written contemporaneous records that document all pupil attendance and ~~shall~~ make these records available for audit and inspection.

(3) Certify that its pupils have participated in the state testing programs specified in Chapter 5 (commencing with Section 60600) of Part 33 in the same manner as other pupils attending public schools as a condition of apportionment of state funding.

(b) Notwithstanding any other provision of law, a charter school that provides independent study shall comply with Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 and implementing regulations adopted thereunder. The State Board of Education shall adopt regulations that apply this article to charter schools. To the extent that these regulations concern the qualifications of instructional personnel, the

State Board of Education shall be guided by subdivision (*l*) of Section 47605.

SEC. 47. Section 51871.5 of the Education Code is amended to read:

51871.5. (a) It is the intent of the Legislature that education technology planning be accomplished in the most comprehensive manner possible. To that end, the current practice of developing education technology plans for each funding program should be replaced with a comprehensive local planning process that will enable school districts to apply for grants on an ongoing basis and assist in utilizing available education technology ~~program~~ *programs*.

(b) By October 1, 2000, the commission, in conjunction with the Curriculum Development and Supplemental Materials Commission, shall recommend guidelines and criteria to the State Board of Education for assisting school districts in the preparation of three- to five-year technology plans for the integration of technology into the school curriculum. At a minimum, the technology plans shall be integrated, where allowed by law, with School Improvement Plans and Title I Plans and include a staff development and technical support component.

(c) On or after January 1, 2002, a school district shall have a technology plan as a precondition of receiving any technology grant administered by the State Department of Education. This requirement may be waived by the State Board of Education if it is determined that the applicant school district made a good faith effort to develop a local technology plan, but for reasons beyond its control, the district cannot develop the plan before receipt of the technology grant.

(d) The State Department of Education shall maintain a record of school districts that have three- to five-year education technology plans and shall make that information available to any interested public agencies.

SEC. 48. Section 54685.2 of the Education Code is amended to read:

54685.2. The Orange County Superintendent of Schools, having been selected by the Superintendent of

Public Instruction, shall continue to manage the implementation of the Early Intervention for School Success Program pursuant to the management plan described in Section ~~54683.5~~ *54685.3*.

SEC. 49. Section 54685.3 of the Education Code is amended to read:

54685.3. The management plan required by this section shall include the following activities:

(a) Implementation of the program at 300 public schoolsites within the state between July 1, 1999, and June 30, 2004.

(b) The dissemination of program information.

(c) The awarding of competitive grants to schools representative of the ethnic, socioeconomic, and geographic diversity of the public school system.

(d) Provisions for training, materials, parent education, and technical assistance.

(e) Adaptation of the Early Intervention for School Success Program to meet state and local standards, the goals of the California Reading Initiative, and the expectations of class size reduction legislation, including identification of existing materials and development of new materials, if needed.

(f) Development of a statewide support network.

(g) Selection of successful sites as demonstration models for inclusion in a statewide network.

(h) Certification of one teacher for each funded schoolsite to serve as a local trainer.

(i) The provision of continued professional development instruction in prevention and early intervention methods based on research and exemplary practice.

(j) The training of school personnel in the skills necessary to determine instructional levels of pupils based on a continuous assessment of ~~pupils~~ *pupil* performance that is validated and supported by the use of multiple assessment techniques. For purposes of this section, ‘‘multiple assessment techniques’’ includes, but is not limited to, teacher observation, anecdotal records, norm referenced tests, and criterion referenced tests.

(k) Provision for an annual program progress report and program evaluation by the Orange County Superintendent of Schools to be submitted to the State Department of Education.

SEC. 50. Section 60200.2 of the Education Code is amended to read:

~~(a)~~

60200.2. (a) In addition to the findings authorized under subparagraphs (A) and (B) of paragraph (5) of subdivision (c) of Section 60200, if the state board finds that the use of a commercial brand name, product, or corporate or company logo in an instructional material is authorized under a contract entered into under paragraph (3) of subdivision (a) of Section 35182.5 as added by Assembly Bill 117 of the 1999–2000 Regular Session, the state board may allow the use of that instructional material.

(b) This section shall become operative only if Section 35182.5 as proposed by Assembly Bill 117 of the 1999–2000 Regular Session is enacted and takes effect.

SEC. 51. The heading of Chapter 8 (commencing with Section 60850) of Part 33 of Division 4 of Title 2 of the Education Code is amended and renumbered to read:

CHAPTER ~~8.~~ *9.* HIGH SCHOOL EXIT EXAMINATION

SEC. 52. Section 60855 of the Education Code is amended to read:

60855. (a) By January 15, 2000, the Superintendent of Public Instruction shall contract for a multiyear independent evaluation of the high school exit examination that is established pursuant to this chapter. The evaluation shall be based upon information gathered in field testing and annual administrations of the examination and shall include all of the following:

(1) Analysis of pupil performance, broken down by grade level, gender, race or ethnicity, and subject matter of the examination, including any trends that become apparent over time.

(2) Analysis of the exit examination's effects, if any, on college attendance, pupil retention, graduation, and dropout rates, including analysis of these effects on the population subgroups described in subdivision (b).

(3) Analysis of whether the exit examination is likely to have, or has, differential effects, whether beneficial or detrimental, on population subgroups described in subdivision (b).

(b) Evaluations conducted pursuant to this section shall separately consider test results for each of the following population subgroups, provided that information concerning individuals shall not be gathered or disclosed in the process of preparing this evaluation.

(1) English language learners and non-English language learners.

(2) Individuals with exceptional needs and individuals without exceptional needs.

(3) Pupils that qualify for free or reduced price meals and are enrolled in schools that qualify for assistance under Title 1 of the Improving America's Schools Act of 1994 (P.L. 103-382) and pupils that do not qualify for free or reduced price meals and are not enrolled in schools that ~~quality~~ *qualify* for assistance under Title 1 of the Improving America's Schools Act of 1994 (P.L. 103-382) ~~Act~~.

(4) Any group of pupils that has been determined by the independent evaluator to be differentially affected by the exit examination established pursuant to this chapter.

(c) Evaluation reports shall include recommendations to improve the quality, fairness, validity, and reliability of the examination. The independent evaluator may also make recommendations for revisions in design, administration, scoring, processing, or use of the examination.

(d) The independent evaluator shall report to the Governor, the Office of the Legislative Analyst, the Superintendent of Public Instruction, the State Board of Education, the Secretary for Education, and the chairs of the education policy committees in both houses of the Legislature, in accordance with the following schedule:

(1) Preliminary report on field testing by July 1, 2000.

(2) First annual report by February 1, 2002.

(3) Regular biennial reports by February 1 of even-numbered years following 2002.

SEC. 53. Section 66293 of the Education Code is amended to read:

66293. The California Postsecondary Education Commission shall report to the Legislature and Governor on the representation and utilization of ethnic minorities and women among academic, administrative, and other employees at the community colleges, the California State University, and the University of California, pursuant to ~~Sections 66903.1 and~~ *Section* 66903.3.

SEC. 54. Section 81149 of the Education Code is amended to read:

81149. (a) Notwithstanding any provision of law, a community college district may acquire for use any facility previously used by the United States military and closed as a result of action by the federal Defense Base Closure and Realignment Commission, or purchase any offsite building constructed prior to January 1, 1998 that meets the structural requirements of the 1976 Uniform Building Code, or subsequent additions to that code, but that does not meet the requirements of Section 81130, for use as a school building, as defined in Section 81130.5, if the governing board of the district finds that all of the following conditions have been met:

(1) A structural engineer has inspected the building or facility and submitted a report to the governing board of the community college district that certifies that the building or facility is in substantial compliance with the requirements of this article, or describes in detail any structural modifications necessary to render the building or facility in substantial compliance with ~~the~~ this article. For purposes of this section, substantial compliance with this article means that the building or facility is likely to resist, without catastrophic collapse, earthquake forces generated by major earthquakes of the intensity and severity of the strongest experienced in California, but may experience some reparable architectural or

structural damage. This requirement is satisfied if the structural engineer affixes his or her seal of approval to the report and he or she attests in that report that to the best of his or her knowledge:

(A) He or she has reviewed the design calculations, construction documents, and the local government construction inspection records of the building or facility, to the extent those items are available.

(B) He or she has authorized testing and has observed or reviewed the test results and the inspections of an adequate sample of the structure's welds, anchor bolts, and other structural elements.

(C) He or she has observed that the nonstructural elements, including, but not limited to, light fixtures, heating, and air-conditioning diffusers are adequately braced or anchored.

(2) The governing board of the community college district shall forward the report submitted pursuant to paragraph (1) to the Department of General Services for its review. Within 45 working days, the Department of General Services shall review the report for compliance with the above requirements, to provide feedback to the structural engineer regarding any insufficiencies with the report, and to determine whether or not the building or facility is in substantial compliance with the requirements of this article, or whether any proposed structural modifications will render the structure in substantial compliance with this article. If the Department of General Services does not respond within 45 working days of the submission of the final and complete report, the department will be deemed to have concurred with the structural engineer's report. If structural modifications are necessary to achieve substantial compliance with this article, plans shall be submitted to the department for review and approval. Construction shall be completed in compliance with the continuous inspection requirements of this article.

(b) (1) No member of the governing board of a community college district, and no employee of a community college district, shall be held personally liable

for injury to persons or damage to property resulting from the fact that the governing board of the community college district purchased a building or facility pursuant to this subdivision for a school and the building or facility was not constructed pursuant to the requirements of Section 81130.

(2) The exemption from personal liability for members of the governing board and employees of a community college district described in paragraph (1) does not limit the liability of the community college district for injury to persons or damage to property resulting from the fact that the governing board or any employee of the community college district used a building or facility pursuant to this subdivision for a school if the building or facility was not constructed pursuant to the requirements of Section 81130. The exemption from personal liability for members of the governing board and employees of a community college district described in paragraph (1) does not limit the liability of the community college district, the governing board, or the district's employees pursuant to Section 835 of the Government Code.

(3) Section 81144 is not applicable to a person who, pursuant to this section, purchases a building or facility that meets the requirements of this section but does not meet the requirements of Section 81130. Approval and use of a building or facility pursuant to this section does not violate this article.

SEC. 55. Section 8040 of the Elections Code is amended to read:

8040. (a) The declaration of candidacy by a candidate shall be substantially as follows:

DECLARATION OF CANDIDACY

I hereby declare myself a _____ Party candidate for nomination to the office of _____ District Number _____ to be voted for at the primary election to be held _____, 19____, and declare the following to be true:

My name is _____.

I want my name and occupational designation to appear on the ~~ballot as follows _____.~~
ballot as follows: _____.

Addresses:

Residence _____

_____

Business _____

_____

Mailing _____

_____

Telephone numbers: Day _____ Evening _____

I meet the statutory and constitutional qualifications for this office (including, but not limited to, citizenship, residency, and party affiliation, if required).

I am at present an incumbent of the following public office (if any) _____.

If nominated, I will accept the nomination and not withdraw.

_____

Signature of candidate

State of California)
County of _____) ss.
)

Subscribed and sworn to before me this _____ day of _____, 19____.

_____

Notary Public (or other official)

Examined and certified by me this _____ day of _____, 19____.

_____

Registrar of Voters—County Clerk

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any declaration of candidacy in his or her possession which is entitled to be filed under the provisions of the Elections Code

Section 18202.

(b) No candidate for a judicial office shall be required to state his or her residential address on the declaration of candidacy. However, in cases where the candidate does not state his or her residential address on the declaration of candidacy, the elections official shall verify whether his or her address is within the appropriate political subdivision and add the notation ‘‘verified’’ where appropriate.

SEC. 56. Section 243 of the Family Code is amended to read:

243. (a) When the matter first comes up for hearing, the applicant must be ready to proceed.

(b) If an order described in Section 240 has been issued without notice pending the hearing, the applicant must have served on the respondent, at least five days before the hearing, a copy of each of the following:

(1) The order to show cause.

(2) The application and the affidavits and points and authorities in support of the application.

(3) Any other supporting papers filed with the court.

(c) If the applicant fails to comply with subdivisions (a) and (b), the court shall dissolve the order.

(d) If service is made under subdivision (b), the respondent is entitled, as *a matter* of course, to one continuance for a reasonable period~~,~~ to respond to the application for the order.

(e) On motion of the applicant or on its own motion, the court may shorten the time provided in this section for service on the respondent.

(f) The respondent may, in response to the order to show cause, present affidavits relating to the granting of the order, and if the affidavits are served on the applicant at least two days before the hearing, the applicant is not entitled to a continuance on account of the affidavits.

SEC. 57. Section 2040 of the Family Code is amended to read:

2040. (a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

(b) In all actions filed on and after January 1, 1995, the summons shall contain the following notice:

"WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property."

SEC. 58. Section 3021 of the Family Code is amended to read:

3021. This part applies in any of the following:

(a) A proceeding for dissolution of marriage.

(b) A proceeding for nullity of marriage.

(c) A proceeding for legal separation of the parties.

(d) An action for exclusive custody pursuant to Section 3120.

(e) A proceeding to determine physical or legal custody or for visitation in a proceeding pursuant to the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200)).

In an action under Section 6323, nothing in this subdivision shall be construed to authorize physical or legal custody, or visitation rights, to be granted to any party to a Domestic Violence Prevention Act proceeding who has not established a parent and child relationship pursuant to paragraph (2) of subdivision (a) of Section 6323.

(f) A proceeding to determine physical or legal custody or visitation in an action pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(g) A proceeding to determine physical or legal custody or visitation in an action brought by the district attorney pursuant to Section ~~11350.1 of the Welfare and Institutions Code~~ *17404*.

SEC. 59. Section 4065 of the Family Code is amended to read:

4065. (a) Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court. However, the court shall not approve a stipulated agreement for child support below the guideline formula amount unless the parties declare all of the following:

(1) They are fully informed of their rights concerning child support.

(2) The order is being agreed to without coercion or duress.

(3) The agreement is in the best interests of the children involved.

(4) The needs of the children will be adequately met by the stipulated amount.

(5) The right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.

(b) The parties may, by stipulation, require the child support obligor to designate an account for the purpose of paying the child support obligation by electronic funds transfer pursuant to Section 4508.

(c) A stipulated agreement of child support is not valid unless the district attorney has joined in the stipulation by signing it in any case in which the district attorney is providing services pursuant to Section ~~11475.1 of the Welfare and Institutions Code~~ *17400*. The district attorney shall not stipulate to a child support order below the guideline amount if the children are receiving assistance under the CalWORKs program, if an application for public assistance is pending, or if the parent receiving support has not consented to the order.

(d) If the parties to a stipulated agreement stipulate to a child support order below the amount established by the statewide uniform guideline, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.

SEC. 60. Section 5002 of the Family Code is amended to read:

5002. (a) In an action pursuant to this chapter prosecuted by the district attorney or the Attorney General that is initiated by service of summons and petition or other comparable pleading, the respondent may also be served with a proposed judgment consistent with the relief sought in the petition or other comparable pleading. If the respondent's income or income history is unknown to the district attorney, the district attorney may serve a form of proposed judgment with the petition and other documents on the respondent that shall inform the respondent that income shall be presumed in an amount that results in a court order equal to the minimum basic standard of adequate care provided in Section 11452 of the Welfare and Institutions Code unless information concerning the respondent's income is provided to the court. The respondent shall also receive notice that the proposed judgment will become effective if he or she fails to file a response with the court within 30 days after service.

(b) In any action pursuant to this chapter in which the judgment was obtained pursuant to presumed income, as set forth in this section, the court may relieve the respondent from that part of the judgment or order concerning the amount of child support to be paid in the manner set forth in Section ~~11356 of the Welfare and Institutions Code~~ *17432*.

SEC. 61. Section 18210 of the Financial Code is amended to read:

18210. (a) Except as provided in Sections 18205.5 and 18209 and subject to ~~subdivision~~ *subdivisions* (b) and (c), an industrial loan company shall not make any loan or purchase or discount any note secured primarily by real property unless the loan or other obligation is repayable in substantially equal weekly, semimonthly, monthly, or quarterly installments during its term, which shall not exceed 30 years and 30 days from the date the loan or other obligation is made or acquired by the company. Equal installment requirements shall not apply to

adjustable or variable rate loans or obligations made or purchased by the industrial loan company in accordance with Title VIII of the Garn-St. Germaine Depository Institutions Act of 1982 and any applicable regulations, guidelines, and policies adopted thereunder. However, an industrial loan company may make loans secured by first trust deeds on real property containing single family, or one to four residential, units provided that the repayment period for each loan does not exceed 40 years and 30 days from the date the loan is made by the company. All loans with repayment periods in excess of 30 years and 30 days shall not exceed in the aggregate 5 percent of all outstanding loans and obligations of the company.

(b) Any consumer loan or any purchase or discount of any consumer obligation having a term in excess of three years from the date the loan or other obligation is made or acquired by the company shall be secured solely by real property or solely by personal property. However, if the original principal amount of the consumer loan or obligation is twenty thousand dollars ($20,000) or more, then the loan or obligation shall be secured solely by real property or solely by personal property, or by both real property and personal property. All loans and obligations made and purchased pursuant to this subdivision shall be repayable in installments and within a term not to exceed the limitations set forth in subdivision (a), except that consumer loans or obligations secured solely by personal property shall have a term not to exceed the term provided for in Section 18205 and except as otherwise may be provided for in Sections 18207, 18208, and 18209. The equal installment requirements set forth in subdivision (a) shall not apply to loans or obligations made or purchased by the industrial loan company in accordance with Title VIII of the Garn-St. Germaine Depository Institutions Act of 1982 and any applicable regulations, guidelines, and policies adopted thereunder.

(c) In order to ensure the safety and soundness of industrial loan companies and to avoid an unreasonable concentration of loans and obligations that could result in

balloon payments, all loans and obligations with a term in excess of 15 years and 30 days shall be repaid in substantially equal weekly, semimonthly, monthly, or quarterly installments during their term.

SEC. 62. Section 55702 of the Food and Agricultural Code is amended to read:

55702. (a) Except as otherwise provided in this section, any person who sells or furnishes livestock to a meatpacker, shall have a lien, not dependent upon possession, on ~~such~~ *the* livestock and upon the identifiable proceeds and products thereof, for the unpaid part of the purchase price, or for the unpaid value of the livestock at the time of the transfer of possession if no purchase price has been agreed upon. The lien shall commence on the date of the transfer of possession of the livestock to the meatpacker and shall have priority over all other liens upon, and security interests in, the livestock and the identifiable proceeds and products thereof, without regard to the time of attachment or perfection of such other liens or security interests and shall remain a lien upon the livestock and the identifiable proceeds and products thereof notwithstanding sale, exchange, or other disposition thereof.

(b) Notwithstanding the provisions of subdivision (a), a buyer in the ordinary course of business, as that term is defined in subdivision (9) of Section 1201 of the Commercial Code, shall take free of such lien even though ~~such~~ *the* buyer knows of the existence of ~~such~~ *the* lien.

(c) Notwithstanding the provisions of subdivision (a), ~~such~~ *the* lien shall cease to be of any force or effect after the expiration of 21 days from the date of delivery of the livestock unless a notice of lien is filed pursuant to subdivision (e), in which case the lien shall remain effective as long as such notice shall remain effective.

(d) No person shall have a lien pursuant to subdivision (a) to the extent that ~~such~~ *the* person shall have made the livestock available to the meatpacker on credit terms.

(e) Any person selling or delivering livestock who claims a lien under this article shall file a statement with

the Secretary of State and a copy thereof with the director, both~~,~~ within 21 days after delivery of the livestock to the meatpacker. The statement shall be in writing, verified by the oath of the person filing, and shall contain all of the following:

(1) The name and address of the person filing.

(2) A statement of the amount demanded by the person filing the statement after deducting all credits and offsets.

(3) The name and address of the meatpacker who received the livestock.

(4) A description of the livestock delivered to the meatpacker and the date of delivery.

(5) A statement that the amount claimed is a true and bona fide existing debt as of the date of the statement.

(6) A statement that the amount claimed is a true and bona fide existing debt as of the date on which payment was due for the livestock.

(f) Every statement ~~which~~ *that* is filed shall be accompanied by the fees required by Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code in the case of a financing statement not on the standard form and shall remain effective for a period of five years from the date of filing.

SEC. 63. 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 ~~which~~ *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 any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer’s employer-employee relations.

(d) ‘‘Employee organization’’ means any organization ~~which~~ *that* includes employees of a public school employer and ~~which~~ *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 ~~such an~~ *that* organization authorizes to act on its behalf.

(e) ‘‘Exclusive representative’’ means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees 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 any 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, shall not be 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’’ 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~~ *that* 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, no such arrangement shall 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 any person employed by any 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, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(*l*) ‘‘Recognized organization’’ or ‘‘recognized employee organization’’ means an employee organization ~~which~~ *that* has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) ‘‘Supervisory employee’’ means any 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 such 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. 64. Section 7222 of the Government Code is amended to read:

7222. The Secretary of State shall cause the notice to be marked, held and indexed in accordance with the provisions of Section 9519 of the ~~Uniform~~ Commercial Code as if the notice were a financing statement within the meaning of that code.

SEC. 65. Section 15346.9 of the Government Code is amended to read:

15346.9. In addition to the duties specified in Section 15346.5, the council shall do ~~all~~ *both* of the following:

(a) At the request of a council member, the council may review actions or programs by state agencies that may affect military base retention and reuse and offer comments or suggest changes to better integrate these actions or programs into the overall state strategic plan required pursuant to subdivision (a) of Section 15346.5.

(b) *(1)* The council shall prepare a study considering strategies for the long-term protection of lands adjacent to military bases from development that would be incompatible with the continuing missions of those bases. The study shall include the effects of local land use encroachment, environmental impact considerations, and population growth issues. The study shall recommend basic criteria to assist local governments in identifying lands where incompatible development may adversely impact the long-term missions of these bases. The study shall also identify potential mechanisms, including recommendations for changes in law at the local or state level, to address these issues. In conducting this study, the council may use the Naval Air Station at Lemoore and Edwards Air Force Base as case studies.

~~The~~

(2) The council shall hold public hearings on this study, including at least one in the vicinity of either Lemoore or Edwards. Notwithstanding Section 7550.5, the council shall prepare and submit to the Governor and

the Legislature by November 30, 2000, a report on this study with any recommendations.

SEC. 66. Section 18935 of the Government Code is amended to read:

18935. The board may refuse to examine or, after examination, may refuse to declare as an eligible or may withhold or withdraw from certification, prior to appointment, anyone who comes under any of the following categories:

(a) Lacks any of the requirements established by the board for the examination or position for which he or she applies.

(b) At the time of examination has permanent status in a position of equal or higher class than the examination or position for which he or she applies.

(c) Is physically or mentally so disabled as to be rendered unfit to perform the duties of the position to which he or she seeks appointment.

(d) Is addicted to the use of intoxicating beverages to excess.

(e) Is addicted to the use of controlled substances.

(f) Has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude.

(g) Has been guilty of infamous or notoriously disgraceful conduct.

(h) Has been dismissed from any position for any cause which would be a cause for dismissal from the state service.

(i) Has resigned from any position not in good standing or in order to avoid dismissal.

(j) Has intentionally attempted to practice any deception or fraud in his or her application, in his or her examination, or in securing his or her eligibility.

(k) Has waived appointment three times after certification from the same employment list.

(*l*) Has failed to reply within a reasonable time, as specified by the board, to communications concerning his or her availability for employment.

(m) Has made himself or herself unavailable for employment by requesting that his or her name be withheld from certification.

(n) Is, in accordance with board rule, found to be unsuited or not qualified for employment.

(o) Has engaged in unlawful reprisal or retaliation in violation of Article 3~~, Chapter 6.5~~ (commencing with Section~~ 8547 of the Government Code)~~ *8547) of Chapter 6.5 of Division 1*, as determined by the ~~State Personnel Board~~ *board* or the court.

SEC. 67. Section 19827.3 of the Government Code is amended to read:

19827.3. In order for the state to recruit skilled firefighters for the California Department of Forestry and Fire Protection, it is the policy of the state to consider prevailing salaries and benefits prior to making salary recommendations. In order to provide comparability in pay, the Department of Personnel Administration shall take into consideration the salary and benefits of other jurisdictions employing 75 *or more* full-time firefighters ~~or more~~ who work in California.

SEC. 68. Section 20395 of the Government Code is amended to read:

20395. ‘‘State peace officer/firefighter member’’ means all members who are full-time permanent employees represented in Corrections Unit No. 6, Protective Services and Public Safety Unit No. 7, and Firefighters Unit No. 8 and are employed in class titles that are designated as peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code or are firefighters whose principal duties consist of active firefighting/fire suppression.

A member who is employed in a position that is reclassified from state miscellaneous to state peace officer/firefighter pursuant to this section~~,~~ may make an irrevocable election in writing to remain subject to the miscellaneous service retirement benefit and the normal rate of contribution by filing a notice of the election with the board within 90 days of notification by the board. A member who so elects shall be subject to the reduced

benefit factors specified in Section 21353 or 21354.1, as applicable, only for service also included in the federal system.

Notwithstanding any other provision of law, security officers employed by the Department of Justice are not state peace officer/firefighter members, but are, for all purposes, state miscellaneous members.

SEC. 69. Section 20397 of the Government Code is amended to read:

20397. ‘‘State peace officer/firefighter member’’ also includes:

~~(1)~~

(a) The Sergeants-at-Arms of each house of the Legislature who have been designated as peace officers in subdivision (a) of Section 830.36 of the Penal Code, excluding the Chief Sergeant-at-Arms.

~~(2)~~

(b) Bailiffs and security coordinators of the judicial branch who have been designated as peace officers in subdivision (b) of Section 830.36 of the Penal Code.

A member who is reclassified from state miscellaneous to state peace officer/firefighter pursuant to this section~~,~~ may make an irrevocable election in writing to remain subject to the miscellaneous service retirement benefit and the normal rate of contribution by filing a notice of the election with the board within 90 days of notification by the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21353 or 21354.1, as applicable, only for service included in the federal system.

SEC. 70. Section 20677 of the Government Code is amended to read:

20677. (a) (1) The normal rate of contribution for a state miscellaneous member whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered on and after July 1, 1976. The normal rate of contribution for a school member~~,~~ or a local miscellaneous member shall be 7 percent of the

compensation paid that member for service rendered on and after June 21, 1971.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service is not included in the federal system, shall be 6 percent of the member's compensation.

(3) The normal rate of contribution as established under this subdivision for a member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21353, 21353.5, 21354, or 21354.1 because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement, including service in the federal system, and prior to termination of the agreement with respect to the coverage group to which he or she belongs.

(b) (1) The normal rate of contribution for a state miscellaneous member whose service has been included in the federal system shall be 5 percent of compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service has been included in the federal system, shall be 5 percent of compensation, subject to the reduction specified in paragraph (3) of subdivision (a).

(c) The normal rate of contribution for a state miscellaneous or state industrial member who is subject to Section 21076 or Section 21077 shall be 0 percent.

(d) A member who elected to become subject to Section 21353 solely for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 21070 during the period between November 1, 1988, and October 31, 1989, is not required to make the contributions specified in Section 21073.

(e) A member who elects to become subject to Section 21353 or 21354.1, as applicable, shall contribute at the rate specified in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b), as determined by the member's status with the federal system, and the rate shall be applied from the first of the month following the date of the election. A member who makes the election shall also contribute for service prior to the date the contribution rate was applied, in the manner specified in Section 21073 or 21073.1, as applicable.

SEC. 71. Section 21070.5 of the Government Code is amended to read:

21070.5. (a) Notwithstanding any other provision of this article, a person who, on or after January 1, 2000, becomes a state miscellaneous or state industrial member of the system because the person~~:~~ (1) is first employed by the state, (2) returns to employment with the state from a break in service of more than 90 days, or (3) returns to employment with the state after ceasing to be a member pursuant to Section 20340 or 21075, shall be subject to the benefits provided by Section 21354.1, unless the person elects within 180 days of membership as a state miscellaneous or state industrial member to be subject to the Second Tier benefits provided for in Section 21076. This section shall only apply to state miscellaneous and state industrial members who are~~:~~ (1) excluded from the definition of state employee in subdivision (c) of Section 3513~~;~~, (2) employed by the executive branch of government ~~who~~ *and* are not members of the civil service~~;~~, or (3) included in the definition of state employee in subdivision (c) of Section 3513.

(b) The effective date of the election shall be the first *day* of the month following the date the election is received by the system and shall be applicable to state service rendered on and after that date. Any election filed with the board pursuant to this section shall also be signed by the spouse of the member.

(c) A member who makes an election authorized by this section shall not be precluded from making a

subsequent election pursuant to Section 21073.7 to be subject to the benefits provided by Section 21354.1.

(d) Operation and application of this section are subject to the limitations set forth in Section 21251.13.

SEC. 72. Section 21071 of the Government Code is amended to read:

21071. (a) Notwithstanding any other provision of this article, except as provided in subdivisions (b) and (c), persons who first become state miscellaneous or state industrial members of the system on or after July 1, 1991, and who are (1) excluded from the definition of state employee in subdivision (c) of Section 3513, (2) employed by the executive branch of government and are not members of the civil service, or (3) included in the definition of state employee in subdivision (c) of Section 3513 shall become subject to Section 21076.

(b) Any person who was a member on or before June 30, 1991, eligible to elect membership on or before June 30, 1991, or who was employed in any position on or before June 30, 1991, that would lead to membership as a state member, as defined in Section 20370, and who thereafter enters employment subject to Section 21076 shall be granted the rights provided in subdivision (c) of Section 21070, unless the person had earlier made an irrevocable election to be subject to Section 21076 or 21077. The one-year period in which to make the election provided in subdivision (c) of Section 21070 for any member who became a state member prior to January 1, 1994, shall commence with the mailing of a notice by the system to the member~~,~~ of his or her election right. The effective date of the election shall be the date on which the member became a state miscellaneous or state industrial member. The member shall be obligated to make the contributions specified in Section 20677.

(c) Effective on or after April 1, 1998, state miscellaneous or industrial members may elect to be subject to the service retirement formula prescribed in Section 21353.5, as an alternative to Second Tier membership under Section 21076. The election shall be provided to eligible members by the appointing

authority, and, to be effective, an election must be filed with the board. Eligible members who must be in the employment of the state are defined as members in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to Section 21353.5. The effective date of a member's election shall be the first day of the month following the date the election is filed with the system.

(d) This section shall not apply to state miscellaneous members employed by the California State University or employees described in Section 20324.

(e) This section shall become inoperative on January 1, 2000.

(f) The amendments to this section enacted during the first year of the 1999–2000 Regular Session are subject to the limitations set forth in Section 21251.13.

SEC. 73. Section 21073.7 of the Government Code is amended to read:

21073.7. (a) A member subject to the Second Tier benefits provided in Section 21076 or 21077 who is employed by the state on or after January 1, 2000, may make an irrevocable election, to be filed with the board, to be subject to the First Tier benefits provided in Section 21354.1 and to make the contributions specified in Section 20677. An election shall be effective the first *day* of the month following the date the election is received by the system and shall be applicable to state service rendered on and after that date. An election to be subject to Section 21354.1 may be made at any time prior to retirement and shall also be signed by the spouse of the member.

(b) A member who is employed by the state on or after January 1, 2000, with past service credited under the Second Tier may make an irrevocable election, at any time prior to retirement, to have his or her past Second Tier service credited under Section 21354.1 by making contributions specified in Section 21073.1. This subdivision shall not apply to a Second Tier member eligible to make the election provided in subdivision (a) until after the effective date of that election.

(c) A member subject to modified First Tier benefits pursuant to Section 21353.5 shall become subject to Section 21353 or 21354.1, as applicable, and make contributions as specified in Section 20677. The member's past service and contributions credited as modified First Tier under Section 21353.5 shall be converted to First Tier service and contributions and shall be subject to Section 21353 or 21354.1, as applicable. Contributions previously credited as modified First Tier and withdrawn by the member may be redeposited under the conditions specified in Section 20750, with the service credit and contributions subject to Section 21353 or 21354.1, as applicable.

(d) Operation and application of this section is subject to the limitations set forth in Section 21251.13.

SEC. 74. Section 21370 of the Government Code is amended to read:

21370. (a) The combined prior and current service pension for local safety members with respect to service to a contracting agency subject to this section, upon retirement after attaining 56 years of age, is a pension derived from contributions of an employer sufficient, when added to that portion of the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of his or her retirement, to equal one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year in the following table, multiplied by the number of years of service credited to him or her as a local safety member subject to this section at retirement.

(b) Upon retirement for service prior to attaining 56 years of age, the percentage of final compensation payable for each year of credited service that is subject to this section shall be the product of 2 percent multiplied by the factor set forth in the following table for the actual age at retirement:

If retirement occurs at age:	The percent for each year of credited service is:
50	.8565
50 1/4	.8650
50 1/2	.8740
50 3/4	.8830
51	.8920
51 1/4	.9020
51 1/2	.9120
51 3/4	.9222
52	.9330
52 1/4	.9410
52 1/2	.9490
52 3/4	.9570
53	.9650
53 1/4	.9675
53 1/2	.9700
53 3/4	.9725
54	.9750
54 1/4	.9810
54 1/2	.9870
54 3/4	.9935
55	1.0000
55 1/4	1.0435
55 1/2	1.0870
55 3/4	1.1310
56	1.1750

(c) This section shall apply only to local police officers and county peace officers who are local safety members.

(d) This section shall not apply to persons whose effective date of retirement is prior to January 1, 1985.

(e) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate

because of the earlier age of service retirement made possible by the benefits under this section.

(f) The percentage of final compensation provided in this section shall be reduced by one-third as applied to that part of the member's final compensation that does not exceed four hundred dollars ($400) per month for service after the effective date of coverage of a member under the federal system. This paragraph shall not apply to a member who retires after the date upon which coverage under the federal system of persons in his or her employment terminates.

(g) For members who retire prior to January 1, 2000, in no event shall the total pension for all service under this section exceed an amount that, when added to the service retirement annuity related to the service, equals 75 percent of final compensation. For members who retire on or after January 1, 2000, the allowance shall not exceed 85 percent of final compensation. If the pension relates to service for more than one employer and would otherwise exceed the maximum, the pension payable with respect to each employer shall be reduced in the same proportion as the allowance based on service to the employer bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum.

(h) This section shall only apply as an optional contributory retirement formula for this system *for* local safety groups whose group participated in Federal Old Age and Survivors' Insurance provisions of the Social Security Act on April 1983.

(i) This section shall not apply to a contracting agency nor its employees until the agency and the representative employee organization agree by memorandum of understanding to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts. It shall also be required that the representative employee organizations agree to be subject to this provision.

(j) The operative date of this section with respect to a local safety member shall be the effective date of the

amendment to the employer's contract electing to be subject to this section. However, this section shall not apply to any local safety member in the employ of an employer not subject to this section on January 1, 2000.

SEC. 75. Section 21572 of the Government Code is amended to read:

21572. (a) In lieu of benefits provided in Section 21571, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made~~,~~ in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of a disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid four hundred fifty dollars ($450) per month if there is one

child or five hundred thirty-eight dollars ($538) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of two hundred twenty-five dollars ($225) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid two hundred twenty-five dollars ($225) per month.

(B) If there are two children, the children shall be paid four hundred fifty dollars ($450) per month divided equally between them.

(C) If there are three or more children, the children shall be paid five hundred thirty-eight dollars ($538) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid two hundred twenty-five dollars ($225) per month. No allowance shall be paid under this paragraph~~,~~ while the surviving spouse is receiving an allowance under paragraph (1)~~,~~ or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be eighty-eight dollars ($88) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for a 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or

if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 *years*, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid two hundred twenty-five dollars ($225) per month.

(c) ''Stepchildren,'' for purposes of this section, shall include only stepchildren of the member living with him or her in a regular parent-child relationship at the time of his or her death.

(d) This section shall apply to beneficiaries receiving 1959 survivor allowances on July 1, 1975, as well as to beneficiaries with respect to the death of a state member occurring on or after July 1, 1975.

(e) This section shall apply, with respect to benefits payable on and after July 1, 1981, to all members employed by a school employer, and school safety members employed with a school district or community college district as defined in subdivision (i) of Section 20057, except that it shall not apply, without contract amendment, with respect to safety members who became members after July 1, 1981. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of all miscellaneous members employed by a school employer and all safety members who are members on July 1, 1981.

(f) This section shall not apply to any member in the employ of an employer not subject to this section on January 1, 1994.

(g) A contracting agency may, by amending its contract, elect to make this section applicable to local members employed by the agency.

(h) On and after January 1, 2000, and until January 1, 2010, all state members covered by this section shall be covered by the benefit provided under Section 21574.7. On and after January 1, 2010, all state members not

covered by Section 21573 or 21574.7 shall be covered by this section.

SEC. 76. Section 22825.01 of the Government Code is amended to read:

22825.01. (a) As used in this section, the following definitions shall apply:

(1) A ‘‘rural area’’ means an area in which there is no board-approved health maintenance organization plan available for enrollment by state employees or annuitants who live in the area.

(2) ‘‘Coinsurance’’ means the provision of a medical plan design in which the plan or insurer and state employee or annuitant share the cost of hospital or medical expenses at a specified ratio.

(3) A ‘‘deductible’’ means the annual amount of out-of-pocket medical expenses that state employees or annuitants must pay before the insurer or self-funded plan begins paying for expenses.

(4) ‘‘Department’’ means the Department of Personnel Administration.

(5) ‘‘Fund’’ means the Rural ~~Healthcare~~ *Health Care* Equity Trust Fund.

(b) (1) The Rural Health Care Equity Trust Fund is hereby established in the State Treasury for the purpose of funding the subsidization and reimbursement of premium costs, deductibles, coinsurance,~~,~~ and other out-of-pocket health care costs, which would otherwise be covered if the state employee or annuitant ~~was~~ *were* enrolled in a board-approved health maintenance organization plan, paid by employees and annuitants living in rural areas, as authorized by this section. The fund shall be administered by the department or by a third-party administrator approved by the department in a manner consistent with all applicable state and federal laws. Interest earned from the fund shall be used to offset administrative costs. The board shall determine the rural area for each subsequent fiscal year at the same meeting ~~when~~ *at which* the board approves premiums for health maintenance organizations.

(2) Separate accounts shall be maintained within the fund for (A) employees, as defined in subdivision (c) of Section 3513~~;~~, (B) excluded employees, as defined in subdivision (b) of Section 3527~~;~~, and (C) annuitants, as defined in subdivision (e) of Section 22754.

(c) Moneys in the Rural Health Care Equity Trust Fund shall be allocated to the separate accounts as follows:

(1) As the employer's contribution with respect to each employee, as defined in subdivision (c) of Section 3513, who lives in a rural area and who is otherwise eligible, an amount to be determined through the collective bargaining process.

(2) As the employer's contribution with respect to each excluded employee, as defined in subdivision (b) of Section 3527, who lives in a rural area and who is otherwise eligible, an amount equal to, but not to exceed, the amount given to eligible state employees, as defined in subdivision (c) of Section 3513, who live in a rural area.

(3) As the employer's contribution with respect to each annuitant, as defined in subdivision (e) of Section 22754, who lives in a rural area, is not a Medicare participant, and who is otherwise eligible, an amount not to exceed five hundred dollars ($500) per year.

(4) As ~~to~~ the state's contribution with respect to each state annuitant, as defined in subdivision (e) of Section 22754, who lives in a rural area, participates in a board-approved, Medicare-coordinated health plan, participates in a board-approved health plan, and is otherwise eligible, an amount equal to the Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month. The state shall not reimburse for penalty amounts.

(5) As to an employee who enters state service or leaves state service during a fiscal year, contributions for the employee shall be made on a pro rata basis. A similar computation shall be used for anyone entering or leaving the bargaining unit, including a person who enters the bargaining unit by promotion in mid-fiscal year.

(d) Each fund of the State Treasury, other than the General Fund, shall reimburse the General Fund for any sums allocated pursuant to subdivision (c) for employees and annuitants whose compensation or annuities are paid from that fund.

(e) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the Rural Health Care Equity Trust Fund shall be disbursed for the benefit of an employee who lives in a rural area and who is otherwise eligible. The disbursements shall, where there is no board-approved health maintenance organization plan available in an area that is open for enrollment for the employee, (1) subsidize the preferred provider plan premiums for the employee~~,~~ by an amount equal to the difference between the weighted average of board-approved health maintenance organization premiums and the lowest board-approved preferred provider plan premium available under this part and (2) reimburse the employee for a portion or all of his or her incurred deductibles, ~~coinsurances~~ *coinsurance*, and other out-of-pocket health-related expenses~~, which~~ *that* would otherwise be covered if the employee ~~was~~ *were* enrolled in a board-approved health maintenance organization plan.

These subsidies and reimbursements shall be provided according to a plan determined by the department~~,~~ ~~which~~ *that* may include, but is not limited to, a supplemental insurance plan, a medical reimbursement account, or a medical spending account plan.

(f) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the Rural Health Care Equity Trust Fund shall be disbursed for the benefit of eligible annuitants, as defined in subdivision (e) of Section 22754, who live in rural areas and who are otherwise eligible. The disbursements shall, where there is ~~not~~ *no* board-approved health maintenance organization plan available and open to enrollment by the annuitant, either ~~(A)~~ *(1)* reimburse the annuitant, if he or she is not a Medicare participant, for some or all of his or her deductibles, not to exceed five

hundred dollars ($500) per fiscal year, or ~~(B)~~ *(2)* reimburse Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month, exclusive of penalties. These reimbursements shall be provided by the department.

The state shall not reimburse for penalty amounts.

(g) Any moneys remaining in any account of the fund at the end of any fiscal year shall remain in the account for use in subsequent fiscal years until the account is terminated. Moneys remaining in any account of the fund upon termination, after payment of all outstanding expenses and claims incurred prior to the date of termination, shall be deposited in the General Fund.

(h) The Legislature finds and declares that the Rural Health Care Equity Trust Fund is a trust fund held for the exclusive benefit of employees, annuitants, and family members.

~~(h)~~

(i) This section shall cease to be operative on January 1, 2005, or on such earlier date as the board makes a formal determination that HMOs are no longer the most cost-effective health care plans offered by the board.

SEC. 77. Section 22875 of the Government Code is amended to read:

22875. This article shall apply to any of the following:

(a) Represented state employees who are members of a bargaining unit or who retired from a bargaining unit only if (1) there is a signed memorandum of understanding between the state and the recognized employee organization to adopt the benefits accorded under this article and (2) the Department of Personnel Administration makes this article simultaneously applicable to all eligible annuitants retired from the bargaining unit. This article shall not apply to active state employees who are members of a state bargaining unit unless it also applies to eligible annuitants retired from that bargaining unit.

(b) Members of the Public Employees' Retirement System who are employed by the Assembly, the Senate, ~~and~~ *or* the California State University only if the Assembly

Rules Committee, the Senate Rules Committee, and the Board of Trustees of the California State University, respectively, make this section applicable to their employees.

(c) Members of the Public Employees' Retirement System who are state employees of the judicial branch, and judges and justices who are members of the Judges' Retirement System or the Judges' Retirement System II, if the Judicial Council makes this section applicable to them.

(d) Employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) upon adoption by the Department of Personnel Administration of regulations to implement employee benefits under this article for those state officers and employees excluded from, or not otherwise subject to the Ralph C. Dills Act. Regulations adopted or amended pursuant to this section shall not be subject to review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). These regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 78. Section 31469.5 of the Government Code is amended to read:

31469.5. (a) This section shall be applicable in the retirement system of any county of the 10th class, as defined by Sections 28020 and 28031, as amended by Chapter 1204 of the Statutes of 1971, if the board of supervisors executes a memorandum of understanding with the employee representatives and adopts, by majority vote, a resolution providing for safety status for probation officers, as provided in Section 31469.4.

(b) The purpose of this section is to provide optional safety status for probation officers employed on or before March 1, 1991. Notwithstanding Section 31558.6, that option shall be exercised within 120 days from the effective date of the implementation of Section 31469.4, together with the option to receive credit as a safety member for all or part of the time during which his or her

duties would have made him or her eligible to become a safety member, if this section had then been in effect.

(c) Except as otherwise provided in this section, the retirement benefits of existing probation officers who elect to transfer from general membership in the county retirement system to safety membership shall be implemented pursuant to Section 31484.5, except that:

(1) The definition of final compensation in Section 31462.1 shall no longer apply to probation officers electing safety status; instead, the definition of final compensation in Section 31462 shall apply at the date of retirement to all credited safety service regardless of previous service under Section 31462.1. However, the board of supervisors may adopt a resolution providing that the definition of final compensation contained in Section 31462.1 shall apply to certain probation officers electing safety status ~~and as~~ *who are* specifically identified in the resolution and who are retiring on or after the date specified in the resolution.

(2) For employees entitled to a cost-of-living adjustment upon retirement, Article 16.5 (commencing with Section 31870) shall apply, except that the increase in the allowance shall not exceed a maximum ~~amount~~ of 3 percent in any given year credited as safety membership. An employee who elects safety retirement under Section 31469.4 and who thereby waives his or her entitlement to a higher cost-of-living allowance shall be deemed to have waived the higher cost-of-living allowance with regard to all previous service credited as safety service at the date of retirement, regardless of previous service under any other provision, and shall be deemed to have relinquished any right to the higher cost-of-living allowance without refund of contributions therefor, except as determined by the board of supervisors.

(3) An employee who elects safety retirement under Section 31469.4 may elect to receive credit as a safety member for all or part of the time during which his or her duties would have made him or her eligible to become a safety member if this section had then been in effect as

provided in Section 31639.7, except that an election to receive part credit may be exercised only in multiples of five years of service. A member who elects to receive credit for only a part of that county service shall elect that county service latest in time and may not receive credit for any portion of county service prior in time to any county service for which he or she does not elect to ~~received~~ *receive* credit.

(4) A member not previously within the safety membership category who elects to receive credit for all or part of the time during which the member's duties would have made him or her eligible to become a safety member if this section had then been in effect shall pay into the retirement system the amount that would have had to be contributed by the employer to fund the employer's liability for safety membership and an amount equal to the difference between the employee's contributions actually made during the time for which he or she claims credit and the contributions the member would have made during that period if he or she had been in safety status during that period.

(d) All probation officers in Tier III who elect to transfer from general membership in the county retirement system to safety membership pursuant to this section shall be placed in Tier II regardless of their status prior to selecting Tier III benefits.

(e) All persons hired after the effective date of implementation of Section 31469.4 shall, upon retirement, have his or her cost-of-living allowance and final compensation computed in accordance with this section.

SEC. 79. Section 51298 of the Government Code is amended to read:

51298. It is the intent of the Legislature in enacting this chapter to provide local governments opportunities to attract large manufacturing facilities to invest in their communities and to encourage industries such as high technology, aerospace, automotive, biotechnology, software, environmental sources, and others to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

(1) ''Qualified manufacturing facility'' means a proposed manufacturing facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises

any portion of that facility or has its situs at that facility, exceeds one hundred fifty million dollars ($150,000,000). Compliance with this subparagraph shall be certified by the Trade and Commerce Agency upon the agency's approval of a proponent's application for certification of a qualified manufacturing facility. An application for certification shall be submitted by a proponent to the agency in writing in the time and manner as specified by the agency.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by either of the following:

(i) A business described in Codes 3500 to 3899, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, except that ''January 1, 1997,'' shall be substituted for ''January 1, 1994,'' in each place in which it appears.

(ii) A business engaged in the recovery of minerals from geothermal resources, including the proportional amount of a geothermal electric generating plant that is integral to the recovery process by providing electricity for it.

(D) The proponent is either currently engaged in commercial production or engaged in the perfection of the manufacturing process, or the perfection of a product intended to be manufactured.

(2) ''Proponent'' means a party or parties that meet all of the following criteria:

(A) The party is named in the application to the county, city and county, or city within which the qualified manufacturing facility would be located for a permit to construct a qualified manufacturing facility.

(B) The party will be the fee owner of the qualified manufacturing facility upon the completion of that facility. Notwithstanding the previous sentence, the party may enter into a sale-leaseback transaction and nevertheless be considered the proponent.

(C) If a proponent that is receiving capital investment incentive amounts subsequently leases the subject qualified manufacturing facility to another party, the lease may provide for the payment to that lessee of any portion of a capital investment incentive amount. Any lessee receiving any portion of a capital investment incentive amount shall also be considered a proponent for the purposes of subdivision (d).

(3) ''Capital investment incentive amount'' means, with respect to a qualified manufacturing facility for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue derived by the participating local agency from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) that is in excess of one hundred fifty million dollars ($150,000,000).

(4) ''Manufacturing'' means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(c) A city, special district, or school district may, upon the approval by a majority of the entire membership of its governing body, pay to the county, city and county, or city an amount equal to the amount of ad valorem property tax revenue allocated to that city, special district, or school district, but not the actual allocation, derived from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) of subdivision (b) that is in excess of one hundred fifty million dollars ($150,000,000).

(d) A proponent~~,~~ whose request for the payment of capital investment incentive amounts is approved by an electing county, city and county, or city shall enter into a community services agreement with that county, city

and county, or city that includes, but is not limited to, all of the following provisions:

(1) A provision requiring that a community services fee be remitted by the proponent to the county, city and county, or city, in each fiscal year subject to the agreement, in an amount that is equal to 25 percent of the capital investment incentive amount calculated for that proponent for that fiscal year, except that in no fiscal year shall the amount of the community services fee exceed two million dollars ($2,000,000).

(2) A provision specifying the dates in each relevant fiscal year upon which payment of the community services fee is due and delinquent, and the rate of interest to be charged to a proponent for any delinquent portion of the community services fee amount.

(3) A provision specifying the procedures and rules for the determination of underpayments or overpayments of a community services fee, for the appeal of determinations of any underpayment, and for the refunding or crediting of any overpayment.

(4) A provision specifying that a proponent is ineligible to receive a capital investment incentive amount if that proponent is currently delinquent in the payment of any portion of a community services fee amount, if the qualified manufacturing facility is constructed in a manner materially different from the facility as described in building permit application materials, or if the facility is no longer operated as a qualified manufacturing facility meeting the requirements of paragraph (1) of subdivision (b). If a proponent becomes ineligible to receive a capital investment incentive amount as a result of an agreement provision included pursuant to this subparagraph, the running of the number of consecutive fiscal years specified in an agreement made pursuant to subdivision (a) is not tolled during the period in which the proponent is ineligible.

(5) A provision that sets forth a job creation plan with respect to the relevant qualified manufacturing facility. The plan shall specify the number of jobs to be created by

that facility, and the types of jobs and compensation ranges to be created thereby. The plan shall also specify that for the entire term of the community services agreement ~~that~~, both of the following shall apply:

(A) All of the employees working at the qualified manufacturing facility shall be covered by an employer-sponsored health benefits plan.

(B) The average weekly wage, exclusive of overtime, paid to all of the employees working at the qualified manufacturing facility, who are not management or supervisory employees, shall be not less than the state average weekly wage.

For the purpose of this subdivision, ''state average weekly wage'' means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year.

(6) (A) In the case in which the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, a provision that requires the recapture of any portion of any capital investment incentive amounts previously paid to the proponent equal to the lesser of the following:

(i) All of the capital investment incentive amounts paid to the proponent, less all of the community services fees received from the proponent, and less any capital investment incentive amounts previously recaptured.

(ii) The last capital investment incentive amount paid to the proponent, less the last community services fee received from the proponent, multiplied by 40 percent of the number of years remaining in the community services agreement, but not to exceed 10 years, and less any capital investment incentive amounts previously recaptured.

(B) If the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, the county, city and county, or city may, upon a finding that good cause exists, waive any portion of the recapture of any capital investment

incentive amount due under this subdivision. For the purpose of this subdivision, good cause includes, but is not limited to, the following:

(i) The proponent has sold or leased the property to a person who has entered into an agreement with the county, city and county, or city to assume all of the responsibilities of the proponent under the community services agreement.

(ii) The qualified manufacturing facility has been rendered inoperable and beyond repair as a result of an act of God.

(C) For purposes of this subdivision, failure to operate a qualified manufacturing facility as required by the community services agreement includes, but is not limited to, failure to establish the number of jobs specified in the jobs creation plan created pursuant to paragraph (5).

(e) (1) Each county, city and county, or city that elects to establish a capital investment incentive program shall notify the Trade and Commerce Agency of its election to do so no later than June 30th of the fiscal year in which the election was made.

(2) In addition to the information required to be reported pursuant to paragraph (1), each county, city and county, or city that has elected to establish a capital investment incentive program shall notify the Trade and Commerce Agency each fiscal year no later than June 30th of the amount of any capital investment incentive payments made and the proponent of the qualified manufacturing facility to whom the payments were made during that fiscal year.

(3) The Trade and Commerce Agency shall compile the information submitted by each county, city and county, and city pursuant to paragraphs (1) and (2) and submit a report to the Legislature containing this information no later than October 1, every two years commencing October 1, 2000.

SEC. 80. Section 53601 of the Government Code is amended to read:

53601. The legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate needs of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery. For purposes of this section ''counterparty'' means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(g) Commercial paper of ‘‘prime’’ quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody’s Investors Service, Inc., or Standard and Poor’s Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars ($500,000,000) and having an ‘‘A’’ or higher rating for the issuer’s debt, other than commercial paper, if any, as provided for by Moody’s Investors Service, Inc., or Standard and Poor’s Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency’s surplus money that may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency’s surplus money, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. ‘‘Dollar-weighted average maturity’’ means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposits issued by a nationally or state-chartered bank or a state or federal association (as defined by Section 5102 of the Financial Code) or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency’s surplus money ~~which~~ *that* may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposits do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision,

including, the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when either of the following conditions are met:

(A) The security was owned or specifically committed to purchase, by the local agency, prior to December 31, 1994, and was sold using a reverse repurchase agreement or securities lending agreement on December 31, 1994.

(B) The security to be sold on *a* reverse repurchase agreement or *a* securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale; the total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency not purchased or committed to purchase, prior to December 31, 1994, does not exceed 20 percent of the base value of the portfolio; and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) After December 31, 1994, a reverse repurchase agreement or securities lending agreement may not be entered into with securities not sold on a reverse repurchase agreement or securities lending agreement

and purchased, or committed to purchase, prior to that date, as a means of financing or paying for the security sold on a reverse repurchase agreement or securities lending agreement, but may only be entered into with securities owned and previously paid for a minimum of 30 days prior to the settlement of the reverse repurchase agreement or securities lending agreement, in order to supplement the yield on securities owned and previously paid for or to provide funds for the immediate payment of a local agency obligation. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement, on securities originally purchased subsequent to December 31, 1994, shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security. Reverse repurchase agreements or securities lending agreements specified in subparagraph (B) of paragraph (3) may not be entered into unless the percentage restrictions specified in that subparagraph are met, including the total of any reverse repurchase agreements or securities lending agreements specified in subparagraph (A) of paragraph (3).

(5) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York.

(6) (A) ‘‘Repurchase agreement’’ means a purchase of securities by the local agency pursuant to an agreement

by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) ''Securities,'' for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) ''Reverse repurchase agreement'' means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) ''Securities lending agreement'' means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United

States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated ''A'' or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's surplus money ~~which~~ *that* may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 and following).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and with assets under

management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 10 percent of the agency's surplus funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(*l*) Notwithstanding anything to the contrary contained in this section, Section 53635, or any other provision of law, moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible

securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an ''A'' or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of ''AA'' or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

SEC. 81. Section 53635 of the Government Code is amended to read:

53635. As far as possible, all money belonging to, or in the custody of, a local agency, including money paid to the treasurer or other official to pay the principal, interest, or penalties of bonds, shall be deposited for safekeeping in state or national banks, savings associations or federal associations, credit unions, or federally insured industrial loan companies in this state selected by the treasurer or other official having the legal custody of the money~~;~~ or, unless otherwise directed by the legislative body pursuant to Section 53601, may be invested in the investments set forth below. A local agency purchasing or obtaining any securities described in this section, in a

negotiable, bearer, registered, or nonregistered format, shall require delivery of all the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book-entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book-entry delivery. For purposes of this section, ''counterparty'' means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase.

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank, the Tennessee Valley Authority, or in obligations,

participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus funds which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of ''prime'' quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars ($500,000,000) and having an ''A'' or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money ~~which~~ *that* may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's money or money in its custody, may be invested pursuant to this subdivision. The additional 15 percent

may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. ‘‘Dollar-weighted average maturity’’ means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency’s surplus money ~~which~~ *that* may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5, except that the amount so invested shall be subject to the limitations of Section 53638. For purposes of this section, the legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from depositing or investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or an employee of the administrative officer, manager’s office, budget office, auditor-controller’s office, or treasurer’s office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements, or securities lending agreements of any securities authorized by this section, so long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements or securities lending agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements may be utilized only when either of the following conditions are met:

(A) The security was owned or specifically committed to purchase, by the local agency, prior to repurchase agreement on December 31, 1994, and was sold using a reverse repurchase agreement or securities lending agreement on December 31, 1994.

(B) The security to be sold on *a* reverse repurchase agreement or *a* securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale; the total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency not purchased or committed to purchase, prior to December 31, 1994, does not exceed 20 percent of the base value of the portfolio; and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) After December 31, 1994, a reverse repurchase agreement or securities lending agreement may not be entered into with securities not sold on a reverse repurchase agreement or securities lending agreement and purchased, or committed to purchase, prior to that

date, as a means of financing or paying for the security sold on a reverse repurchase agreement or securities lending agreement, but may only be entered into with securities owned and previously paid for a minimum of 30 days prior to the settlement of the reverse repurchase agreement or securities lending agreement, in order to supplement the yield on securities owned and previously paid for or to provide funds for the immediate payment of a local agency obligation. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement, on securities originally purchased subsequent to December 31, 1994, shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security. Reverse repurchase agreements or securities lending agreements specified in subparagraph (B) of paragraph (3) may not be entered into unless the percentage restrictions specified in that subparagraph are met, including the total of any reverse repurchase agreements or securities lending agreements specified in subparagraph (A) of paragraph (3).

(5) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York.

(6) (A) ‘‘Repurchase agreement’’ means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the

securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) ''Securities,'' for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) ''Reverse repurchase agreement'' means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date, and includes other comparable agreements.

(D) ''Securities lending agreement'' means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement or securities lending agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

Notes eligible for investment under this subdivision shall be rated ''A'' or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's surplus money ~~which~~ *that* may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivision (*l*) or (m) and that comply with the investment restrictions of this article and Article 1 (commencing with Section 53600). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 and following).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivision (*l*) or (m) and with assets under management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 10 percent of the agency's surplus funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(*l*) Notes, bonds, or other obligations which are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(m) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of

five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an ‘‘A’’ or higher rating for the issuer’s debt as provided by a nationally recognized rating service and rated in a rating category of ‘‘AA’’ or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency’s surplus money that may be invested pursuant to this section.

SEC. 82. Section 54985 of the Government Code is amended to read:

54985. (a) Notwithstanding any other provision of law that prescribes an amount or otherwise limits the amount of a fee or charge that may be levied by a county, a county service area, or a county waterworks district governed by a county board of supervisors, a county board of supervisors shall have the authority to increase or decrease the fee or charge, that is otherwise authorized to be levied by another provision of law, in the amount reasonably necessary to recover the cost of providing any product or service or the cost of enforcing any regulation for which the fee or charge is levied. The fee or charge may reflect the average cost of providing any product or service or enforcing any regulation. Indirect costs that may be reflected in the cost of providing any product or service or the cost of enforcing any regulation shall be limited to those items that are included in the federal Office of Management and Budget Circular A-87 on January 1, 1984.

(b) If any person disputes whether a fee or charge levied pursuant to subdivision (a) is reasonable, the board of supervisors may request the county auditor to conduct a study and to determine whether the fee or charge is reasonable.

Nothing in this subdivision shall be construed to mean that the county shall not continue to be subject to fee review procedures required by Article XIII B of the California Constitution.

(c) This chapter shall not apply to any of the following:

(1) Any fee charged or collected by a court clerk pursuant to Section 26820.4, 26823, 26824, 26826, 26827, 26827.4, 26830, 72054, 72055, 72056, 72059, 72060, or 72061 of the Government Code or Section 103470 of the Health and Safety Code, and any other fee or charge that may be assessed, charged, collected, or levied~~,~~ pursuant to law for filing judicial documents or for other judicial functions.

(2) Any fees charged or collected pursuant to Chapter 2 (commencing with Section 6100) of Division 7 of Title 1.

(3) Any standby or availability assessment or charge.

(4) Any fee charged or collected by a county agricultural commissioner.

(5) Any fee charged or collected pursuant to Article 2.1 (commencing with Section 12240) of Chapter 2 of Division 5 of the Business and Professions Code.

(6) Any fee charged or collected by a county recorder or local registrar for filing, recording, or indexing any document, performing any service, issuing any certificate, or providing a copy of any document pursuant to Section 2103 of the Code of Civil Procedure, Section 27361, 27361.1, 27361.2, 27361.3, 27361.4, 27361.8, 27364, 27365, or 27366 of the Government Code, Section 103625 of the Health and Safety Code, or Section 9525 of the ~~Uniform~~ Commercial Code.

(7) Any fee charged or collected pursuant to Article 7 (commencing with Section 26720) of Chapter 2 of Part 3 of Division 2 of Title 3 of the Government Code.

SEC. 83. Section 69915 of the Government Code is amended to read:

69915. (a) Notwithstanding any other provision of law, and except as provided in subdivision (j), the Board of Supervisors of each of the Counties of Merced, Orange, and Shasta may commence public hearings regarding the abolition of the marshal's office and the transferring of court-related services provided by the marshal within the county to the sheriff's department. Within 30 days of the commencement of public hearings as authorized by this section, the board shall make a final determination as to

the most cost-effective and most efficient manner of providing court-related services.

(b) Concurrently, an election may be conducted among all of the judges of the consolidated courts of the county to provide an advisory recommendation to the board of supervisors on the abolition of the marshal's office and the transferring of court-related services provided by the marshal within the county to the sheriff's department. The outcome shall be determined by a simple majority of votes cast. The vote of the judges shall then be forwarded to the board of supervisors prior to the close of the public hearing, and the board of supervisors shall take into advisement the recommendation of the judges provided by the election report.

(c) The determination of the abolishment of the marshal's office or the transferring of the duties of the marshal shall occur pursuant to the board's determination, and shall be concluded no later than July 1, 2000.

(d) The courtroom assignment of bailiffs after abolition of the marshal's office and the consolidation pursuant to this section shall be determined by a two-member committee comprised of the presiding judge of the consolidated court and the sheriff, or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned.

It is the intent of the Legislature, in enacting this subdivision, to ensure that courtroom assignments are made in a manner that best ensures that the interests of the affected judge or commissioner and bailiff are protected.

(e) Notwithstanding any other provision of law, the marshal and all personnel of the marshal's office affected by the abolition of the marshal's office in the county shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits, and, except as may be necessary for the operation of the agency under which court-related services and the

service of civil and criminal process are consolidated, they shall not be involuntarily transferred out of the consolidated office for a period of five years following the consolidation.

(f) Personnel of the abolished marshal's office shall be entitled to request an assignment to another division within the sheriff's department, and that request shall be reviewed the same as any other request from within the department. Persons who accept a voluntary transfer from the court services/civil division shall waive their rights pursuant to subdivision (e).

(g) Permanent employees of the marshal's office on the effective date of the abolition of the marshal's office pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office on the effective date of a consolidation pursuant to this section shall retain their probationary status and rights and shall not be deemed to have transferred so as to require serving a new probationary period.

(h) All county service or service by employees of the marshal's office on the effective date of a consolidation pursuant to this section shall be counted toward seniority in the consolidated office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(i) No employee of the marshal's office on the effective date of a consolidation pursuant to this section shall lose peace officer status, or otherwise be adversely affected as a result of the abolition and merger of personnel into the sheriff's department.

(j) Subdivisions (d) to (i), inclusive, shall not apply to the County of Orange. Prior to a determination by the Orange County Board of Supervisors to abolish the marshal's office and to transfer duties of the marshal to the sheriff, the board of supervisors shall do both of the following:

(1) Meet and confer with affected employee bargaining representatives with respect to matters

within the scope of representation that would be affected by a determination to abolish the marshal's office and to transfer duties of the marshal to the sheriff. These matters shall include, but not be limited to, seniority within the merged departments, job qualifications, classification of positions, and intradepartmental transfers. For purposes of carrying out this paragraph, employees of the superior court whose job classification confers safety status shall have the right to representation in accordance with the local employer-employee resolution and to bargain in accordance with Sections 3504, 3505, *and* 3505.1. The board of supervisors is not authorized to abolish the office of the marshal and to transfer duties of the marshal to the sheriff unless a mutual agreement, or mutually agreed to amendment to an existing memorandum of understanding as authorized by this section, is reached with each affected recognized employee organization pursuant to Section 3505.1 and adopted by the board of supervisors.

(2) Confer with the presiding judge of the superior court or his or her designated representative and the sheriff to discuss courthouse security and to establish a mechanism for the assignment of courtroom security personnel. Any agreement made in accordance with this paragraph that commits the superior court to fund services shall be approved by the presiding judge of the superior court or his or her designee. Any agreement entered into pursuant to this paragraph shall become effective only upon a majority vote of the board of supervisors to abolish the office of the marshal or to transfer duties of the marshal to the sheriff.

(k) Upon a determination by the Orange County Board of Supervisors to abolish the office of marshal and to transfer duties of the marshal to the sheriff, Article 17.1 (commencing with Section 74010) of Chapter 10 shall become inoperative.

SEC. 84. Section 72114.2 of the Government Code is amended to read:

72114.2. (a) Notwithstanding any other provision of law, on or after January 1, 2000, the San Diego County

Marshal's Office shall be abolished, and there shall be a bureau in the San Diego County Sheriff's Department under which court security services and the service of civil and criminal process are consolidated.

This bureau's primary function shall be to provide the management with direction, supervision, and personnel for court-related services ~~which~~ *that* include court security, the service of civil and criminal process, public safety protection, judicial protection, standards of performance, and other matters incidental to the performance of those services.

The sheriff shall be appointing authority for all bureau personnel. The person selected by the sheriff to oversee the operation of court-related services, as described in this section, shall report directly to the sheriff.

Notwithstanding Section 77212, the operational service level for court security services shall be in accordance with agreements between the court and the County of San Diego, which shall not provide a lesser operational service level than may be required by statute.

The operational service level for the service of civil and criminal process and for administrative services shall be in accordance with agreements between the court and the County of San Diego, which shall not provide a lesser operational service level than may be required by statute.

To ensure that the costs assessed to the court for bureau services are in full conformance with the rules of court and statutes concerning trial court funding, the bureau shall be maintained as a separate organizational unit for budgeting and cost accounting purposes.

On a semiannual basis or more often as required by law, the sheriff shall provide the court with an accounting of costs for the bureau, in sufficient detail to allow for an assessment of budget performance, separately, for each function of the bureau. The county auditor and controller shall provide to the court copies of each audit report conducted on the bureau. The court is authorized to conduct, and the sheriff shall cooperate in, independent financial audits of the bureau, either by court staff or by independent auditors.

(b) Notwithstanding any other provision of law, concomitant with the abolition of the marshal's office all personnel of the marshal's office shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits.

The marshal and the assistant marshal, or their equivalents, may become employees of the sheriff's department.

(c) Permanent employees of the marshal's office on the effective date of transfer of services from the marshal to the sheriff pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Promotions for all personnel from the marshal's office shall be made pursuant to standards set by the sheriff. Probationary employees in the marshal's office on the effective date of the abolition shall not be required to serve a new probationary period. All probationary time served as an employee of the marshal shall be credited toward probationary time required as an employee of the sheriff's department.

(d) All county service and all service with the marshal's office by employees of the marshal's office on the effective date of the abolition of the marshal's office shall be counted toward seniority in the sheriff's department. All time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) As a result of the abolition of the marshal's office, no employee of the marshal's office who becomes an employee of the sheriff's department pursuant to this section shall lose peace officer status or be reduced in rank or salary.

(f) Prior to the abolition of the marshal's office, the court and the County of San Diego shall enter into a contractual agreement regarding the provision of court security services to be provided by the sheriff. Thereafter, from time to time, the court and the County of San Diego may enter into agreements regarding the

provision of court security services to be provided by the sheriff.

(g) After abolition of the marshal's office, a two-member committee comprised of a representative of the presiding judge of the superior court and a representative of the sheriff shall make recommendations to the sheriff regarding courtroom assignments of bailiffs. Bailiff assignments and the release from those assignments shall be made only after consultation with, and concurrence of, the affected judge or judicial officer. The presiding judge may provide the concurrence required by this section. This subdivision shall not apply to actions instituted by the sheriff for fitness for duty reasons or discipline that is subject to review by the San Diego County Civil Service Commission.

(h) For a period of five years following the abolition of the marshal's office, personnel of the marshal's office who become employees of the sheriff's department shall not be transferred from the bureau in the sheriff's department under which court-related services and the service of civil and criminal process are consolidated, unless the transfer is voluntary or is the result of fitness for duty reasons or discipline that is subject to review by the San Diego County Civil Service Commission.

(i) Personnel of the marshal's office who become employees of the sheriff's department shall be entitled to request an assignment to another bureau or division within the sheriff's department, and that request shall be reviewed the same as any other request from within the department.

(j) This section shall become operative in the County of San Diego when the board of supervisors adopts a resolution declaring this section operative. The implementation of this section shall be subject to approval and adoption by the board of supervisors of necessary actions, appropriations, and ordinances consistent with the ~~Charter~~ *charter* of the County of San Diego and other statutory authority.

SEC. 85. Section 91007 of the Government Code is amended to read:

91007. (a) Any person, before filing a civil action pursuant to Sections 91004 and 91005, must first file with the civil prosecutor a written request for the civil prosecutor to commence the action. The request shall include a statement of the grounds for believing a cause of action exists. The civil prosecutor shall respond to the person in writing, indicating whether he or she intends to file a civil action.

(1) If the civil prosecutor responds in the affirmative and files suit within 120 days from receipt of the written request to commence the action, no other action may be brought unless the action brought by the civil prosecutor is dismissed without prejudice as provided for in Section 91008.

(2) If the civil prosecutor responds in the negative within 120 days from receipt of the written request to commence the action, the person requesting the action may proceed to file a civil action upon receipt of the response from the civil prosecutor. If, pursuant to this subdivision, the civil prosecutor does not respond within 120 days, the civil prosecutor shall be deemed to have provided a negative written response to the person requesting the action on the 120th day and the person shall be deemed to have received that response.

(3) The time period within which a civil action shall be commenced, as set forth in Section 91011, shall be tolled from the date of receipt by the civil prosecutor of the written request to either the date that the civil action is dismissed without prejudice~~,~~ or the date of receipt by the person of the negative response from the civil prosecutor, but only for a civil action brought by the person who requested the civil prosecutor to commence the action.

(b) Any person filing a complaint, cross-complaint, or other initial pleading in a civil action pursuant to Section 91003, 91004, 91005, or 91005.5 shall, within 10 days of filing the complaint, cross-complaint, or initial pleading, serve on the commission a copy of the complaint,

cross-complaint, or initial pleading or a notice containing all of the following:

(1) The full title and number of the case.

(2) The court in which the case is pending.

(3) The name and address of the attorney for the person filing the complaint, cross-complaint, or other initial pleading.

(4) A statement that the case raises issues under the Political Reform Act *of 1974*.

(c) No complaint, cross-complaint, or other initial pleading shall be dismissed for failure to comply with subdivision (b).

SEC. 86. Section 1357.50 of the Health and Safety Code is amended to read:

1357.50. For purposes of this article:

(a) ''Health benefit plan'' means any individual or group~~,~~ insurance policy or health care service plan contract~~,~~ that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) ''Late enrollee'' means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer~~;~~, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment, that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, legal separation, divorce, or loss of no share-of-cost Medi-Cal coverage.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan. The health benefit plan shall enroll a dependent child within 30 days after receipt of a court order or request from the district attorney, either parent or the person having custody of the child as defined in

Section 3751.5 of the Family Code, the employer, or the group administrator. In the case of children who are eligible for medicaid, the State Department of Health Services may also make the request.

(4) The plan cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in ~~bold~~ *boldface* type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision, and the coverage under that provision has been exhausted. For purposes of this section, the definition of ''COBRA'' set forth in subdivision (e) of Section 1373.621 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days of notification of this loss of coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth, adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf, and on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for

adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(c) ‘‘Preexisting condition provision’’ means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the enrollee’s effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) ‘‘Creditable coverage’’ means:

(1) Any individual or group policy, contract, or program~~,~~ that is written or administered by a disability insurance company, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital and surgical coverage not designed to

supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(e) ''Waivered condition'' means a contract provision that excludes coverage for charges or expenses incurred

during a specified period of time for one or more specific, identified, medical conditions.

(f) ‘‘Affiliation period’’ means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 87. Section 1368 of the Health and Safety Code is amended to read:

1368. (a) Every plan shall do all of the following:

(1) Establish and maintain a grievance system approved by the department under which enrollees may submit their grievances to the plan. Each system shall provide reasonable procedures in accordance with department regulations that shall ensure adequate consideration of enrollee grievances and rectification when appropriate.

(2) Inform its subscribers and enrollees upon enrollment in the plan and annually thereafter of the procedure for processing and resolving grievances. The information shall include the location and telephone number where grievances may be submitted.

(3) Provide forms for grievances to be given to subscribers and enrollees who wish to register written grievances. The forms used by plans licensed pursuant to Section 1353 shall be approved by the director in advance as to format.

(4) Provide subscribers and enrollees with written responses to grievances, with a clear and concise explanation of the reasons for the plan’s response. For grievances involving the delay, denial, or modification of health care services, the plan response shall describe the criteria used and the clinical reasons for its decision, including all criteria and clinical reasons related to medical necessity. If a plan, or one of its contracting providers, issues a decision delaying, denying, or modifying health care services based in whole or in part on a finding that the proposed health care services are not a covered benefit under the contract that applies to the enrollee, the decision shall clearly specify the provisions in the contract that exclude that coverage.

(5) Keep in its files all copies of grievances, and the responses thereto, for a period of five years.

(b) (1) (A) After either completing the grievance process described in subdivision (a), or participating in the process for at least 30 days, a subscriber or enrollee may submit the grievance to the department for review. In any case determined by the department to be a case involving an imminent and serious threat to the health of the patient, including, but not limited to, severe pain, the potential loss of life, limb, or major bodily function, or in any other case where the department determines that an earlier review is warranted, a subscriber or enrollee shall not be required to complete the grievance process or participate in the process for at least 30 days before submitting a grievance to the department for review.

(B) A grievance may be submitted to the department for review and resolution prior to any arbitration.

(C) Notwithstanding subparagraphs (A) and (B), the department may refer any grievance that does not pertain to compliance with this chapter to the State Department of Health Services, the California Department of Aging, the federal Health Care Financing Administration, or any other appropriate governmental entity for investigation and resolution.

(2) If the subscriber or enrollee is a minor, or is incompetent or incapacitated, the parent, guardian, conservator, relative, or other designee of the subscriber or enrollee, as appropriate, may submit the grievance to the department as the agent of the subscriber or enrollee. Further, a provider may join with, or otherwise assist, a subscriber or enrollee, or the agent, to submit the grievance to the department. In addition, following submission of the grievance to the department, the subscriber or enrollee, or the agent, may authorize the provider to assist, including advocating on behalf of the subscriber or enrollee. For purposes of this section, a ‘‘relative’’ includes the parent, stepparent, spouse, adult son or daughter, grandparent, brother, sister, uncle, or aunt of the subscriber or enrollee.

(3) The department shall review the written documents submitted with the subscriber's or the enrollee's request for review, or submitted by the agent on behalf of the subscriber or enrollee. The department may ask for additional information, and may hold an informal meeting with the involved parties, including providers who have joined in submitting the grievance or who are otherwise assisting or advocating on behalf of the subscriber or enrollee. If, after reviewing the record, the department concludes that the grievance, in whole or in part, is eligible for review under the independent medical review system established pursuant to Article ~~12~~ *5.55* (commencing with Section 1374.30), the department shall immediately notify the subscriber or enrollee, or agent, of that option and shall, if requested orally or in writing, ~~shall~~ assist the subscriber or enrollee in participating in the independent medical review system.

(4) If, after reviewing the record of a grievance, the department concludes that a health care service eligible for coverage and payment under a health care service plan contract has been delayed, denied, or modified by a plan, or by one of its contracting providers, in whole or in part due to a determination that the service is not medically necessary, and that determination was not communicated to the enrollee in writing along with a notice of the enrollee's potential right to participate in the independent medical review system, as required by this chapter, the director shall, by order, assess administrative penalties. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice of, and the opportunity for, a hearing with regard to the person affected in accordance with Section 1397. The administrative penalties shall not be deemed an exclusive remedy available to the director. These penalties shall be paid to the State Managed Care Fund.

(5) The department shall send a written notice of the final disposition of the grievance, and the reasons therefor, to the subscriber or enrollee, the agent, to any provider that has joined with or is otherwise assisting the

subscriber or enrollee, and to the plan, within 30 calendar days of receipt of the request for review unless the director, in his or her discretion, determines that additional time is reasonably necessary to fully and fairly evaluate the relevant grievance. In any case not eligible for the independent medical review system established pursuant to Article ~~12~~ *5.55* (commencing with Section 1374.30), the department's written notice shall include, at a minimum, the following:

(A) A summary of its findings and the reasons why the department found the plan to be, or not to be, in compliance with any applicable laws, regulations, or orders of the director.

(B) A discussion of the department's contact with any medical provider, or any other independent expert relied on by the department, along with a summary of the views and qualifications of that provider or expert.

(C) If the enrollee's grievance is sustained in whole or part, information about any corrective action taken.

(6) In any department review of a grievance involving a disputed health care service, as defined in subdivision (b) of Section 1374.30, that is not eligible for the independent medical review system established pursuant to Article ~~12~~ *5.55* (commencing with Section 1374.30), in which the department finds that the plan has delayed, denied, or modified health care services that are medically necessary, based on the specific medical circumstances of the enrollee, and those services are a covered benefit under the terms and conditions of the health care service plan contract, the department's written notice shall either~~: (A) Order~~ *order* the plan to promptly offer and provide those health care services to the enrollee, or ~~(B) Order~~ *order* the plan to promptly reimburse the enrollee for any reasonable costs associated with urgent care or emergency services, or other extraordinary and compelling health care services, when the department finds that the enrollee's decision to secure those services outside of the plan network was reasonable under the circumstances. The department's order shall be binding on the plan.

(7) Distribution of the written notice shall not be deemed a waiver of any exemption or privilege under existing law, including, but not limited to, Section 6254.5 of the Government Code, for any information in connection with and including the written notice, nor shall any person employed or in any way retained by the department be required to testify as to that information or notice.

(8) The director shall establish and maintain a system of aging of grievances that are pending and unresolved for 30 days or more, that shall include a brief explanation of the reasons each grievance is pending and unresolved for 30 days or more.

(9) A subscriber or enrollee, or the agent acting on behalf of a subscriber or enrollee, may also request voluntary mediation with the plan prior to exercising the right to submit a grievance to the department. The use of mediation services shall not preclude the right to submit a grievance to the department upon completion of mediation. In order to initiate mediation, the subscriber or enrollee, or the agent acting on behalf of the subscriber or enrollee, and the plan shall voluntarily agree to mediation. Expenses for mediation shall be borne equally by both sides. The department shall have no administrative or enforcement responsibilities in connection with the voluntary mediation process authorized by this paragraph.

(c) The plan's grievance system shall include a system of aging of grievances that are pending and unresolved for 30 days or more. The plan shall provide a quarterly report to the director of grievances pending and unresolved for 30 or more days with separate categories of grievances for Medicare enrollees and Medi-Cal enrollees. The plan shall include with the report a brief explanation of the reasons each grievance is pending and unresolved for 30 days or more. The plan may include the following statement in the quarterly report that is made available to the public by the director:

"Under Medicare and Medi-Cal law, Medicare enrollees and Medi-Cal enrollees each have separate avenues of appeal that are not available to other enrollees. Therefore, grievances pending and unresolved may reflect enrollees pursuing their Medicare or Medi-Cal appeal rights."

If requested by a plan, the director shall include this statement in a written report made available to the public and prepared by the director that describes or compares grievances that are pending and unresolved with the plan for 30 days or more. Additionally, the director shall, if requested by a plan, append to that written report a brief explanation, provided in writing by the plan, of the reasons why grievances described in that written report are pending and unresolved for 30 days or more. The director shall not be required to include a statement or append a brief explanation to a written report that the director is required to prepare under this chapter, including Sections 1380 and 1397.5.

(d) Subject to subparagraph (C) of paragraph (1) of subdivision (b), the grievance or resolution procedures authorized by this section shall be in addition to any other procedures that may be available to any person, and failure to pursue, exhaust, or engage in the procedures described in this section shall not preclude the use of any other remedy provided by law.

(e) Nothing in this section shall be construed to allow the submission to the department of any provider grievance under this section. However, as part of a provider's duty to advocate for medically appropriate health care for his or her patients pursuant to Sections 510 and 2056 of the Business and Professions Code, nothing in this subdivision shall be construed to prohibit a provider from contacting and informing the department about any concerns he or she has regarding compliance with or enforcement of this chapter.

~~(f) This section shall become operative on January 1, 2001, and then only if Assembly Bill 55 of the 1999–2000 Regular Session is enacted.~~

SEC. 88. Section 1368.04 of the Health and Safety Code is amended to read:

1368.04. (a) The director shall investigate and take enforcement action against plans regarding grievances reviewed and found by the department to involve noncompliance with the requirements of this chapter, including grievances that have been reviewed pursuant to the independent medical review system established pursuant to Article ~~12~~ *5.55* (commencing with Section 1374.30). Where substantial harm to an enrollee has occurred as a result of plan noncompliance, the director shall, by order, assess administrative penalties subject to appropriate notice of, and the opportunity for, a hearing with regard to the person affected in accordance with Section 1397. The administrative penalties shall not be deemed an exclusive remedy available to the director. These penalties shall be paid to the State Managed Care Fund. The director shall periodically evaluate grievances to determine if any audit, investigative, or enforcement actions should be undertaken by the department.

(b) The director may, after appropriate notice and opportunity for hearing in accordance with Section 1397, by order, assess administrative penalties if the director determines that a health care service plan has knowingly committed, or has performed with a frequency that indicates a general business practice, either of the following:

(1) Repeated failure to act promptly and reasonably to investigate and resolve grievances in accordance with Section 1368.01.

(2) Repeated failure to act promptly and reasonably to resolve grievances when the obligation of the plan to the enrollee or subscriber is reasonably clear.

(c) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed warranted by the director to enforce this chapter.

(d) The administrative penalties authorized pursuant to this section shall be paid to the State Managed Care Fund.

~~(e) This section shall become operative on January 1, 2001, and then only if Assembly Bill 55 of the 1999–2000 Regular Session is enacted.~~

SEC. 89. Section 1370.4 of the Health and Safety Code is amended to read:

1370.4. (a) Every health care service plan shall provide an external, independent review process to examine the plan's coverage decisions regarding experimental or investigational therapies for individual enrollees who meet all of the following criteria:

(1) (A) The enrollee has a life-threatening or seriously debilitating condition.

(B) For purposes of this section, ''life-threatening'' means either or both of the following:

(i) Diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted.

(ii) Diseases or conditions with potentially fatal outcomes, where the end point of clinical intervention is survival.

(C) For purposes of this section, ''seriously debilitating'' means diseases or conditions that cause major irreversible morbidity.

(2) The enrollee's physician certifies that the enrollee has a condition, as defined in paragraph (1), for which standard therapies have not been effective in improving the condition of the enrollee, for which standard therapies would not be medically appropriate for the enrollee, or for which there is no more beneficial standard therapy covered by the plan than the therapy proposed pursuant to paragraph (3).

(3) Either (A) the enrollee's physician, who is under contract with or employed by the plan, has recommended a drug, device, procedure or other therapy that the physician certifies in writing is likely to be more beneficial to the enrollee than any available standard therapies, or (B) the enrollee, or the enrollee's

physician who is a licensed, board-certified or board-eligible physician qualified to practice in the area of practice appropriate to treat the enrollee's condition, has requested a therapy that, based on two documents from the medical and scientific evidence, as defined in subdivision (d), is likely to be more beneficial for the enrollee than any available standard therapy. The physician certification pursuant to this subdivision shall include a statement of the evidence relied upon by the physician in certifying his or her recommendation. Nothing in this subdivision shall be construed to require the plan to pay for the services of a nonparticipating physician provided pursuant to this subdivision, that are not otherwise covered pursuant to the plan contact.

(4) The enrollee has been denied coverage by the plan for a drug, device, procedure, or other therapy recommended or requested pursuant to paragraph (3).

(5) The specific drug, device, procedure, or other therapy recommended pursuant to paragraph (3) would be a covered service, except for the plan's determination that the therapy is experimental or investigational.

(b) The plan's decision to delay, deny, or modify experimental or investigational therapies shall be subject to the independent medical review process under Article ~~12~~ *5.55* (commencing with Section 1374.30) of this chapter except that, in lieu of the information specified in subdivision (i) of Section 1374.30, an independent medical reviewer shall base his or her determination on relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence defined in subdivision (d).

(c) The independent medical review process shall also meet the following criteria:

(1) The plan shall notify eligible enrollees in writing of the opportunity to request the external independent review within five business days of the decision to deny coverage.

(2) If the enrollee's physician determines that the proposed therapy would be significantly less effective if not promptly initiated, the analyses and

recommendations of the experts on the panel shall be rendered within seven days of the request for expedited review. At the request of the expert, the deadline shall be extended by up to three days for a delay in providing the documents required. The timeframes specified in this paragraph shall be in addition to any otherwise applicable timeframes contained in subdivision (c) of Section 1374.33.

(3) Each expert's analysis and recommendation shall be in written form and state the reasons the requested therapy is or is not likely to be more beneficial for the enrollee than any available standard therapy, and the reasons that the expert recommends that the therapy should or should not be provided by the plan, citing the enrollee's specific medical condition, the relevant documents provided, and the relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence as defined in subdivision (d), to support the expert's recommendation.

(4) Coverage for the services required under this section shall be provided subject to the terms and conditions generally applicable to other benefits under the plan contract.

(d) For the purposes of subdivision (b), ''medical and scientific evidence'' means the following sources:

(1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

(2) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS data base Health Services Technology Assessment Research (HSTAR).

(3) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861(t)(2) of the Social Security Act.

(4) The following standard reference compendia: The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information.

(5) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including the Federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services.

(6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

(e) The independent review process established by this section shall be required on and after January 1, 2001.

~~(f) This section shall become operative on January 1, 2001, and then only if Assembly Bill 55 of the 1999–2000 Regular Session is enacted.~~

SEC. 90. Section 1374.32 of the Health and Safety Code is amended to read:

1374.32. (a) By January 1, 2001, the department shall contract with one or more independent medical review organizations in the state to conduct reviews for purposes of this article. The independent medical review organizations shall be independent of any health care service plan doing business in this state. The director may establish additional requirements, including conflict-of-interest standards, consistent with the purposes of this article, that an organization shall be required to meet in order to qualify for participation in

the Independent Medical Review System and to assist the department in carrying out its responsibilities.

(b) The independent medical review organizations and the medical professionals retained to conduct reviews shall be deemed to be medical consultants for purposes of Section 43.98 of the Civil Code.

(c) The independent medical review organization, any experts it designates to conduct a review, or any officer, director, or employee of the independent medical review organization shall not have any material professional, familial, or financial affiliation, as determined by the director, with any of the following:

(1) The plan.

(2) Any officer, director, or employee of the plan.

(3) A physician, the physician's medical group, or the independent practice association involved in the health care service in dispute.

(4) The facility or institution at which either the proposed health care service, or the alternative service, if any, recommended by the plan, would be provided.

(5) The development or manufacture of the principal drug, device, procedure, or other therapy proposed by the enrollee whose treatment is under review, or the alternative therapy, if any, recommended by the plan.

(6) The enrollee or the enrollee's immediate family.

(d) In order to contract with the department for purposes of this article, an independent medical review organization shall meet all of the following requirements:

(1) The organization shall not be an affiliate or a subsidiary of, nor in any way be owned or controlled by, a health plan or a trade association of health plans. A board member, director, officer, or employee of the independent medical review organization shall not serve as a board member, director, or employee of a health care service plan. A board member, director, or officer of a health plan or a trade association of health plans shall not serve as a board member, director, officer, or employee of an independent medical review organization.

(2) The organization shall submit to the department the following information upon initial application to

contract for purposes of this article and, except as otherwise provided, annually thereafter upon any change to any of the following information:

(A) The names of all stockholders and owners of more than 5 percent of any stock or options, if a publicly held organization.

(B) The names of all holders of bonds or notes in excess of one hundred thousand dollars ($100,000), if any.

(C) The names of all corporations and organizations that the independent medical review organization controls or is affiliated with, and the nature and extent of any ownership or control, including the affiliated organization's type of business.

(D) The names and biographical sketches of all directors, officers, and executives of the independent medical review organization, as well as a statement regarding any past or present relationships the directors, officers, and executives may have with any health care service plan, disability insurer, managed care organization, provider group, or board or committee of a plan, managed care organization, or provider group.

(E) (i) The percentage of revenue the independent medical review organization receives from expert reviews, including, but not limited to, external medical reviews, quality assurance reviews, and utilization reviews.

(ii) The names of any health care service plan or provider group for which the independent medical review organization provides review services, including, but not limited to, utilization review, quality assurance review, and external medical review. Any change in this information shall be reported to the department within five business days of the change.

(F) A description of the review process including, but not limited to, the method of selecting expert reviewers and matching the expert reviewers to specific cases.

(G) A description of the system the independent medical review organization uses to identify and recruit medical professionals to review treatment and treatment recommendation decisions, the number of medical

professionals credentialed, and the types of cases and areas of expertise that the medical professionals are credentialed to review.

(H) A description of how the independent medical review organization ensures compliance with the conflict-of-interest provisions of this section.

(3) The organization shall demonstrate that it has a quality assurance mechanism in place that does the following:

(A) Ensures that the medical professionals retained are appropriately credentialed and privileged.

(B) Ensures that the reviews provided by the medical professionals are timely, clear, and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensures that the method of selecting medical professionals for individual cases achieves a fair and impartial panel of medical professionals who are qualified to render recommendations regarding the clinical conditions and the medical necessity of treatments or therapies in question.

(D) Ensures the confidentiality of medical records and the review materials, consistent with the requirements of this section and applicable state and federal law.

(E) Ensures the independence of the medical professionals retained to perform the reviews through conflict-of-interest policies and prohibitions, and ensures adequate screening for conflicts-of-interest, pursuant to paragraph (5).

(4) Medical professionals selected by independent medical review organizations to review medical treatment decisions shall be physicians or other appropriate providers who meet the following minimum requirements:

(A) The medical professional shall be a clinician knowledgeable in the treatment of the enrollee's medical condition, knowledgeable about the proposed treatment, and familiar with guidelines and protocols in the area of treatment under review.

(B) Notwithstanding any other provision of law, the medical professional shall hold a nonrestricted license in ~~the~~ any state of the United States, and for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review. The independent medical review organization shall give preference to the use of a physician licensed in California as the reviewer, except when training and experience with the issue under review reasonably requires the use of an out-of-state reviewer.

(C) The medical professional shall have no history of disciplinary action or sanctions, including, but not limited to, loss of staff privileges or participation restrictions, taken or pending by any hospital, government, or regulatory body.

(5) Neither the expert reviewer, nor the independent medical review organization, shall have any material professional, material familial, or material financial affiliation with any of the following:

(A) The plan or a provider group of the plan, except that an academic medical center under contract to the plan to provide services to enrollees may qualify as an independent medical review organization provided it will not provide the service and provided the center is not the developer or manufacturer of the proposed treatment.

(B) Any officer, director, or management employee of the plan.

(C) The physician, the physician's medical group, or the independent practice association (IPA) proposing the treatment.

(D) The institution at which the treatment would be provided.

(E) The development or manufacture of the treatment proposed for the enrollee whose condition is under review.

(F) The enrollee or the enrollee's immediate family.

(6) For purposes of this section, the following terms shall have the following meanings:

(A) ‘‘Material familial affiliation’’ means any relationship as a spouse, child, parent, sibling, spouse’s parent, or child’s spouse.

(B) ‘‘Material professional affiliation’’ means any physician-patient relationship, any partnership or employment relationship, a shareholder or similar ownership interest in a professional corporation, or any independent contractor arrangement that constitutes a material financial affiliation with any expert or any officer or director of the independent medical review organization. ‘‘Material professional affiliation’’ does not include affiliations that are limited to staff privileges at a health facility.

(C) ‘‘Material financial affiliation’’ means any financial interest of more than 5 percent of total annual revenue or total annual income of an independent medical review organization or individual to which this subdivision applies. ‘‘Material financial affiliation’’ does not include payment by the plan to the independent medical review organization for the services required by this section, nor does ‘‘material financial affiliation’’ include an expert’s participation as a contracting plan provider where the expert is affiliated with an academic medical center or a National Cancer Institute-designated clinical cancer research center.

(e) The department shall provide, upon the request of any interested person, a copy of all nonproprietary information, as determined by the director, filed with it by an independent medical review organization seeking to contract under this article. The department may charge a nominal fee to the interested person for photocopying the requested information.

SEC. 91. Section 1386 of the Health and Safety Code is amended to read:

1386. (a) The director may, after appropriate notice and opportunity for a hearing, by order, suspend~~,~~ or revoke any license issued under this chapter to a health care service plan or assess administrative penalties if the director determines that the licensee has committed any

of the acts or omissions constituting grounds for disciplinary action.

(b) The following acts or omissions constitute grounds for disciplinary action by the director:

(1) The plan is operating at variance with the basic organizational documents as filed pursuant to Section 1351 or 1352, or with its published plan, or in any manner contrary to that described in, and reasonably inferred from, the plan as contained in its application for licensure and annual report, or any modification thereof, unless amendments allowing the variation have been submitted to, and approved by, the director.

(2) The plan has issued, or permits others to use, evidence of coverage or uses a schedule of charges for health care services which do not comply with those published in the latest evidence of coverage found unobjectionable by the director.

(3) The plan does not provide basic health care services to its enrollees and subscribers as set forth in the evidence of coverage. This subdivision shall not apply to specialized health care service plan contracts.

(4) The plan is no longer able to meet the standards set forth in Article 5 (commencing with Section 1367).

(5) The continued operation of the plan will constitute a substantial risk to its subscribers and enrollees.

(6) The plan has violated or attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter, any rule or regulation adopted by the director pursuant to this chapter, or any order issued by the director.

(7) The plan has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(8) The plan has permitted, or aided or abetted any violation by an employee or contractor who is a holder of any certificate, license, permit, registration or exemption issued pursuant to the Business and Professions Code, or this code which would constitute grounds for discipline

against the certificate, license, permit, registration, or exemption.

(9) The plan has aided or abetted or permitted the commission of any illegal act.

(10) The engagement of a person as an officer, director, employee, associate, or provider of the plan contrary to the provisions of an order issued by the director pursuant to subdivision (c) of this section or subdivision (d) of Section 1388.

(11) The engagement of a person as a solicitor or supervisor of solicitation contrary to the provisions of an order issued by the director pursuant to Section 1388.

(12) The plan, its management company, or any other affiliate of the plan, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in the plan, management company or affiliate, has been convicted of or pleaded nolo contendere to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this chapter. The director may revoke or deny a license hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(13) The plan violates Section 510, 2056, or 2056.1 of the Business and Professions Code.

(14) The plan has been subject to a final disciplinary action taken by this state, another state, an agency of the federal government, or another country, for any act or omission that would constitute a violation of this chapter.

(15) The plan violates the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(c) (1) The director may prohibit any person from serving as an officer, director, employee, associate, or provider of any plan or solicitor firm, or of any management company of any plan, or as a solicitor, if either of the following applies:

(A) The prohibition is in the public interest and the person has committed, caused, participated in, or had

knowledge of a violation of this chapter by a plan, management company, or solicitor firm.

(B) The person was an officer, director, employee, associate, or provider of a plan or of a management company or solicitor firm of any plan whose license has been suspended or revoked pursuant to this section and the person had knowledge of, or participated in, any of the prohibited acts for which the license was suspended or revoked.

(2) A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a plan under this section or may constitute a separate proceeding, subject in either case to subdivision (d).

(d) A proceeding under this section shall be subject to appropriate notice to, and the opportunity for a hearing with regard to, the person affected in accordance with subdivision (a) of Section 1397.

SEC. 92. Section 1507.3 of the Health and Safety Code is amended to read:

1507.3. (a) A residential facility that provides care to adults may obtain a waiver from the department for the purpose of allowing a resident who has been diagnosed as terminally ill by his or her physician or surgeon to remain in the facility when all of the following conditions are met:

(1) The facility agrees to retain the terminally ill resident and to seek a waiver on behalf of the individual, provided the individual has requested the waiver and is capable of deciding to obtain hospice services.

(2) The terminally ill resident has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident, and is in substantial compliance with regulations governing the operation of residential facilities that provide care to adults.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks authorized for a residential facility under this chapter.

(6) The facility has obtained the agreement of those residents who share the same room with the terminally ill resident to allow the hospice caregivers into their residence.

(b) At any time that the licensed hospice, the facility, or the terminally ill resident determines that the resident's condition has changed so that continued residence in the facility will pose a threat to the health and safety ~~to~~ *of* the terminally ill resident or any other resident, the facility may initiate procedures for a transfer.

(c) Nothing in this section is intended to expand the scope of care and supervision for a residential facility, as defined in this chapter, that provides care to adults nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident as authorized by this section.

(d) Nothing in this section shall require any care or supervision to be provided by the residential facility beyond that which is permitted in this chapter.

(e) Nothing in this section is intended to expand the scope of life care contracts or the contractual obligation of continuing care retirement communities as defined in Section 1771.

(f) The department shall not be responsible for the evaluation of medical services provided to the resident by

the hospice and shall have no liability for the independent acts of the hospice.

(g) The department, in consultation with the State Fire Marshal, shall develop and expedite implementation of regulations related to residents who have been diagnosed as terminally ill who remain in the facility and who are nonambulatory that ensure resident safety but also provide flexibility to allow residents to remain in the least restrictive environment.

(h) Nothing in this section shall be construed to relieve a licensed residential facility that provides care to adults of its responsibility, for purposes of allowing a resident who has been diagnosed as terminally ill to remain in the facility, to do both of the following:

(1) With regard to any resident who is bedridden, as defined in subdivision (b) of Section 1569.72, to, within 48 hours of the resident's retention in the facility, notify the local fire authority with jurisdiction in the bedridden resident's location of the estimated length of time the resident will retain his or her bedridden status in the facility.

(2) Secure a fire clearance approval from the city or county fire department, fire district, or any other local agency providing fire protection services, or the State Fire Marshal, whichever has primary fire protection jurisdiction.

SEC. 93. Section 1596.7927 of the Health and Safety Code is amended to read:

1596.7927. (a) (1) There is hereby established a two-year pilot project in San Diego County, upon the adoption of a resolution to that effect by the City Council of San Diego. The program established for purposes of the pilot project authorized by this section shall be known as the ''6 to 6'' program.

(2) The mission of the ''6 to 6'' program shall encompass, but not be limited to, the following extended schoolday activities.

(A) Homework assistance.

(B) Academic enrichment.

(C) Reading.

(D) Tutoring.

(E) Creative and performing arts.

(F) Sports and recreational activities.

(b) The ‘‘6 to 6’’ program shall consist of an extended schoolday program that is operated by a community-based organization, child care agency, or other entity that has demonstrated the ability to provide services to schoolage children pursuant to a contract with a public school district or city. The ‘‘6 to 6’’ program shall meet all of the following conditions:

(1) The program shall be operated on a schoolsite that is in current use by the public school or school district that has collaborated with the City of San Diego for the purpose of providing an extended schoolday program. The program shall serve the children who regularly attend school within the district or districts, exclusively. The hours of operation shall begin before school no earlier than 6:00 a.m. and operate after school to 6:00 p.m., except for evening parent meetings that may be scheduled later than 6:00 p.m.

(2) The city shall ensure all of the following:

(A) That employees of the operator of the ‘‘6 to 6’’ program have had a criminal background check performed by the Department of Justice. In this regard, the city shall ensure that the name of and identifying data about each prospective employee has been submitted to the Department of Justice to determine if the individual is listed in the department’s child abuse index maintained pursuant to Section 11170 of the Penal Code. The city may deny participation of an individual in the ~~‘‘6-to-6’’~~ *“6 to 6”* program if a purported incident of child abuse is determined, after independent investigation, to be substantiated as provided in Section 1522.1. The results of the criminal background check and child abuse index review shall be maintained by the city for purposes of notification of future convictions or suspected child abuse incidents.

(B) That each operator of the ‘‘6 to 6’’ program is familiar with and follows health-related services

procedures as specified in Section 101226 of Title 22 of the California Code of Regulations.

(C) That each operator of the ‘‘6 to 6’’ program maintains emergency information on each child that includes, but is not limited to, the telephone number of the child’s parents or guardians, the telephone number of the child’s physician or the name and telephone number of the child’s health plan or contact person, and an alternative name and *telephone* number.

(3) Any individuals employed as site supervisors shall meet the center director qualifications specified in Section 101515 of Title 22 of the California Code of Regulations.

(4) All individuals employed by the ‘‘6 to 6’’ program shall be over the age of 18 years and shall meet, at a minimum, the minimum qualifications for an instructional aide established for purposes of Section 8483.4 of the Education Code, or the equivalent qualifications.

(5) All staff shall have training in cardiopulmonary resuscitation and first aid.

(6) All staff shall have a negative tuberculosis test or chest X-ray within the last three years.

(7) All staff shall be familiar with and adhere to the emergency procedures established by the school where the program is located.

(8) The contract with the city or school district shall include, but not be limited to, all of the following:

(A) A requirement that site directors meet the requirements for site directors of schoolage day care centers set forth in Section 1597.21.

(B) A requirement that the contractor require a child-to-staff ratio that is the pupil-to-staff ratio set forth in Section 8483.4 of the Education Code. The contract shall contain a provision that requires the contractor to maintain the minimum staffing ratio pursuant to this paragraph and shall contain protocols for maintaining required staffing ratios in the event of illness, accidents, and other emergencies and staffing breaks and other situations of absences.

(C) A requirement that the contractor comply with sign-in and sign-out regulations otherwise applicable by regulation to extended schoolday programs pursuant to Section 101529.1 of Title 22 of the California Code of Regulations.

(D) A complaint process established by the city with protocols that shall include a requirement that the contractor comply with all of the following:

(i) Post, in a visible location at all sites, the names and telephone numbers of the site director and city program contact to each participant's parents or guardian.

(ii) Provide to each participant's parents or guardian the names and telephone numbers specified in clause (i).

(E) A provision guaranteeing the city's timely investigation of accidents and complaints and providing for the immediate administrative leave of contracted employees pending the outcome of the investigation in cases relating to allegations involving a substantial threat to the health and safety of the children under the contractor's care. All parents shall be notified of the complaint process at the time of registration.

(9) All classrooms or portable classrooms utilized by the ''6 to 6'' program providing extended day care shall meet all standards applicable for use during the regular schoolday.

(c) The ''6 to 6'' program shall be planned through a neighborhood community collaborative partnership process that includes the city, school district, school administrators, government agencies, community organizations, parents, youth, and the private sector.

(d) In addition to the exemptions set forth in Section 1596.792, this chapter shall not apply to the ''6 to 6'' program if the contracting city ensures the program is operated in compliance with the requirements of this section.

(e) (1) The city shall secure the services of an independent entity to evaluate the ''6 to 6'' program. The Community Care Licensing Division of the department and the city shall agree upon the independent evaluator. The city shall bear the cost of the evaluation.

(2) The evaluation shall be conducted upon the completion of the pilot project and shall evaluate the health and safety of the participants in the ‘‘6 to 6’’ program, with a particular focus on children ages five to eight years, inclusive.

(3) The evaluation shall include, but not be limited to, the health and safety of the children, information on staff to pupil ratio, site and program monitoring, and extent and progress of participation, tutoring, literacy, and homework assistance.

(4) The independent evaluator designated pursuant to paragraph (1) shall have experience in program evaluation, with a preference for expertise in children’s programs. The independent evaluator shall not have any conflicts of interest with the independent evaluator’s duties pursuant to this section.

(5) The results of the evaluation shall be forwarded to the Legislature.

(6) The city shall maintain any records necessary in order for the evaluation to be completed. The city shall compare the results of the evaluation to local community care licensing data.

(f) No charges or costs associated with the provision of care shall be imposed upon participants in the ‘‘6 to 6’’ program.

(g) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 94. Section 13933 of the Health and Safety Code is amended and renumbered to read:

~~13933.~~

1374.34. (a) Upon receiving the decision adopted by the director pursuant to Section 1374.33 that a disputed health care service is medically necessary, the plan shall immediately contact the enrollee and offer to promptly implement the decision.

(b) A plan shall not engage in any conduct that has the effect of prolonging the independent review process. The engaging in that conduct or the failure of the plan to

promptly implement the decision is a violation of this chapter and, in addition to any other fines, penalties, and other remedies available to the director under this chapter, the plan shall be subject to an administrative penalty of not less than five thousand dollars ($5,000) for each day that the decision is not implemented. Administrative penalties shall be deposited in the State Managed Care Fund.

(c) In any case where an enrollee secured urgent care or emergency services outside of the plan provider network, which services are later found by the independent medical review organization to have been medically necessary pursuant to Section 1374.33, the director shall require the plan to promptly reimburse the enrollee for any reasonable costs associated with those services when the director finds that the enrollee's decision to secure the services outside of the plan provider network prior to completing the plan grievance process or seeking an independent medical review was reasonable under the circumstances and the disputed health care services were a covered benefit under the terms and conditions of the health care service plan contract.

(d) In addition to requiring plan compliance regarding subdivisions (a), (b), and (c), the director shall review individual cases submitted for independent medical review to determine whether any enforcement actions, including penalties, may be appropriate. In particular, where substantial harm to an enrollee has already occurred because of the decision of a plan, or one of its contracting providers, to delay, deny, or modify covered health care services that an independent medical review determines to be medically necessary pursuant to Section 1374.33, the director shall impose penalties.

(e) Pursuant to Section 1368.04, the director shall perform an annual audit of independent medical review cases for the dual purposes of education and the opportunity to determine if any investigative or enforcement actions should be undertaken by the

department, particularly if a plan repeatedly fails to act promptly and reasonably to resolve grievances associated with a delay, denial, or modification of medically necessary health care services when the obligation of the plan to provide those health care services to enrollees or subscribers is reasonably clear.

~~(f) This section shall become operative on January 1, 2001, and then only if Assembly Bill 55 of the 1999-2000 Regular Session is enacted.~~

SEC. 95. Section 25390.4 of the Health and Safety Code is amended to read:

25390.4. (a) A potentially responsible party may file a claim pursuant to paragraph (1) of subdivision (c) of Section 25390.3 only if all of the following apply:

(1) The site is listed pursuant to Section 25356.

(2) The department or the regional board has approved a final remedy for the site under Section 25356.1.

(3) The department and the potentially responsible party have entered into a written, enforceable cleanup agreement or order embodied in a consent order issued pursuant to Section 25355.5 or 25358.3, or the regional board and the potentially responsible party have entered into a written, enforceable cleanup agreement or order that provides for the completion of all response actions necessary at the site, conducted pursuant to this chapter and under the oversight and at the direction of the department or the regional board. The agreement shall provide for the payment by the potentially responsible party of the department's or the regional board's response costs.

(4) The potentially responsible party demonstrates, and the department or the regional board finds, that the potentially responsible party has and will have sufficient financial resources to complete all required response actions.

(5) The potentially responsible party is in compliance with the agreement provided in paragraph (3), and with any other applicable order or agreement pertaining to

the potentially responsible party's obligations with respect to the site.

(6) The potentially responsible party has prepared and provided the information required under subdivision (b) of Section 25390.5.

(7) The claim for reimbursement is for the costs incurred for response actions that were subject to the oversight and approval of the department or the regional board.

(b) The administrator of the fund shall prescribe appropriate application forms and procedures for claims filed pursuant to paragraph (1) of subdivision (c) of Section 25390.3 that shall include all of the following:

(1) Requirements that the claimant provide, at a minimum, all of the following documentation:

(A) A sworn verification of the claim to the best of the information known to the claimant or within the claimant's possession or control.

(B) All records and information pertaining to the site and relevant to the ownership, operation, or control of the site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the site, within the possession or control of the claimant, including, but not limited to, the information specified in subdivision (b) of Section 25358.1.

(C) Certification of all response costs that have been, or will be, incurred at the site by the potentially responsible party, and an estimate of the total cost of completion of the approved final remedy at the site.

(2) Procedures specifying that claims shall be filed only at the two following specific time periods during the performance of a response action:

(A) After the final remedy is selected under Section 25356.1.

(B) After the department or the regional board determines that the response action is complete. The department or the regional board shall not include operation and maintenance activities in determining

whether the response action is complete under this subparagraph.

(c) The administrator of the fund shall annually, on a fiscal year basis, pay claims for reimbursement from the fund filed by potentially responsible parties under paragraph (1) of subdivision (c) of Section 25390.3, in accordance with the following procedures:

(1) Claims for funds available during each fiscal year shall be filed with the administrator by July 30 of that fiscal year.

(2) For sites with multiple responsible parties, all potentially responsible parties that have entered into the cleanup agreement specified in paragraph (3) of subdivision (a) of Section 25390.4 shall file a single claim.

(3) (A) The administrator shall allocate the money available in the fund for the fiscal year among the claims filed by the July 30 deadline. The allocation shall be based on the determination of the orphan share percentage at the facility under the process set forth in Section 25390.5, the long-term financial stability and short-term resources available in the fund, and the administrator's fiduciary duty with respect to the fund. Except as provided in subparagraph (B), the administrator shall pay claims for funds in the order in which they are received.

(B) Notwithstanding subparagraph (A), if an appropriation from the General Fund is made to the fund in any fiscal year, the administrator may alter the order of payment of claims required by subparagraph (A) by using funds appropriated from the General Fund to pay claims based on the threat to public health or the environment posed by a site or the need to improve economic and environmental conditions in redeveloping communities.

(4) The total amount allocated to any one site shall not exceed 10 percent of the total amount available each fiscal year in the fund. If, due to this limit or to the unavailability of funds, a claimant receives only partial or no reimbursement of the orphan share ~~paid to be~~ paid by that claimant, the claim shall be paid in the following fiscal year and shall be given priority over all claims filed

after the claim was initially received, subject to the discretion of the administrator set forth in paragraph (3).

(5) The administrator's proposed allocation shall be subject to public review and comment for 30 days.

(d) The state and the fund have no obligation to provide full reimbursement to a claimant. The fund shall be allocated at the discretion of the administrator, subject to the requirements of this article. In enacting this article, the Legislature intends that claimants be reimbursed only to the extent that money is available in the fund and is allocated to the claimant by the administrator.

SEC. 96. Section 32121.7 of the Health and Safety Code is amended to read:

32121.7. Notwithstanding any other provision of law, the transfer of assets by El Camino Hospital, a California nonprofit public benefit corporation (''El Camino Hospital-Corporation'') that owns and operates El Camino Hospital, located in the City of Mountain View, pursuant to a transfer and ground lease from the El Camino Hospital District pursuant to subdivision (p) of Section 32121, is subject to this section.

(a) Before El Camino Hospital-Corporation transfers 50 percent or more of its assets, at fair market value, to one or more corporations, trusts, associations, partnerships, limited liability companies, or other entities or persons, in sum or by increment, the Board of Directors of El Camino Hospital District shall, by resolution, submit to the voters of the El Camino Hospital District a measure proposing the transfer. The measure shall be placed on the ballot of the special election held upon the request of the El Camino Hospital District or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the Board of El Camino Hospital District. If a majority of the voters voting on the measure vote in favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(b) El Camino Hospital-Corporation may transfer, for the benefit of the community served by the El Camino Hospital District, in the absence of adequate consideration, any part of the assets of El Camino Hospital-Corporation, including without limitation, the El Camino Hospital, the real property, equipment and other fixed assets, current assets, and cash, relating to the operation of El Camino Hospital to one or more nonprofit corporations, trusts, or associations to operate and maintain the assets.

(1) Any transfer of 50 percent or more of El Camino Hospital-Corporation's assets in sum or by increment, pursuant to this subdivision shall be deemed to be for the benefit of the community served by the El Camino Hospital District only if all of the following occur:

(A) The transfer agreement and all arrangements necessary thereto are approved by the Board of Directors of El Camino Hospital District, and the agreement and arrangements are fully discussed in advance of the board's decision to transfer the assets of El Camino Hospital-Corporation, in at least five properly noticed open and public meetings of the Board of Directors of El Camino Hospital District in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(B) The transfer agreement provides that the El Camino Hospital District shall approve all initial board members of the nonprofit corporation, trust, or association, and any subsequent board members as may be specified in the transfer agreement.

(C) The transfer agreement provides that all assets transferred to the nonprofit corporation, trust, or association, and all assets accumulated by the nonprofit corporation, trust, or association during the term of the transfer agreement arising out of or from the operation of the transferred assets shall be transferred back to the El Camino Hospital District upon termination of the transfer agreement, including any extension of the transfer agreement.

(D) The transfer agreement commits the nonprofit corporation, trust, or association to operate and maintain the assets of El Camino Hospital-Corporation for the benefit of the community served by the El Camino Hospital District.

(E) The transfer agreement requires that any funds received from the El Camino Hospital-Corporation at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce the El Camino Hospital-Corporation indebtedness, to acquire needed equipment for the El Camino Hospital-Corporation health care facilities, to operate, maintain, and make needed capital improvements to those health care facilities, to provide supplemental health care services or facilities for the communities served by the El Camino Hospital District, or to conduct other activities that would further a valid public purpose if undertaken directly by the El Camino Hospital District.

(2) A transfer of 33 percent or more but less than 50 percent of the El Camino Hospital-Corporation's assets, in sum or by increment, pursuant to this subdivision shall be deemed to be for the benefit of the communities served by the El Camino Hospital District only if both of the following occur:

(A) The transfer agreement and all arrangements necessary thereto are approved by the Board of Directors of El Camino Hospital District and the agreement and arrangements are fully discussed in advance of the board's decision to transfer the assets of El Camino Hospital-Corporation in at least two properly noticed open and public meetings of the Board of Directors of El Camino Hospital District in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(B) The transfer agreement meets all of the requirements of subparagraphs (B) to (E), inclusive, of paragraph (1).

(3) A transfer of 10 percent or more but less than 33 percent of the El Camino Hospital-Corporation's assets,

in sum or by increment, pursuant to this subdivision shall be deemed to be for the benefit of the communities served by the El Camino Hospital District only if both of the following occur:

(A) The transfer agreement and all arrangements necessary thereto are approved by the Board of Directors of El Camino Hospital District and the agreement and arrangements are fully discussed in advance of the board's decision to transfer the assets of El Camino Hospital-Corporation in at least two properly noticed open and public meetings of the Board of Directors of El Camino Hospital District in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(B) The transfer ~~agreements~~ *agreement* meets all of the requirements of subparagraphs (C) to (E), inclusive, of paragraph (1).

(4) Before El Camino Hospital-Corporation transfers, pursuant to this subdivision, 50 percent or more of its assets to one or more nonprofit corporations, trusts, or associations, in sum or by increment, the Board of Directors of El Camino Hospital District shall, by resolution, submit to the voters of the El Camino Hospital District a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of El Camino Hospital District or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the El Camino Hospital District. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(5) Notwithstanding any other provision of this subdivision, El Camino Hospital-Corporation shall not transfer any portion of its assets to a private nonprofit corporation, trust, or association that is owned or

controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(c) If the El Camino Hospital-Corporation board has previously transferred less than 50 percent of its assets pursuant to this subdivision, before any additional assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets.

(d) For purposes of this section, a ''transfer'' means the transfer of ownership of the assets of El Camino Hospital-Corporation. A lease of the real property or the tangible personal property of El Camino Hospital District shall not be subject to this section except as required under Section 32121.4 or Section 32121.8.

(e) If El Camino Hospital District requests a special election pursuant to subdivision (a) or (b) it shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(f) The limitations set forth in subdivisions (a) and (b) shall not apply to any transfers, sales, leases, or other assignments of assets from El Camino Hospital-Corporation to El Camino Hospital District or entities controlled by El Camino Hospital District, provided that in the case of a transfer to an entity controlled by El Camino Hospital District, that entity shall continue to be governed by this section, imposing the same requirements on such entity as are imposed on El Camino Hospital-Corporation.

(g) Nothing in this section shall limit, modify, or otherwise alter the requirements imposed on El Camino Hospital-Corporation as a nonprofit corporation under the Corporations Code, including Attorney General notice and consent requirements if applicable.

SEC. 97. Section 33333.6 of the Health and Safety Code is amended to read:

33333.6. The limitations of this section shall apply to every redevelopment plan adopted on or before December 31, 1993.

(a) (1) The time limit on the establishing of loans, advances, and indebtedness adopted pursuant to paragraph (2) of subdivision (a) of Section 33333.2 or paragraph (2) of subdivision (a) of Section 33333.4 shall not exceed 20 years from the adoption of the redevelopment plan or January 1, 2004, whichever is later. This limit, however, shall not prevent agencies from incurring debt to be paid from the Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's housing obligations under Section 33413. This limit shall not prevent agencies from refinancing, refunding, or restructuring indebtedness after the time limit if the indebtedness is not increased and the time during which the indebtedness is to be repaid does not exceed the date on which the indebtedness would have been paid.

(2) The time limitation established by this subdivision may be extended, only by amendment of the redevelopment plan, after the agency finds, based on substantial evidence, that: (A) significant blight remains within the project area~~;~~, and (B) this blight cannot be eliminated without the establishment of additional debt. However, this amended time limitation may not exceed 10 years from the time limit established pursuant to this subdivision or the time limit on the effectiveness of the plan established pursuant to subdivision (b), whichever is earlier.

(b) The effectiveness of every redevelopment plan to which this section applies shall terminate at a date which shall not exceed 40 years from the adoption of the redevelopment plan or January 1, 2009, whichever is later. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness and to enforce existing covenants, contracts, or other obligations.

(c) Except as provided in subdivisions (g) and (h), a redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670 after 10 years from the termination of the effectiveness of the redevelopment plan pursuant to subdivision (b).

(d) (1) If plans that had different dates of adoption were merged on or before December 31, 1993, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan. If an amendment to a redevelopment plan added territory to the project area on or before December 31, 1993, the time limitations required by this section shall commence, with respect to the redevelopment plan, from the date of the adoption of the redevelopment plan, and, with respect to the added territory, from the date of the adoption of the amendment.

(2) If plans that had different dates of adoption are merged on or after January 1, 1994, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan.

(e) (1) Unless a redevelopment plan adopted prior to January 1, 1994, contains all of the limitations required by this section and each of these limitations does not exceed the applicable time limits established by this section, the legislative body, acting by ordinance on or before December 31, 1994, shall amend every redevelopment plan adopted prior to January 1, 1994, either to amend an existing time limit that exceeds the applicable time limit established by this section or to establish time limits that do not exceed the provisions of subdivision (a), (b), or (c).

(2) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance required by this section, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any

other provision of this part relating to the amendment of redevelopment plans.

(f) (1) If a redevelopment plan adopted prior to January 1, 1994, contains one or more limitations required by this section, and the limitation does not exceed the applicable time limit required by this section, this section shall not be construed to require an amendment of this limitation.

(2) A redevelopment plan adopted prior to January 1, 1994, that has a limitation shorter than the terms provided in this section may be amended by a legislative body by adoption of an ordinance on or after January 1, 1999, but on or before December 31, 1999, to extend the limitation, provided that the plan as so amended does not exceed the terms provided in this section. The ordinance authorized by this subdivision shall not be used to extend a limitation pursuant to the authority in paragraph (2) of subdivision (a). In adopting this ordinance, neither the legislative body nor the agency is required to comply with Section 33354.6 or Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(g) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit allocation of taxes to an agency to the extent required to eliminate project deficits created under subdivision (e) of Section 33320.5, subdivision (g) of Section 33334.6, or subdivision (d) of Section 33487, in accordance with the plan adopted pursuant thereto for the purpose of eliminating the deficits or to implement a replacement housing program pursuant to Section 33413. In the event of a conflict between these limitations and the obligations under Section 33334.6 or to implement a replacement housing program pursuant to Section 33413, the legislative body shall amend the ordinance adopted pursuant to this section to modify the limitations to the extent necessary to permit compliance with the plan adopted pursuant to subdivision (g) of Section 33334.6 and to allow full expenditure of moneys in the agency's Low and Moderate Income Housing Fund in accordance

with Section 33334.3 or to permit implementation of the replacement housing program pursuant to Section 33413. The procedure for amending the ordinance pursuant to this subdivision shall be the same as for adopting the ordinance under subdivision (e).

(h) This section shall not be construed to affect the validity of any bond, indebtedness, or other obligation, including any mitigation agreement entered into pursuant to Section 33401, authorized by the legislative body, or the agency pursuant to this part, prior to January 1, 1994. This section shall not be construed to affect the right of an agency to receive property taxes, pursuant to Section 33670, to pay the bond, indebtedness, or other obligation.

(i) A redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670, with respect to a redevelopment plan adopted prior to January 1, 1994, after the date identified in subdivision (c) or the date identified in the redevelopment plan, whichever is earlier, except as provided in paragraph (2) of subdivision (f) or in subdivision (h).

(j) The Legislature finds and declares that the amendments made to this section by the act that adds this subdivision are intended to add limitations to the law on and after January 1, 1994, and are not intended to change or express legislative intent with respect to the law prior to that date. It is not the intent of the Legislature to affect the merits of any litigation regarding the ability of a redevelopment agency to sell bonds for a term that exceeds the limit of a redevelopment plan pursuant to law that existed prior to January 1, 1994.

(k) If a redevelopment plan is amended to add territory, the amendment shall contain the time limits required by Section 33333.2.

SEC. 98. Section 33334.17 of the Health and Safety Code is amended to read:

33334.17. (a) The Legislature finds and declares that the cost and availability of land, construction costs, geophysical and environmental constraints, household

incomes, the market for affordable housing, commuting patterns, and other related factors make it difficult for some communities to provide their share of regional housing needs for persons and households at all income levels. While the Legislature finds that each community has a moral and legal obligation to meet these needs, the Legislature recognizes that there are instances where the use of housing funds in one community will result in the construction or rehabilitation of more housing units than in another community. For the sole purpose of increasing the state's supply of affordable housing, it is, therefore, necessary and appropriate that agencies in these communities be permitted, under specified conditions, to use a portion of the moneys in their Low and Moderate Income Housing Funds outside these communities.

(b) Notwithstanding subdivision (c) of Section 33334.3 or Section 33670, an agency may, not more than once every five years, use up to 20 percent of the moneys in its Low and Moderate Income Housing Fund at any one time to develop housing outside the territorial jurisdiction of the agency, pursuant to this section. In determining the amount of funds that can be transferred pursuant to this section, the agency may transfer up to 20 percent of the balance of its Low and Moderate Income Housing Fund moneys reflected in the accounts of the agency at the end of the previous fiscal year, or 20 percent of the average balance of its Low and Moderate Income Housing Fund moneys reflected in the accounts of the agency at the end of each of the previous two years, whichever is greater.

(c) Each of the following conditions shall be met and described in a mutually acceptable, binding contract between the donor agency, the legislative body of the donor community, and the legislative body of the receiving community:

(1) Moneys from the fund shall be used in the receiving community to pay for the direct costs of constructing, rehabilitating, or otherwise assisting housing units which are affordable, for at least 40 years, to lower income households and very low income

households, as defined in Sections 50079.5 and 50105. The donor agency or the receiving community shall not spend money in a Low and Moderate Income Housing Fund in any way which is inconsistent with the requirements of Section 33334.3. The receiving community shall be subject to the same replacement requirements provided in Section 33413 and any relocation requirements applicable pursuant to Section 7260 of the Government Code.

(2) A donor agency's use of this section shall result in the development of a greater number of dwelling units and the accumulation of more financial and nonfinancial resources in the receiving community than if the moneys had been spent in the jurisdiction of the donor agency.

(3) The receiving community shall construct, rehabilitate, or assist housing units within three years of the date it first receives moneys from the donor agency pursuant to this section. This requirement shall be met by documenting, for ~~newly-constructed~~ *newly constructed* units, that a building permit has been issued and all fees have been paid or, for rehabilitated or assisted units, that rehabilitation has been completed or assistance has been provided.

(4) Moneys from the donor agency shall not be spent for administrative costs or offsite improvements.

(5) The contract shall not place a financial burden on the receiving community.

(6) The community of the donor agency shall have, in the current or previous housing element cycle, met 50 percent or more of its share of the region's affordable housing needs, as defined in Section 65584 of the Government Code, in the very low and lower income categories of income groups defined in Section 50052.5. The receiving community shall have, in the current or previous housing element cycle, met 20 percent or more of its share of the region's affordable housing needs, as defined in Section 65584 of the Government Code, in the very low and lower income categories of income groups defined in Section 50052.5.

(7) The donor agency and the receiving community shall have agreed upon mutually acceptable terms and conditions which provide for the receiving community's reimbursement of service and public facilities costs related to any new dwelling units constructed, rehabilitated, or otherwise assisted in the receiving community using the donor agency's funds. The contract shall include a plan and schedule for timely construction, rehabilitation, or assistance of dwelling units, including, in addition to site identification, identification of and timeframes for applying for sufficient subsidy or mortgage financing if units will need a subsidy or mortgage financing, and a finding that sufficient services and public facilities will be provided.

(8) The Attorney General of the State of California or any other interested person shall have authority to enforce the terms of the contract.

(9) If the agency is the agency of a county, the receiving community shall be a city within that county. If the agency is the agency of a city, the receiving community shall be another city in the same county or the county itself. A donor agency may only transfer its funds to a receiving community that is contiguously situated or within five miles of the territory of the community of the donor agency. The sites for the housing to be constructed, rehabilitated, or assisted with transferred funds shall be in the receiving community and within the same housing market area as the jurisdiction of the donor agency. As used in this section, ''housing market area'' means an area determined by a council of governments or by the department pursuant to Section 65584 of the Government Code and based upon market demand for housing, employment opportunities, the availability of suitable sites and public facilities, and commuting patterns. A city or county shall use the same methodology as used by the council of governments pursuant to subdivision (a) of, or by the department pursuant to subdivision (b) of, Section 65584 of the Government Code.

(10) The donor agency shall find that the use of the funds of the donor agency in the receiving community will be of benefit to the project.

(11) No moneys shall be transferred from an agency that has, pursuant to Section 33413, replacement housing requirements that must be met during the preceding three years, unless sufficient moneys are identified to meet those needs.

(12) No moneys shall be transferred from a project area that has an indebtedness to its low- and moderate-income housing fund pursuant to Section 33334.6.

(13) A receiving city or county shall separately account for all moneys transferred and expenditures made pursuant to this section. The receiving city or county shall have the same annual reporting requirements as a redevelopment agency under the provisions of this part.

(14) All unencumbered low- and moderate-income housing funds shall, at the end of three years, be transferred back to the redevelopment agency from which the moneys were generated. At that time, the moneys shall be deemed to be excess surplus pursuant to paragraph (1) of subdivision ~~(d)~~ *(g)* of Section 33334.12.

(15) At least 60 days prior to the transfer, the donor agency and the receiving community shall submit to the department a draft contract. The department shall review the draft contract, including its terms, conditions, and determinations, shall solicit and consider any public comments, and shall report its written findings to the donor agency and receiving community within 45 days of its receipt.

(16) In the case of a challenge brought to any transfer contract pursuant to this section, the court shall use its independent judgment as to the validity of the contract, and as to the terms, conditions, and determinations of that contract. The court shall consider any written findings by the department.

(17) A receiving community shall, in addition to any other provisions of this article, identify in its housing

element sufficient sites to meet its initial low- and moderate-income housing needs and sufficient sites for all units to be constructed, rehabilitated, or assisted with transferred housing funds.

(18) A receiving community shall, at least 45 days prior to the transfer, submit to the department a draft amendment to its housing element to reflect the dwelling units to be constructed, rehabilitated, or assisted with transferred funds.

(19) The donor community and the receiving community shall, at least 45 days prior to the transfer, hold a public hearing, after providing notice pursuant to Section 6062 of the Government Code, to solicit public comments on the draft contract, including its terms, conditions, and determinations.

(20) The receiving community shall certify that it has sufficient authority under Article XXXIV of the California Constitution to allow development of units with transferred funds if Article XXXIV is applicable.

(21) The receiving community shall not use any of the transferred funds to pay for fees or exactions levied solely for development projects constructed, rehabilitated, or assisted with transferred funds.

(22) The receiving community shall not, within three years of the date it first receives transferred funds from the donor agency pursuant to this section, or until units developed with transferred funds are constructed, rehabilitated, or assisted, whichever is longer, enter into a contract to transfer moneys in its Low and Moderate Income Housing Fund to develop housing outside the territorial jurisdiction of the agency pursuant to this section.

(23) Communities in which the donor agency or donor community have transferred a portion of their Low and Moderate Income Housing Fund to another jurisdiction pursuant to this section shall comply with all other state requirements for purposes of meeting its share of the regional housing need, including the requirements of Section 65589.5 of the Government Code.

(d) Before executing a contract pursuant to this section, both the community of the donor agency and the receiving community shall have adopted complete and adequate general plans, including a housing element that is being implemented and that substantially complies with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(e) Both the community of the donor agency and the receiving community shall maintain, until the units are constructed, an adopted housing element that substantially complies with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(f) If a council of governments serves the donor agency, the council shall convene a special committee to review the proposed contract. The committee may revise the contract and shall approve or deny the contract. If the committee denies the contract, the contract shall not be implemented. The donor agency and the receiving community shall pay the council's costs associated with the committee. Neither the donor agency, the donor community, nor the receiving community may expend redevelopment low- and moderate-income housing set-aside funds for costs associated with the committee. Membership of the committee shall include all of the following:

(1) One representative appointed by the executive director of the council of governments.

(2) One representative appointed by the donor agency.

(3) One representative appointed by the receiving community.

(4) Two advocates for housing for persons of low and moderate income appointed by the director of the council of governments.

(g) (1) If no council of governments serves the agency, the director of the department shall convene a special committee. The committee may revise the contract and shall approve or deny the contract. If the

committee denies the contract, the contract shall not be implemented. The donor agency and the receiving community shall pay the department's costs associated with the committee. Neither the donor agency, the donor community, nor the receiving community may expend redevelopment low- and moderate-income housing set-aside funds for costs associated with the committee.

(2) Membership of the committee appointed pursuant to this subdivision shall include all of the following:

(A) One representative appointed by the director.

(B) One representative appointed by the donor agency.

(C) One representative appointed by the receiving community.

(D) Two advocates for housing for persons of low and moderate income appointed by the director.

(h) The expenditure of low- and moderate-income housing funds outside of the territorial jurisdiction of an agency, as authorized by this section, shall, upon the adoption of the agreement, be deemed to be a part of the redevelopment plan of the project area, as if the redevelopment plan had been amended to include the agreement and those expenditures. However, in adopting the agreement pursuant to this section, the agency is not required to comply with Article 12 (commencing with Section 33450).

(i) As used in this section:

(1) ''Donor agency'' means a redevelopment agency which proposes to spend moneys from its Low and Moderate Income Housing Fund outside its jurisdiction.

(2) ''Receiving community'' means a city or county which proposes to accept money from a donor agency's Low and Moderate Income Housing Fund.

(j) On or after January 1, 2000, no donor agency shall enter into a contract pursuant to this section unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 99. Section 44287 of the Health and Safety Code is amended to read:

44287. (a) The state board shall establish grant criteria and guidelines consistent with this chapter for covered vehicle projects as soon as practicable, but not later than January 1, 2000. The adoption of guidelines is exempt from 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 state board shall solicit input and comment from the districts during the development of the criteria and guidelines and shall make every effort to develop criteria and guidelines that are compatible with existing district programs that are also consistent with this chapter. Guidelines shall include protocols to calculate project cost-effectiveness. The grant criteria and guidelines shall include safeguards to ensure that the project generates surplus emissions reductions. Guidelines shall enable and encourage districts to cofund projects that provide emissions reductions in more than one district. The state board shall make draft criteria and guidelines available to the public 45 days before final adoption, and shall hold at least one public meeting to consider public comments before final adoption.

(b) The state board, in consultation with the participating districts, may propose revisions to the criteria and guidelines established pursuant to subdivision (a) as necessary to improve the ability of the program to achieve its goals. A proposed revision shall be made available to the public 45 days before final adoption of the revision and the state board shall hold at least one public meeting to consider public comments before final adoption of the revision.

(c) The state board shall reserve funds for, and disburse funds to, districts from the fund for administration pursuant to this section and Section 44299.1.

(d) The state board shall develop guidelines for a district to follow in applying for the reservation of funds, in accordance with this chapter. It is the intent of the Legislature that district administration of any reserved

funds be in accordance with the project selection criteria specified in Sections 44281, 44282, and 44283 and all other provisions of this chapter. The guidelines shall be established and published by the state board as soon as practicable, but not later than January 1, 2000.

(e) Funds shall be reserved by the state board for administration by a district that adopts an eligible program pursuant to this chapter and offers matching funds at a ratio of one dollar ($1) of matching funds committed by the district or the Mobile Source Air Pollution Reduction Review Committee for every two dollars ($2) committed from the fund. Funds available to the Mobile Source Air Pollution Reduction Review Committee may be counted as matching funds for projects in the South Coast Air Basin only if the committee approves the use of these funds for matching purposes. Matching funds may be any funds under the district's budget authority that are committed to be expended in accordance with the program. Funds committed by a port authority or a local government, in cooperation with a district, to be expended in accordance with the program may also be counted as district matching funds. Matching funds provided by a port authority or a local government may not exceed 30 percent of the total required matching funds in any district that applies for more than three hundred thousand dollars ($300,000) of the state board funds. Only a district, or a port authority or a local government teamed with a district, may provide matching funds.

(f) Notwithstanding subdivision (e), a district need not provide matching funds for state board funds allocated to the district for program outreach activities pursuant to paragraph (4) of subdivision (a) of Section 44299.1.

(g) A district may include within its matching funds a reasonable estimate of direct or in-kind costs for assistance in providing program outreach and application evaluation. In-kind and direct matching funds shall not exceed 15 percent of the total matching funds offered by a district. A district may also include within its matching

funds any money spent on or after February 25, 1999, that would have qualified as matching funds but were not previously claimed as matching funds.

(h) A district desiring a reservation of funds shall apply to the state board following the application guidelines established pursuant to this section. The state board shall approve or disapprove a district application not later than 60 days after receipt. Upon approval of any district application, the state board shall simultaneously approve a reservation of funding for that district to administer. Reserved funds shall be disbursed to the district so that funding of a district-approved project is not impeded.

(i) Notwithstanding any other provision of this chapter, districts and the Mobile Source Air Pollution Reduction Review Committee shall not use funds collected pursuant to Section 41081 or Chapter 7 (commencing with Section 44220), or pursuant to Section 9250.11 of the Vehicle Code, as matching funds to fund a project with stationary or portable engines, locomotives, or marine vessels.

(j) Any funds reserved for a district pursuant to this section are available to the district for a period of not more than two years from the time of reservation. Funds not expended by June 30 of the second calendar year following the date of the reservation shall revert back to the state board as of that June 30, and shall be deposited in the Covered Vehicle Account established pursuant to Section 44299. The funds may then be redirected based on applications to the fund. Regardless of any reversion of funds back to the state board, the district may continue to request other reservations of funds for local administration. Each reservation of funds shall be accounted for separately, and unused funds from each application shall revert back to the state board as specified in this subdivision.

(k) The state board shall specify a date each year when district applications are due. If the eligible applications received in any year oversubscribe the available funds, the state board shall reserve funds on an allocation basis, pursuant to subdivision (b) of Section 44299.1. The state

board may accept a district application after the due date for a period of months specified by the state board. Funds may be reserved in response to those applications, in accordance with this chapter, out of funds remaining after the original reservation of funds for the year.

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(l) Guidelines for a district application shall require information from an applicant district to the extent necessary to meet the requirements of this chapter, but shall otherwise minimize the information required of a district.

(m) A district application shall be reviewed by the state board immediately upon receipt. If the state board determines that an application is incomplete, the applicant shall be notified within 10 working days with an explanation of what is missing from the application. A completed application fulfilling the criteria shall be approved as soon as practicable, but not later than 60 working days after receipt.

(n) The commission, in consultation with the districts, shall establish project approval criteria and guidelines for infrastructure projects consistent with Section 44284 as soon as practicable, but not later than February 15, 2000. The commission shall make draft criteria and guidelines available to the public 45 days before final adoption, and shall hold at least one public meeting to consider public comments before final adoption.

(o) The commission, in consultation with the participating districts, may propose revisions to the criteria and guidelines established pursuant to subdivision (n) as necessary to improve the ability of the program to achieve its goals. A revision may be proposed at any time, or may be proposed in response to a finding made in the annual report on the program published by the state board pursuant to Section 44295. A proposed revision shall be made available to the public 45 days before final adoption of the revision and the commission shall hold at least one public meeting to consider public comments before final adoption of the revision.

SEC. 100. Section 51451 of the Health and Safety Code is amended to read:

51451. The Homebuyer Down Payment Assistance Program and the Rental Assistance Program are hereby established to provide assistance in the amount of the applicable school facility fee on affordable housing developments.

(a) A Homebuyer Down Payment Assistance Program shall provide the following assistance:

(1) Downpayment assistance to the purchaser of newly constructed residential structures in a development project in economically distressed areas in the aggregate amount of school facility fees paid pursuant to one or both of Sections 65995.5 and 65995.7 of the Government Code, less the amount that would be required pursuant to subdivision (b) of Section 65995 of the Government Code notwithstanding Sections 65995.5 and 65995.7 of the Government Code, if all of the following conditions are met:

(A) The development project is located in a county with an unemployment rate that equals or exceeds 125 percent of the state unemployment rate.

(B) Five hundred or more residential structures have been constructed in the county during 1997.

(C) A building permit for an eligible residential structure in the development project is issued by the local agency on or after January 1, 1999.

(D) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

(E) The sales price of the eligible residential structure does not exceed 175 percent of the median sales price of residential structures in the county during the average of the previous five years.

(2) Downpayment assistance to the purchaser of any newly constructed residential structure in the development project in the aggregate amount of school facility fees paid pursuant to one, all, or any combination

of Sections 65995, 65995.5, and 65995.7 of the Government Code, less the amount that would be required pursuant to subdivision (b) of Section 65995 of the Government Code notwithstanding Sections 65995.5 and 65995.7 of the Government Code, if all of the following conditions are met:

(A) The development project is located in the state.

(B) The sales price of the eligible residential structure in the development project does not exceed one hundred ten thousand dollars ($110,000).

(C) A building permit for an eligible residential structure in the development project is issued by the local agency on or after January 1, 1999.

(D) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

(3) Downpayment to the purchaser of any newly constructed residential structure in a development project in the aggregate amount of school facility fees paid pursuant to one, all, or any combination of subdivision (b) of Section 65995 and Sections 65995.5 and 65995.7 of the Government Code for the eligible residential structure if all of the following conditions are met:

(A) The assistance is provided to a qualified first-time homebuyer pursuant to Section 50068.5.

(B) The qualified first-time homebuyer meets the very low or low-income requirements set forth in Sections 50105 and 50079.5, respectively.

(C) A building permit for an eligible residential structure in the development project is issued by the local agency on or after January 1, 1999.

(D) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

(b) A Rental Assistance Program shall provide assistance to the housing sponsor of a housing development in the aggregate amount of the school facility fees paid pursuant to one, all, or any combination of subdivision (b) of Section 65995 and Sections 65995.5 and ~~Section~~ 65995.7 of the Government Code that meets all of the following conditions:

(1) The units are deed restricted to very low income households and are continuously available to or occupied by very low income households at rents that do not exceed those prescribed by Section 50053, except that for the purposes of this subdivision, very low income shall be defined as 30 percent times 30 percent of the median income adjusted for family size appropriate for the unit.

(2) The number of dedicated residential units must equal or exceed the number of units supported by the reimbursed school impact fees determined by the average per unit development cost.

(3) The dedicated residential units are regulated by an appropriate local or state agency for a minimum of 30 years.

(4) A building permit for an eligible residential unit in the development project is issued by the local agency on or after January 1, 1999.

SEC. 101. Section 104550 of the Health and Safety Code is amended to read:

104550. (a) Each manufacturer or importer of cigars shall place, or cause to be placed, labels bearing one of the following warnings on each retail package of cigars packaged for sale after September 1, 2000, and shipped for distribution in California:

> "Warning: Cigars contain many of the same carcinogens found in cigarettes, and cigars are not a safe substitute for smoking cigarettes. This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm."

"Warning: Smoking cigars regularly poses risks of cancer of the mouth, throat, larynx, and esophagus similar to smoking cigarettes. This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm."

"Warning: Smoking cigars causes lung cancer, heart disease, and emphysema, and may complicate pregnancy. This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm."

(b) Commencing September 1, 2000, retail packages of cigars bearing the labels required by subdivision (a) shall be introduced in the distribution chain by the manufacturer or importer so that approximately equal numbers of retail packages of each brand of cigars will bear each of the labels required by subdivision (a) during each 12-month period, subject to any practical limitations of the printing equipment used by the manufacturer or importer ~~for~~ *or* other similar conditions.

(c) For purposes of this article, "cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, but shall not include any roll of tobacco wrapped in any substance which, because of its appearance, the type of tobacco used in the ~~filter~~ *filler*, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

(d) The labels required in subdivision (a) shall appear on the outside surface of retail packages in which cigars are sold or on the cellophane overwrap of the packages and shall be displayed in a clear and reasonable manner so that all letters in the label appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package. Display boxes or containers used to sell individual cigars are required to bear a warning label so that the warning can ordinarily be read by retail customers removing products from that box or container. Labels required by

subdivision (a) may be preprinted, at the discretion of the manufacturer or importer, if firmly attached to the retail package or cellophane overwrap in such a way that the surface of the label is destroyed before the label can be removed from the package or overwrap.

(e) As used in this section, ‘‘retail package’’ means a pack, box, carton, pouch, or container of any kind in which cigars are offered for sale, sold, or otherwise distributed to consumers but does not include cellophane wrappers, tubes, or similar wrappings in which individual cigars are sold, and does not include shipping cartons or other containers not normally purchased by consumers.

(f) The warnings required by this section shall supersede the required warning language as stipulated by the parties in People of the State of California, ex rel. John Van DeKamp v. Safeway Stores, Inc., et al., San Francisco Superior Court No. 897576. It is the intent of the Legislature that the enactment of this section shall not affect the litigation in People of the State of California, et al. v. General Cigar Company, et al., San Francisco Superior Court No. 996780; People of the State of California and American Environmental Safety Institute v. Phillip Morris, Inc., et al., Los Angeles Superior Court No. BC194217; and People of the State of California, et al. v. Tobacco Exporters International (USA), Ltd., et al., San Francisco Superior Court No. 301631.

(g) Any person who violates subdivision (a) shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation in addition to any other penalty established by law. A civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(h) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State of California, by any district attorney, by any city attorney of a city having a population in excess of 750,000 people and with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor.

SEC. 102. Section 104556 of the Health and Safety Code is amended to read:

104556. The definitions contained in this section shall govern the construction of this article.

(a) ‘‘Adjusted for inflation’’ means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) ‘‘Affiliate’’ means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms ‘‘owns,’’ ‘‘is owned,’’ and ‘‘ownership’’ mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term ‘‘person’’ means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(c) ‘‘Allocable share’’ means allocable share as that term is defined in the Master Settlement Agreement.

(d) ‘‘Cigarette’’ means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; ~~or~~ (2) tobacco, in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in this section. ‘‘Cigarette’’ also includes ‘‘roll-your-own’’ tobacco, meaning any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of ‘‘cigarette,’’ 0.09 ounces of ‘‘roll-your-own’’ tobacco shall constitute one individual ‘‘cigarette.’’

(e) ‘‘Master Settlement Agreement’’ means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(f) ‘‘Qualified escrow fund’’ means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where the arrangement requires that the financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds’ principal except as consistent with subdivision (b) of Section 104557.

(g) ‘‘Released claims’’ means released claims as that term is defined in the Master Settlement Agreement.

(h) ‘‘Releasing parties’’ means releasing parties as that term is defined in the Master Settlement Agreement.

(i) ‘‘Tobacco product manufacturer’’ means an entity that after the date of enactment of this article directly, and not exclusively through any affiliate:

(1) Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the importer is an original participating manufacturer as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States)*;* or

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) Becomes a successor of an entity described in paragraph (1) or (2).

The term ‘‘tobacco product manufacturer’’ shall not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within any of paragraphs (1) to (3) of this subdivision.

(j) ‘‘Units sold’’ means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs, or ‘‘roll-your-own’’ tobacco containers, bearing the excise tax stamp of the state. The State Board of Equalization shall adopt any regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.

SEC. 103. Section 104557 of the Health and Safety Code is amended to read:

104557. (a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, after the date of enactment of this article shall do one of the following:

(1) Become a participating manufacturer as that term is defined in Section II(jj) of the Master Settlement Agreement and generally perform its financial obligations under the Master Settlement Agreement; or

(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(A) For 1999: $0.0094241 per unit sold during that year, after the date of the enactment of this article.

(B) For 2000: $0.0104712 per unit sold during that year.

(C) For each of 2001 and 2002: $0.0136125 per unit sold during the year in question.

(D) For each of 2003 through 2006: $0.0167539 per unit sold during the year in question.

(E) For each of 2007 and each year thereafter: $0.0188482 per unit sold during the year in question.

(b) Any tobacco product manufacturer that places funds into escrow pursuant to paragraph (2) of subdivision (a) shall receive the interest or other appreciation on the funds as earned. The funds, other than the interest or other appreciation, shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against that tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under that judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement, ~~,~~ had it been a participating manufacturer, as such payments are determined pursuant to section IX(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(3) To the extent not released from escrow under paragraph (1) or (2) of subdivision (b), funds shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to paragraph (2) of subdivision (a) shall annually certify to the Attorney General that it is in compliance with paragraph (2) of subdivision (a), and subdivision (b). The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section.

Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(1) Be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a civil penalty to be paid to the General Fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a civil penalty to be paid to the General Fund in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(d) Each failure to make an annual deposit required under this section shall constitute a separate violation.

SEC. 104. Section 112040 of the Health and Safety Code is amended to read:

112040. (a) Prior to January 1, 2001, the department, its inspectors and agents, and all local health officers and inspectors may at all times enter any building, room, basement, cellar, or other place occupied or used, or suspected of being occupied or used, for the production, preparation, manufacture, storage, sale, or distribution of food, and inspect the premises and all utensils, implements, receptacles, fixtures, furniture, and machinery used.

(b) Commencing January 1, 2001, only the department, its inspectors and agents, and the local health officers and inspectors of Los Angeles, San Bernardino, and Orange Counties and the City of Vernon may exercise the authority to enter and inspect granted in subdivision (a) except as provided in subdivision (c).

(c) Commencing January 1, 2001, the local health officer or inspector of each city or county, or city and county may exercise the authority to enter and inspect granted in subdivision (a) for the sole purpose of inspecting a food processing establishment that only holds *or* warehouses processed food, provided that:

(1) The warehouse does not manufacture or pack processed food.

(2) The warehouse does not hold fresh seafood, frozen seafood held in bulk for further processing, or fresh or frozen raw shellfish.

(3) The warehouse is not operated as an integral part of a food processing facility required to be registered pursuant to Section 110460.

(4) The warehouse facilities are located entirely within the area under the jurisdiction of the local health department.

(5) The warehouse does not salvage food as the primary business.

(d) All inspections of food processing establishments conducted by local health departments shall be reported to the department within 60 days. The department shall consider this information when scheduling the department's inspection activities.

SEC. 105. Section 115813 of the Health and Safety Code is amended to read:

115813. (a) The board, in consultation with the State Department of Education, the State Department of Health Services, the Department of Conservation, the Department of Parks and ~~Recreations~~ *Recreation*, the League of California Cities, the California State Association of Counties, the California Park and Recreation Society, and other appropriate entities, including, but not limited to, beverage container

recyclers, waste haulers, special districts, school districts, county superintendents of schools, nonprofit organizations, and private companies, shall develop a program to provide grants to local agencies to upgrade, repair, refurbish, install, or replace public playground facilities and promote the use of recycled materials in those playground facilities.

(b) The board shall administer grants for purposes of this article, which shall be awarded pursuant to a request for application process.

(c) Grants shall be awarded pursuant to this article to local agencies, including, but not limited to, schools, school districts, cities, counties, cities and counties, special districts, and joint ventures between school districts and other local agencies, including, but not limited to, park districts, for the purpose of improving or replacing their public playgrounds.

(d) To be eligible for a grant pursuant to this article, a local agency shall do both of the following:

(1) Demonstrate its ability to provide a 50 percent match, either through public or private funds or in-kind contributions. The matching requirement may be reduced to a 25 percent match, either through public or private funds or in-kind contributions, upon a finding by the board that the 50 percent matching requirement would impose an extreme financial hardship on the local agency applying for the grant.

(2) Guarantee that 50 percent of the grant funds will be used for the improvement or replacement of playground equipment or facilities through the use of recycled materials.

(e) No grant made pursuant to this article shall exceed the sum of twenty-five thousand dollars ($25,000) for any one playground.

SEC. 106. Section 128375 of the Health and Safety Code is amended to read:

128375. (a) The Legislature hereby finds and declares that an adequate supply of professional nurses is critical to assuring the health and well-being of the

citizens of California, particularly those who live in medically underserved areas.

(b) The Legislature further finds that changes in the health care system of this state have increased the need for more highly skilled nurses. These changes include advances in medical technology and pharmacology, that necessitate the use of more highly skilled nurses in acute care facilities. Further, the containment of health care costs has led to increased reliance on home health care and outpatient services and to a higher proportion of more acutely ill patients in acute care facilities. Long-term care facilities also need more highly educated nursing personnel. Both shifts require a larger number of skilled nursing personnel.

(c) The Legislature further finds and declares that in nursing, as in other professions, certain populations are underrepresented. The Legislature also finds and declares that it is especially important that nursing care be provided in a way that is sensitive to the sociocultural variables that affect a person's health. The Legislature recognizes that the financial burden of obtaining a baccalaureate degree is considerable and that persons from families lacking adequate financial resources may need financial assistance to complete a baccalaureate degree.

(d) The Legislature further finds and declares that approximately 54.1 percent of all Californians live in rural and urban areas that have been designated underserved. The shortage of professional nurses in these areas makes it more difficult for those citizens to obtain health care and more difficult to attract and retain other health care professionals to those areas.

(e) The Legislature further finds and declares that since July 1, 1989, the Registered Nurse Education Fund has collected five million two hundred eight thousand five hundred seventy-four dollars ($5,208,574) to support the education of professional nurses and nursing students in California.

(f) The Legislature further finds and declares that since 1990, the Health Professions Education Foundation

has awarded over four million dollars ($4,000,000) in scholarship and loan repayment to 754 nursing students and nurses in California.

(g) The Legislature further finds and declares that 107 award recipients are baccalaureate of science degree prepared nurses who have made a commitment to practice in medically underserved areas of California for a period of two years in exchange for loan repayment.

(h) The Legislature further finds that 485 of the award recipients are baccalaureate of science degree nursing students. Since 1990, 199 nurses have completed their contractual obligation with the Office of Statewide *Health* Planning and Development.

(i) The Legislature further finds and declares that, since 1994, 112 associate degree nursing scholarship awards have been made to students who have signed a contract with the office to complete a baccalaureate of science degree within five years of completing their associate degree. Six students have completed the articulations pilot program.

(j) The Legislature further finds that recipients of the foundation's financial assistance program have come from very diverse backgrounds. Scholarships have been awarded to African-Americans, American Indians, Asian-Pacific Islanders, Caucasians, Hispanic-Americans, and other individuals.

SEC. 107. Section 384 of the Insurance Code is amended to read:

384. (a) A certificate of insurance or verification of insurance provided as evidence of insurance in lieu of an actual copy of the insurance policy shall contain the following statements or words to the effect of:

This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies

described herein is subject to all the terms, exclusions and conditions of ~~such~~ *the* policies.

(b) This section is not applicable to a surplus line broker certificate as defined in Section 48.

SEC. 108. Section 791.02 of the Insurance Code is amended to read:

791.02. As used in this act:

(a) (1) ''Adverse underwriting decision'' means any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

(A) A declination of insurance coverage.

(B) A termination of insurance coverage.

(C) Failure of an agent to apply for insurance coverage with a specific insurance institution that the agent represents and that is requested by an applicant.

(D) In the case of a property or casualty insurance coverage:

(i) Placement by an insurance institution or agent of a risk with a residual market mechanism, with an unauthorized insurer, or with an insurance institution that provides insurance to other than preferred or standard risks, if in fact the placement is at other than a preferred or standard rate. An adverse underwriting decision, in case of placement with an insurance institution ~~which~~ *that* provides insurance to other than preferred or standard risks, shall not include ~~such~~ placement ~~where~~ *if* the applicant or insured did not specify or apply for placement as a preferred or standard risk or placement with a particular company insuring preferred or standard risks, or

(ii) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished.

(E) In the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(2) Notwithstanding paragraph (1), any of the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless

provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(A) The termination of an individual policy form on a class or statewide basis.

(B) A declination of insurance coverage solely because ~~such~~ coverage is not available on a class or statewide basis.

(C) The rescission of a policy.

(b) ‘‘Affiliate’’ or ‘‘affiliated’’ means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(c) ‘‘Agent’’ means any person licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(d) ‘‘Applicant’’ means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(e) ‘‘Consumer report’’ means any written, oral, or other communication of information bearing on a natural person’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(f) ‘‘Consumer reporting agency’’ means any person who:

(1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee.

(2) Obtains information primarily from sources other than insurance institutions.

(3) Furnishes consumer reports to other persons.

(g) ‘‘Control,’’ including the terms ‘‘controlled by’’ or ‘‘under common control with,’’ means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by

contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(h) ‘‘Declination of insurance coverage’’ means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(i) ‘‘Individual’’ means any natural person who *is any of the following*:

(1) In the case of property or casualty insurance, is a past, present, or proposed named insured or certificate holder~~;~~.

(2) In the case of life or disability insurance, is a past, present, or proposed principal insured or certificate holder~~;~~.

(3) Is a past, present, or proposed policyowner~~;~~.

(4) Is a past or present applicant~~;~~.

(5) Is a past or present claimant~~; or~~.

(6) Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this act.

(j) ‘‘Institutional source’’ means any person or governmental entity that provides information about an individual to an agent, insurance institution, or insurance-support organization, other than *any of the following*:

(1) An agent~~,~~.

(2) The individual who is the subject of the information~~, or~~.

(3) A natural person acting in a personal capacity rather than in a business or professional capacity.

(k) ‘‘Insurance institution’’ means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society, or other person engaged in the business of insurance. ‘‘Insurance institution’’ shall not include agents, insurance-support organizations, or health care service plans regulated pursuant to the Knox-Keene Health Care Service Plan Act, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(*l*) ‘‘Insurance-support organization’’ means:

(1) Any person who regularly engages, in whole or in part, in the business of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including *either of the following*:

(A) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction~~, or~~.

(B) The collection of personal information from insurance institutions, agents, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(2) Notwithstanding paragraph (1), the following persons shall not be considered ‘‘insurance-support organizations’’: agents, governmental institutions, insurance institutions, medical care institutions, medical professionals, and peer review committees.

(m) ‘‘Insurance transaction’’ means any transaction involving insurance primarily for personal, family, or household needs rather than business or professional needs that entails *either of the following*:

(1) The determination of an individual’s eligibility for an insurance coverage, benefit, or payment~~, or~~.

(2) The servicing of an insurance application, policy, contract, or certificate.

(n) ‘‘Investigative consumer report’’ means a consumer report or portion thereof in which information about a natural person’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person’s neighbors, friends, associates, acquaintances, or others who may have knowledge concerning those items of information.

(o) ‘‘Medical care institution’’ means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals,

skilled nursing facilities, home health agencies, medical clinics, rehabilitation agencies, and public health agencies.

(p) ‘‘Medical professional’’ means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, optometrist, physical or occupational therapist, psychiatric social worker, clinical dietitian, clinical psychologist, chiropractor, pharmacist, or speech therapist.

(q) ‘‘Medical record information’’ means personal information that *is both of the following*:

(1) Relates to an individual’s physical or mental condition, medical history or medical treatment~~, and~~.

(2) Is obtained from a medical professional or medical care institution, from the individual, or from the individual’s spouse, parent, or legal guardian.

(r) ‘‘Person’’ means any natural person, corporation, association, partnership, limited liability company, or other legal entity.

(s) ‘‘Personal information’’ means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual’s character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. ‘‘Personal information’’ includes an individual’s name and address and ‘‘medical record information’’ but does not include ‘‘privileged information.’’

(t) ‘‘Policyholder’’ means any person who *is any of the following*:

(1) In the case of individual property or casualty insurance, is a present named insured~~;~~.

(2) In the case of individual life or disability insurance, is a present policyowner~~; or~~.

(3) In the case of group insurance, which is individually underwritten, is a present group certificate holder.

(u) ‘‘Pretext interview’’ means an interview whereby a person, in an attempt to obtain information about a

natural person, performs one or more of the following acts:

(1) Pretends to be someone he or she is not~~,~~.

(2) Pretends to represent a person he or she is not in fact representing~~,~~.

(3) Misrepresents the true purpose of the interview~~, or~~.

(4) Refuses to identify himself or herself upon request.

(v) ‘‘Privileged information’’ means any individually identifiable information that both:

(1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual.

(2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. However, information otherwise meeting the requirements of this division shall nevertheless be considered ‘‘personal information’’ under this act if it is disclosed in violation of Section 791.13.

(w) ‘‘Residual market mechanism’’ means the California FAIR Plan Association, Chapter 10 (commencing with Section 10101) of Part 1 of Division 2, and the assigned risk plan, Chapter 1 (commencing with Section 11550) of Part 3 of Division 2.

(x) ‘‘Termination of insurance coverage’’ or ‘‘termination of an insurance policy’’ means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(y) ‘‘Unauthorized insurer’’ means an insurance institution that has not been granted a certificate of authority by the director to transact the business of insurance in this state.

(z) ‘‘Commissioner’’ means the Insurance Commissioner.

SEC. 109. Section 1035 of the Insurance Code is amended to read:

1035. (a) In any proceeding under this article, the commissioner ~~shall have the power to~~ *may* appoint and employ under his or her hand and official seal, special

deputy commissioners, as his or her agents, and to employ clerks and assistants and to give to each of them those powers that he or she deems necessary. Upon appointing or employing special deputy commissioners, clerks, or assistants, the commissioner shall notify the Chair of the Joint Budget Committee of the Legislature, by letter, of the action. The costs of employing special deputy commissioners, clerks, and assistants appointed to carry out this article, and all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of that person under this article, shall be fixed by the commissioner, subject to the approval of the court, and shall be paid out of the assets of that person to the department. In the event the property of that person does not contain cash or liquid assets sufficient to defray the cost of the services required to be performed under the terms of this article, the commissioner may at any time or from time to time pay the cost of those services out of the appropriation for the maintenance of the department, but not out of the assets of other estates. Any amounts so paid shall be deemed ~~expense~~ *expenses* of administration and shall be repaid to the fund out of the first available moneys in the estate.

(b) Any person appointed by the commissioner to serve in the capacity of chief executive officer of the department's Conservation and Liquidation Office shall be subject to confirmation by the Senate.

SEC. 110. 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 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 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) ~~(A)~~ *Meets one of the following requirements with respect to its financial stability:*

(A) Has capital and surplus that together total at least fifteen million dollars ($15,000,000). ''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 fifteen million dollars ($15,000,000) 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 any 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 any 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. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in

the calculation of surplus. If less than fifteen million dollars ($15,000,000), the commissioner has affirmatively found that the capital and surplus is 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 any parent company, the underwriting profit and investment income trends, and the record of claims payment and claims handling practices of the nonadmitted insurer~~, or~~.

(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 fifteen million dollars ($15,000,000) 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 any 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 any 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. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit ~~will~~ *shall* not qualify as assets in the calculation of surplus. In the case of an Insurance Exchange which maintains funds for the protection of all Insurance Exchange policyholders, 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 fifteen million dollars ($15,000,000). In the case of Insurance Exchanges that do not maintain funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placement of risks resident, located, or to be performed in this state shall meet the capital and surplus requirements of subparagraph (A) of this paragraph.

(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) of paragraph (2). 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 eligible 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 which 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 any calculation.

(2) In the case of a syndicate seeking eligibility 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) ~~of subdivision (b)~~.

(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) 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, cash-flows, 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) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent ISI 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, any 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 which 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 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) 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 any affiliated entity 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 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 any 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 ~~analysis~~ *analyses*, findings, or ~~conclusion~~ *conclusions* made by the National Association of Insurance Commissioners (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 any 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 eligible 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. Any insurer receiving approval as an eligible 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 eligible 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 eligibility. Upon receipt of notice, the surplus line broker shall make no further placements with the insurer. Nothing in this subdivision shall limit the commissioner's discretion to withdraw an insurer's eligibility.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that any insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the eligibility 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 an insured or prospective insured of the insurer, or, in the case of an application by an insurer to be placed on the list which 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. Any 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 any 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 so 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) any insurer that has failed or refused to timely provide documents required by this section, or any 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 any other statements or reports required by this chapter, the commissioner may also address to any licensee a written request for full and complete information respecting the financial stability, reputation and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the

transaction of insurance business. 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, order the licensee in writing to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with the nonadmitted insurer on behalf of any person. Any placement in the nonadmitted insurer made by a licensee after receipt of that order is a violation of this chapter. The commissioner may issue an order 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.

(i) The commissioner shall require, at least annually, the submission of records and statements as are 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.

(k) (1) Insurance may be placed on a limited basis with insurers not on the list established 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 appear on the list of 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 unlisted insurer

or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the unlisted 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 unlisted insurer, and annually thereafter for as long as the broker continues to make placements with the unlisted 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 unlisted insurer has for any reason been objected to by the commissioner pursuant to this section, removed from the list, or denied placement on the list.

(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) Unlisted 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 not listed by the commissioner in situations where it is not commercially possible to fully obtain that coverage from either admitted or listed 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 listed pursuant to this section, whether the insured is an individual insured, or a group created primarily for the purpose of purchasing insurance.

(*l*) As used in this section:

(1) ‘‘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.

(2) ‘‘Domiciliary jurisdiction’’ means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(3) ‘‘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.

(4) ‘‘IID’’ means the International Insurers Department.

(5) ‘‘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 Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 (commencing with Section 125) of Part 1 of Division 1), except insurers that are risk retention groups as defined by those acts.

(6) ''ISI'' means Insurance Solvency International.

(7) ''Licensee'' means a surplus line broker as defined in Section 47.

(8) ''NAIC'' means the National Association of Insurance Commissioners or its successor organization.

(9) ''NAIIO'' means the Nonadmitted Alien Insurer Information Office of the NAIC or its successor office.

(10) ''State'' means any state of the United States; the District of Columbia; a commonwealth, or a territory.

(11) ''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 penalty of perjury under California law, that the assertions made in the document are true.

(m) With respect to a nonadmitted insurer that is listed as an authorized surplus line insurer as of December 31, 1994, pursuant to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the California Code of Regulations, this section shall not be effective until the subsequent expiration of the listing of that insurer. Nothing in the bill that amended this section during the 1994 portion of the 1993–94 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. 111. Section 1785.89 of the Insurance Code is amended and renumbered to read:

~~1785.89.~~

1758.89. As used in this article, the following definitions have the following meanings:

(a) (1) ‘‘License period’’ means all of that two-year period beginning as described in subparagraph (A) or (B) of paragraph (2), as applicable, and ending the second succeeding year on the last calendar day of the month in which the initial license was issued.

(2) A license period shall be determined for each person as follows:

(A) Upon initial licensing, the license period starts on the date the license is issued.

(B) Subsequently, the license period starts the first day of the month following the month in which the initial license was issued.

(3) A license is required to be renewed on or before the expiration date of the license period.

(b) ‘‘Rental vehicle’’ or ‘‘vehicle’’ means a motor vehicle operated by a driver who is not required to possess a commercial driver’s license to operate the motor vehicle and the motor vehicle is either of the following:

(1) A private passenger motor vehicle, including a passenger van, minivan, or sports utility vehicle.

(2) A cargo vehicle, including a cargo van, pickup truck, or truck with a gross vehicle weight of less than 26,000 pounds.

(c) ‘‘Renter’’ means any person who obtains the use of a vehicle from a rental car company under the terms of a rental agreement.

(d) ‘‘Rental car company’’ means any person in the business of renting vehicles to the public.

(e) ‘‘Rental agreement’’ means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental car company.

(f) ‘‘Rental car agent’’ means a person or organization licensed pursuant to this article to offer insurance in

connection with and incidental to rental car agreements on behalf of an insurer authorized to write those types of insurance in this state.

(g) ‘‘Endorsee’’ means an unlicensed employee of a rental car agent who meets the requirements of this article.

SEC. 112. Section 1874.81 of the Insurance Code is amended to read:

1874.81. (a) The commissioner shall adopt emergency regulations establishing the criteria that shall be used to award grants to district attorneys under Section 1874.8. In addition to the requirements of subdivision (b) of Section 1874.8, the criteria shall include all of the following:

(1) Suggested ratios of investigators to attorneys that the commissioner believes would result in an effective use of funds provided through a grant, taking into consideration the enforcement plans that the commissioner anticipates will be proposed by grantees.

(2) Administrative expenses that the commissioner deems allowable, both as a percentage of a grant and by category of expense.

(3) Benchmarks suitable for measuring the attainment of the objectives of a grant.

(4) Standard data and reporting formats that the commissioner shall require all grantees to provide when reporting to the commissioner about grants.

(5) Any other criteria deemed by the commissioner to be necessary for the efficient and effective administration of this program, including a commitment for full coordination and cooperation with all organizations funded by this chapter.

(b) The regulations required by subdivision (a) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340)~~,~~ *of* Part 1~~,~~ *of* Division 3~~,~~ *of* Title 2 of the Government Code), and the adoption of those regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 113. Section 10123.68 of the Insurance Code is amended to read:

10123.68. (a) When requested by an insured or contracting health professional who is treating an insured, a disability insurer that covers hospital, medical, or surgical expenses shall authorize a second opinion by an appropriately qualified health care professional. Reasons for a second opinion to be provided or authorized shall include, but are not limited to, the following:

(1) If the insured questions the reasonableness or necessity of recommended surgical procedures.

(2) If the insured questions a diagnosis or plan of care for a condition that threatens loss of life, loss of limb, loss of bodily function, or substantial impairment, including, but not limited to, a serious chronic condition.

(3) If clinical indications are not clear or are complex and confusing, a diagnosis is in doubt due to conflicting test results, or the treating health professional is unable to diagnose the condition and the insured requests an additional diagnosis.

(4) If the treatment plan in progress is not improving the medical condition of the insured within an appropriate period of time given the diagnosis and plan of care, and the insured requests a second opinion regarding the diagnosis or continuance of the treatment.

(5) If the insured has attempted to follow the plan of care or consulted with the initial provider concerning serious concerns about the diagnosis or plan of care.

(b) For purposes of this section, an appropriately qualified health care professional is a primary care physician or a specialist who is acting within his or her scope of practice and who possesses a clinical background, including training and expertise, related to the particular illness, disease, condition or conditions associated with the request for a second opinion.

(c) If an insured or participating health professional who is treating an insured requests a second opinion pursuant to this section, an authorization or denial shall be provided in an expeditious manner. When the insured's condition is such that the insured faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or lack of timeliness that would be detrimental to the insured's life or health or could jeopardize the insured's ability to regain maximum function, the second opinion shall be rendered in a timely fashion appropriate to the nature of the insured's condition, ~~no~~ *not* to exceed 72 hours after the insurer's receipt of the request, whenever possible. Each insurer shall file with the Department of Insurance timelines for responding to requests for second opinions for cases involving emergency needs, urgent care, and other requests by July 1, 2000, and within 30 days of any amendment to the timelines. The timelines shall be made available to the public upon request.

(d) If an insurer approves a request by an insured for a second opinion, the insured shall be responsible only for the costs of applicable copayments that the insurer requires for similar referrals.

(e) If the insured is requesting a second opinion about care from his or her primary care physician, the second opinion shall be provided by an appropriately qualified health care professional of the insured's choice who is contracted with the insurer.

(f) If the insured is requesting a second opinion about care from a specialist, the second opinion shall be provided by any provider of the same or equivalent specialty, of the insured's choice, within the insurer's provider network, if the insurance contract limits second opinions to within a network.

(g) The insurer may limit second opinions to its network of providers if the insurance contract limits the benefit to within a network of providers and there is a participating provider who meets the standard specified in subdivision (b). If there is no participating provider

who meets this standard, then the insurer shall authorize a second opinion by an appropriately qualified health professional outside of the insurer's provider network. In approving a second opinion either inside or outside of the insurer's provider network, the insurer shall take into account the ability of the insured to travel to the provider.

(h) The insurer shall require the second opinion health professional to provide the insured and the initial health professional with a consultation report, including any recommended procedures or tests that the second opinion health professional believes appropriate. Nothing in this section shall be construed to prevent the insurer from authorizing, based on its independent determination, additional medical opinions concerning the medical condition of an insured.

(i) If the insurer denies a request by an insured for a second opinion, it shall notify the insured in writing of the reasons for the denial and shall inform the insured of the right to dispute the denial, and the procedures for exercising that right.

(j) If the insurance contract limits health care services to within a network of providers, in order for coverage to be in force, the insured shall obtain services only from a provider who is participating in, or under contract with, the insurer pursuant to the specific insurance contract under which the insured is entitled to health care service benefits.

(k) This section shall not apply to any policy or contract of disability insurance that covers hospital, medical, or surgical expenses and that does not limit second opinions, subject to all other terms and conditions of the contract.

(*l*) This section shall not apply to accident-only, specified disease, or hospital indemnity health insurance policies.

SEC. 114. Section 10140 of the Insurance Code is amended and renumbered to read:

~~10140.~~

10139.1. Nothing in this article applies to blanket loan agreements in which the lender takes a security interest in the borrower's assets to secure the loan.

SEC. 115. Section 10141 of the Insurance Code is amended and renumbered to read:

~~10141.~~

10139.2. Any notice required by this article shall be deemed to have been given if addressed to the recipient's last known address and deposited, first class postage paid, in the United States mail not less than five calendar days prior to the date on which notice is required.

SEC. 116. Section 10145.3 of the Insurance Code is amended to read:

10145.3. (a) Every disability insurer that covers hospital, medical, or surgical benefits shall provide an external, independent review process to examine the insurer's coverage decisions regarding experimental or investigational therapies for individual insureds who meet all of the following criteria:

(1) (A) The insured has a life-threatening or seriously debilitating condition.

(B) For purposes of this section, ''life-threatening'' means either or both of the following:

(i) Diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted.

(ii) Diseases or conditions with potentially fatal outcomes, where the end point of clinical intervention is survival.

(C) For purposes of this section, ''seriously debilitating'' means diseases or conditions that cause major irreversible morbidity.

(2) The insured's physician certifies that the insured has a condition, as defined in paragraph (1), for which standard therapies have not been effective in improving the condition of the insured, for which standard therapies would not be medically appropriate for the insured, or for which there is no more beneficial standard therapy covered by the insurer than the therapy proposed pursuant to paragraph (3).

(3) Either (A) the insured's contracting physician has recommended a drug, device, procedure, or other therapy that the physician certifies in writing is likely to be more beneficial to the insured than any available standard therapies, or (B) the insured, or the insured's physician who is a licensed, board-certified or board-eligible physician qualified to practice in the area of practice appropriate to treat the insured's condition, has requested a therapy that, based on two documents from the medical and scientific evidence, as defined in subdivision (d), is likely to be more beneficial for the insured than any available standard therapy. The physician certification pursuant to this subdivision shall include a statement of the evidence relied upon by the physician in certifying his or her recommendation. Nothing in this subdivision shall be construed to require the insurer to pay for the services of a noncontracting physician, provided pursuant to this subdivision, that are not otherwise covered pursuant to the contract.

(4) The insured has been denied coverage by the insurer for a drug, device, procedure, or other therapy recommended or requested pursuant to paragraph (3), unless coverage for the specific therapy has been excluded by the insurer's contract.

(5) The specific drug, device, procedure, or other therapy recommended pursuant to paragraph (3) would be a covered service except for the insurer's determination that the therapy is experimental or under investigation.

(b) The insurer's decision to deny, delay, or modify experimental or investigational therapies shall be subject to the independent medical review process established under Article ~~12~~ *5.55* (commencing with Section 1374.30) of Chapter ~~2~~ *2.2* of Division 2 of the Health and Safety Code, except that in lieu of the information specified in subdivision (i) of Section 1374.30, an independent medical reviewer shall base his or her determination on relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence defined in subdivision (d).

(c) The independent medical review process shall also meet the following criteria:

(1) The insurer shall notify eligible insureds in writing of the opportunity to request the external independent review within five business days of the decision to deny coverage.

(2) If the insured's physician determines that the proposed therapy would be significantly less effective if not promptly initiated, the analyses and recommendations of the experts on the panel shall be rendered within seven days of the request for expedited review. At the request of the expert, the deadline shall be extended by up to three days for a delay in providing the documents required. The timeframes specified in this paragraph shall be in addition to any otherwise applicable timeframes contained in subdivision (c) of Section 1374.33 of the Health and Safety Code.

(3) Each expert's analysis and recommendation shall be in written form and state the reasons the requested therapy is or is not likely to be more beneficial for the insured than any available standard therapy, and the reasons that the expert recommends that the therapy should or should not be covered by the insurer, citing the insured's specific medical condition, the relevant documents, and the relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence as defined in subdivision (d), to support the expert's recommendation.

(4) Coverage for the services required under this section shall be provided subject to the terms and conditions generally applicable to other benefits under the contract.

(d) For the purposes of subdivision (b), ''medical and scientific evidence'' means the following sources:

(1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

(2) Peer-reviewed literature, biomedical compendia and other medical literature that meet the criteria of the National Institutes of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline and MEDLARS data base Health Services Technology Assessment Research (HSTAR).

(3) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861(t)(2) of the Social Security Act.

(4) The following standard reference compendia: The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics and The United States Pharmacopoeia-Drug Information.

(5) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including the Federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services.

(6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

(e) The independent review process established by this section shall be required on and after January 1, 2001.

~~(f) This section shall become operative on January 1, 2001, and then only if Assembly Bill 55 of the 1999-2000 Regular Session is enacted.~~

SEC. 117. Section 10169 of the Insurance Code is amended to read:

10169. (a) Commencing January 1, 2001, there is hereby established in the department the Independent Medical Review System.

(b) For the purposes of this chapter, ‘‘disputed health care service’’ means any health care service eligible for coverage and payment under a disability insurance contract that has been denied, modified, or delayed by a decision of the insurer, or by one of its contracting providers, in whole or in part due to a finding that the service is not medically necessary. A decision regarding a disputed health care service relates to the practice of medicine and is not a coverage decision. A disputed health care service does not include services provided by a group policy of vision-only or dental-only coverage, except to the extent that (1) the service involves the practice of medicine, or (2) is provided pursuant to a contract with a disability insurer. If an insurer, or one of its contracting providers, issues a decision denying, modifying, or delaying health care services, based in whole or in part on a finding that the proposed health care services are not a covered benefit under the contract that applies to the insured, the statement of decision shall clearly specify the provision in the contract that excludes that coverage.

(c) For the purposes of this chapter, ‘‘coverage decision’’ means the approval or denial of health care services by an insurer, or by one of its contracting entities, substantially based on a finding that the provision of a particular service is included or excluded as a covered benefit under the terms and conditions of the disability insurance contract. A coverage decision does not encompass a plan or contracting provider decision regarding a disputed health care service.

(d) (1) All insured grievances involving a disputed health care service are eligible for review under the Independent Medical Review System if the requirements of this article are met. If the department finds that an insured grievance involving a disputed health care service does not meet the requirements of this article for review under the Independent Medical Review System, the insured request for review shall be treated as a request for the department to review the grievance. All other insured grievances, including grievances involving

coverage decisions, remain eligible for review by the department.

(2) In any case in which an insured or provider asserts that a decision to deny, modify, or delay health care services was based, in whole or in part, on consideration of medical necessity, the department shall have the final authority to determine whether the grievance is more properly resolved pursuant to an independent medical review as provided under this article.

(3) The department shall be the final arbiter when there is a question as to whether an insured grievance is a disputed health care service or a coverage decision. The department shall establish a process to complete an initial screening of an insured grievance. If there appears to be any medical necessity issue, the grievance shall be resolved pursuant to an independent medical review as provided under this article.

(e) Every disability insurance contract that is issued, amended, renewed, or delivered in this state on or after January 1, 2000, shall, effective~~,~~ January 1, 2001, provide an insured with the opportunity to seek an independent medical review whenever health care services have been denied, modified, or delayed by the insurer, or by one of its contracting providers, if the decision was based in whole or in part on a finding that the proposed health care services are not medically necessary. For purposes of this article, an insured may designate an agent to act on his or her behalf. The provider may join with or otherwise assist the insured in seeking an independent medical review, and may advocate on behalf of the insured.

(f) Medicare beneficiaries enrolled in Medicare + Choice products shall not be excluded unless expressly preempted by federal law.

(g) The department may seek to integrate the quality of care and consumer protection provisions, including remedies, of the Independent Medical Review System with related dispute resolution procedures of other health care agency programs, including the Medicare program, in a way that minimizes the potential for duplication, conflict, and added costs. Nothing in this

subdivision shall be construed to limit any rights conferred upon insureds under this chapter.

(h) The independent medical review process authorized by this article is in addition to any other procedures or remedies that may be available.

(i) No later than January 1, 2001, every insurer shall prominently display in every insurer member handbook or relevant informational brochure, in every insurance contract, on insured evidence of coverage forms, on copies of insurer procedures for resolving grievances, on letters of denials issued by either the insurer or its contracting organization, and on all written responses to grievances, information concerning the right of an insured to request an independent medical review in cases where the insured believes that health care services have been improperly denied, modified, or delayed by the plan, or by one of its contracting providers.

(j) An insurer may apply to the department for an independent medical review when all of the following conditions are met:

(1) (A) The insured's provider has recommended a health care service as medically necessary, or

(B) The insured has received urgent care or emergency services that a provider determined was medically necessary, or

(C) The insured, in the absence of a provider recommendation under subparagraph (A) or the receipt of urgent care or emergency services by a provider under subparagraph (B), has been seen by an in-plan provider for the diagnosis or treatment of the medical condition for which the insured seeks independent review. The insurer shall expedite access to an in-plan provider upon request of an insured. The in-plan provider need not recommend the disputed health care service as a condition for the insured to be eligible for an independent review.

For purposes of this article, the insured's provider may be an out-of-plan provider. However, the insurer shall have no liability for payment of services provided by an out-of-plan provider, except as provided pursuant to subdivision (b) of Section 10169.4.

(2) The disputed health care service has been denied, modified, or delayed by the insurer, or by one of its contracting providers, based in whole or in part on a decision that the health care service is not medically necessary.

(3) The insured has filed a grievance with the insurer or its contracting provider, and the disputed decision is upheld or the grievance remains unresolved after 30 days. The insured shall not be required to participate in the insurer's grievance process for more than 30 days. In the case of a grievance that requires expedited review, the insured shall not be required to participate in the insurer's grievance process for more than three days.

(k) An insured may apply to the department for an independent medical review of a decision to deny, modify, or delay health care services, based in whole or in part on a finding that the disputed health care services are not medically necessary, within six months of any of the qualifying periods or events under subdivision (j). The commissioner may extend the application deadline beyond six months if the circumstances of a case warrant the extension.

(*l*) The insured shall pay no application or processing fees of any kind.

(m) As part of its notification to the insured regarding a disposition of the insured's grievance that denies, modifies, or delays health care services, the insurer shall provide the insured with a one-page application form approved by the department, and an addressed envelope, which the insured may return to initiate an independent medical review. The insurer shall include on the form any information required by the department to facilitate the completion of the independent medical review, such as the insured's diagnosis or condition, the nature of the disputed health care service sought by the insured, a means to identify the insured's case, and any other material information. The form shall also include the following:

(1) Notice that a decision not to participate in the independent review process may cause the insured to

forfeit any statutory right to pursue legal action against the insurer regarding the disputed health care service.

(2) A statement indicating the insured's consent to obtain any necessary medical records from the insurer, any of its contracting providers, and any out-of-plan provider the insured may have consulted on the matter, to be signed by the insured.

(3) Notice of the insured's right to provide information or documentation, either directly or through the insured's provider, regarding any of the following:

(A) A provider recommendation indicating that the disputed health care service is medically necessary for the insured's medical condition.

(B) Medical information or justification that a disputed health care service, on an urgent care or emergency basis, was medically necessary for the insured's medical condition.

(C) Reasonable information supporting the insured's position that the disputed health care service is or was medically necessary for the insured's medical condition, including all information provided to the insured by the insurer or any of its contracting providers, still in the possession of the insured, concerning an insurer or provider decision regarding disputed health care services, and a copy of any materials the insured submitted to the insurer, still in the possession of the insured, in support of the grievance, as well as any additional material that the insured believes is relevant.

(n) Upon notice from the department that the insured has applied for an independent medical review, the insurer or its contracting providers, shall provide to the independent medical review organization designated by the department a copy of all of the following documents within three business days of the insurer's receipt of the department's notice of a request by an insured for an independent review:

(1) (A) A copy of all of the insured's medical records in the possession of the insurer or its contracting providers relevant to each of the following:

(i) The insured's medical condition.

(ii) The health care services being provided by the insurer and its contracting providers for the condition.

(iii) The disputed health care services requested by the insured for the condition.

(B) Any newly developed or discovered relevant medical records in the possession of the insurer or its contracting providers after the initial documents are provided to the independent medical review organization shall be forwarded immediately to the independent medical review organization. The insurer shall concurrently provide a copy of medical records required by this subparagraph to the insured or the insured's provider, if authorized by the insured, unless the offer of medical records is declined or otherwise prohibited by law. The confidentiality of all medical record information shall be maintained pursuant to applicable state and federal laws.

(2) A copy of all information provided to the insured by the insurer and any of its contracting providers concerning insurer and provider decisions regarding the insured's condition and care, and a copy of any materials the insured or the insured's provider submitted to the insurer and to the insurer's contracting providers in support of the insured's request for disputed health care services. This documentation shall include the written response to the insured's grievance. The confidentiality of any insured medical information shall be maintained pursuant to applicable state and federal laws.

(3) A copy of any other relevant documents or information used by the insurer or its contracting providers in determining whether disputed health care services should have been provided, and any statements by the insurer and its contracting providers explaining the reasons for the decision to deny, modify, or delay disputed health care services on the basis of medical necessity. The insurer shall concurrently provide a copy of documents required by this paragraph, except for any information found by the commissioner to be legally privileged information, to the insured and the insured's provider. The department and the independent review

organization shall maintain the confidentiality of any information found by the commissioner to be the proprietary information of the insurer.

SEC. 118. Section 10169.2 of the Insurance Code is amended to read:

10169.2. (a) By January 1, 2001, the department shall contract with one or more independent medical review organizations in the state to conduct reviews for purposes of this article. The independent medical review organizations shall be independent of any insurer doing business in this state. The commissioner may establish additional requirements, including conflict-of-interest standards, consistent with the purposes of this article, that an organization shall be required to meet in order to qualify for participation in the Independent Medical Review System and to assist the department in carrying out its responsibilities.

(b) The independent medical review organizations and the medical professionals retained to conduct reviews shall be deemed to be medical consultants for purposes of Section 43.98 of the Civil Code.

(c) The independent medical review organization, any experts it designates to conduct a review, or any officer, director, or employee of the independent medical review organization shall not have any material professional, familial, or financial affiliation, as determined by the commissioner, with any of the following:

(1) The insurer.

(2) Any officer, director, or employee of the insurer.

(3) A physician, the physician's medical group, or the independent practice association involved in the health care service in dispute.

(4) The facility or institution at which either the proposed health care service, or the alternative service, if any, recommended by the insurer, would be provided.

(5) The development or manufacture of the principal drug, device, procedure, or other therapy proposed by the insured whose treatment is under review, or the alternative therapy, if any, recommended by the insurer.

(6) The insured or the insured's immediate family.

(d) In order to contract with the department for purposes of this article, an independent medical review organization shall meet all of the following requirements:

(1) The organization shall not be an affiliate or a subsidiary of, nor in any way be owned or controlled by, an insurer or a trade association of insurers. A board member, director, officer, or employee of the independent medical review organization shall not serve as a board member, director, or employee of an insurer. A board member, director, or officer of an insurer or a trade association of insurers shall not serve as a board member, director, officer, or employee of an independent medical review organization.

(2) The organization shall submit to the department the following information upon initial application to contract for purposes of this article and, except as otherwise provided, annually thereafter upon any change to any of the following information:

(A) The names of all stockholders and owners of more than 5 percent of any stock or options, if a publicly held organization.

(B) The names of all holders of bonds or notes in excess of one hundred thousand dollars ($100,000), if any.

(C) The names of all corporations and organizations that the independent medical review organization controls or is affiliated with, and the nature and extent of any ownership or control, including the affiliated organization's type of business.

(D) The names and biographical sketches of all directors, officers, and executives of the independent medical review organization, as well as a statement regarding any past or present relationships the directors, officers, and executives may have with any health care service plan, disability insurer, managed care organization, provider group, or board or committee of a plan, managed care organization, or provider group.

(E) (i) The percentage of revenue the independent medical review organization receives from expert reviews, including, but not limited to, external medical

reviews, quality assurance reviews, and utilization reviews.

(ii) The names of any insurer or provider group for which the independent medical review organization provides review services, including, but not limited to, utilization review, quality assurance review, and external medical review. Any change in this information shall be reported to the department within five business days of the change.

(F) A description of the review process including, but not limited to, the method of selecting expert reviewers and matching the expert reviewers to specific cases.

(G) A description of the system the independent medical review organization uses to identify and recruit medical professionals to review treatment and treatment recommendation decisions, the number of medical professionals credentialed, and the types of cases and areas of expertise that the medical professionals are credentialed to review.

(H) A description of how the independent medical review organization ensures compliance with the conflict-of-interest provisions of this section.

(3) The organization shall demonstrate that it has a quality assurance mechanism in place that does the following:

(A) Ensures that the medical professionals retained are appropriately credentialed and privileged.

(B) Ensures that the reviews provided by the medical professionals are timely, clear, and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensures that the method of selecting medical professionals for individual cases achieves a fair and impartial panel of medical professionals who are qualified to render recommendations regarding the clinical conditions and the medical necessity of treatments or therapies in question.

(D) Ensures the confidentiality of medical records and the review materials, consistent with the requirements of this section and applicable state and federal law.

(E) Ensures the independence of the medical professionals retained to perform the reviews through conflict-of-interest policies and prohibitions, and ensures adequate screening for conflicts-of-interest, pursuant to paragraph (5).

(4) Medical professionals selected by independent medical review organizations to review medical treatment decisions shall be physicians or other appropriate providers who meet the following minimum requirements:

(A) The medical professional shall be a clinician knowledgeable in the treatment of the insured's medical condition, knowledgeable about the proposed treatment, and familiar with guidelines and protocols in the area of treatment under review.

(B) Notwithstanding any other provision of law, the medical professional shall hold a nonrestricted license in ~~the~~ any state of the United States, and for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review. The independent medical review organization shall give preference to the use of a physician licensed in California as the reviewer, except when training and experience with the issue under review reasonably requires the use of an out-of-state reviewer.

(C) The medical professional shall have no history of disciplinary action or sanctions, including, but not limited to, loss of staff privileges or participation restrictions, taken or pending by any hospital, government, or regulatory body.

(5) Neither the expert reviewer, nor the independent medical review organization, shall have any material professional, material familial, or material financial affiliation with any of the following:

(A) The insurer or a provider group of the insurer, except that an academic medical center under contract to the insurer to provide services to insureds may qualify as an independent medical review organization provided it will not provide the service and provided the center is

not the developer or manufacturer of the proposed treatment.

(B) Any officer, director, or management employee of the insurer.

(C) The physician, the physician's medical group, or the independent practice association (IPA) proposing the treatment.

(D) The institution at which the treatment would be provided.

(E) The development or manufacture of the treatment proposed for the insured whose condition is under review.

(F) The insured or the insured's immediate family.

(6) For purposes of this section, the following terms shall have the following meanings:

(A) ''Material familial affiliation'' means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(B) ''Material professional affiliation'' means any physician-patient relationship, any partnership or employment relationship, a shareholder or similar ownership interest in a professional corporation, or any independent contractor arrangement that constitutes a material financial affiliation with any expert or any officer or director of the independent medical review organization. ''Material professional affiliation'' does not include affiliations that are limited to staff privileges at a health facility.

(C) ''Material financial affiliation'' means any financial interest of more than 5 percent of total annual revenue or total annual income of an independent medical review organization or individual to which this subdivision applies. ''Material financial affiliation'' does not include payment by the insurer to the independent medical review organization for the services required by this section, nor does ''material financial affiliation'' include an expert's participation as a contracting provider where the expert is affiliated with an academic medical center or a National Cancer Institute-designated clinical cancer research center.

(e) The department shall provide, upon the request of any interested person, a copy of all nonproprietary information, as determined by the commissioner, filed with it by an independent medical review organization seeking to contract under this article. The department may charge a nominal fee to the interested person for photocopying the requested information.

SEC. 119. Section 10176.61 of the Insurance Code is amended to read:

10176.61. (a) Every insurer issuing, amending, delivering, or renewing a disability insurance policy on or after January 1, 2000, that covers hospital, medical, or surgical expenses shall include coverage for the following equipment and supplies for the management and treatment of insulin-using diabetes, non-insulin-using diabetes, and gestational diabetes as medically necessary, even if the items are available without a prescription:

(1) Blood glucose monitors and blood glucose testing strips.

(2) Blood glucose monitors designed to assist the visually impaired.

(3) Insulin pumps and all related necessary supplies.

(4) Ketone urine testing strips.

(5) Lancets and lancet puncture devices.

(6) Pen delivery systems for the administration of insulin.

(7) Podiatric devices to prevent or treat diabetes-related complications.

(8) Insulin syringes.

(9) Visual aids, excluding eyewear, to assist the visually impaired with proper dosing of insulin.

(b) Every insurer issuing, amending, delivering, or renewing a disability insurance policy on or after January 1, 2000, that covers prescription benefits shall include coverage for the following prescription items if the items are determined to be medically necessary:

(1) Insulin.

(2) Prescriptive medications for the treatment of diabetes.

(3) Glucagon.

(c) The coinsurances and deductibles for the benefits specified in subdivisions (a) and (b) shall not exceed those established for similar benefits within the given policy.

(d) Every insurer shall provide coverage for diabetes outpatient self-management training, education, and medical nutrition therapy necessary to enable an insured to properly use the equipment, supplies, and medications set forth in subdivisions (a) and (b) and additional diabetes outpatient self-management training, education, and medical nutrition therapy upon the direction or prescription of those services by the insured's participating physician. If an insurer delegates outpatient self-management training to contracting providers, the insurer shall require contracting providers to ensure that diabetes outpatient self-management training, education, and medical nutrition therapy are provided by appropriately licensed or registered health care professionals.

(e) The diabetes outpatient self-management training, education, and medical nutrition therapy services identified in subdivision (d) shall be provided by appropriately licensed or registered health care professionals as prescribed by a health care professional legally authorized to prescribe the services.

(f) The coinsurances and deductibles for the benefits specified in subdivision (d) shall not exceed those established for physician office visits by the insurer.

(g) Every disability insurer governed by this section shall disclose the benefits covered pursuant to this section in the insurer's evidence of coverage and disclosure forms.

(h) An insurer may not reduce or eliminate coverage as a result of the requirements of this section.

(i) This section does not apply to vision-only, dental-only, accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, or disability income insurance, except that for accident-only, specified disease, and hospital indemnity insurance coverage, benefits under this section only

apply to the extent that the benefits are covered under the general terms and conditions that apply to all other benefits under the policy. Nothing in this section may be construed as imposing a new benefit mandate on accident-only, specified disease, or hospital indemnity insurance.

SEC. 120. Section 11629.92 of the Insurance Code is amended to read:

11629.92. (a) The annual rate offered initially under the pilot program for the low-cost automobile insurance policy, until the time that the rate is adjusted, shall be four hundred ten dollars ($410). A surcharge of 25 percent of the base rate shall be added if the named insured is an unmarried male between the ages of 19 and 24, inclusive, or if an unmarried male between the ages 19 and 24, inclusive, resides in the household of the named insured and will be a driver of the automobile covered under the low-cost policy.

(b) In addition to existing premium installment options offered by ~~The~~ *the* California Automobile Assigned Risk Plan under Article 4 (commencing with Section 11620), the plan shall also make available to insureds under the pilot program, a premium installment option pursuant to which an insured is required to pay one hundred dollars ($100) upon issuance of the low-cost policy, followed thereafter by six other payments. No other premium financing arrangement shall be permitted.

(c) Rates for policies issued under the pilot program shall be reviewed and revised as follows:

(1) Rates shall be sufficient to cover (A) losses incurred under policies issued under the pilot program, and (B) expenses, including, but not limited to, all reasonable and necessary expenses such as the costs of administration, underwriting, taxes, commissions, and claims adjusting, that are incurred due to participation in this pilot program. For purposes of this paragraph, ‘‘losses incurred’’ means claims paid, claims incurred and reported, and claims incurred but not yet reported. In assessing loss reserves, the commissioner shall only allow

loss reserves that are estimated from actual losses in the pilot program or comparable data by a licensed statistical agent, as adjusted to reflect coverage provided in this pilot program.

(2) Rates shall be set so as to result in no projected subsidy of the pilot program by those policyholders of insurers issuing policies under the pilot program who are not participants in the pilot program.

(3) Rates shall be set with respect to this pilot program, and the pilot program established in Article 5.5 (commencing with Section 11629.7) ~~of the 1999-2000 Regular Session~~, so as to result in no projected subsidy by policyholders in one pilot program of policyholders in the other pilot program.

(4) Commencing on January 1, 2001, and annually thereafter, the California Automobile Assigned Risk Plan shall submit the loss and expense data, together with a proposed rate for the low-cost automobile policy for the pilot program, to the commissioner for approval in accordance with this chapter. The commissioner shall act on the recommendation within 90 days.

SEC. 121. Section 12698 of the Insurance Code is amended and renumbered to read:

~~12698.~~

12968. Every pleading issued by the commissioner to initiate a formal enforcement action against a licensee under this code, and every order issued by the commissioner or a court of competent jurisdiction or other document that resolves a formal enforcement action, shall be displayed on the department's internet web site, if the document is a public record that is not exempt from disclosure to the public pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 122. Section 12967 of the Insurance Code is amended to read:

12967. (a) (1) The department shall develop and implement a coordinated approach to gather, review, and analyze the archives of insurers and other archives

and records, using onsite teams and the oversight committee, to provide for research and investigation into insurance policies, unpaid insurance claims, and related matters of victims of the Holocaust or of the Nazi-controlled German government or its allies, and the beneficiaries and heirs of those victims, and for losses arising from the activities of the Nazi-controlled German government or its allies for insurance policies issued before and during World War II by insurers who have affiliates or subsidiaries authorized to do business in California. Information compiled shall be placed in a centralized data base for the retention of policy and claimant data, and the data shall be used to implement this section and Section 790.15.

(2) The department has an affirmative duty to play an independent role in representing the interests of Holocaust survivors where necessary, including the duty to carry out research, investigations, and advocacy. The department shall cooperate with, participate in, promote coordination with, and to the extent feasible and consistent with the purposes of this section, work jointly with the National Association of Insurance Commissioners and the international commission on Holocaust survivor claims or any other entity involved in the documentation, resolution, settlement, or distribution of insurance claims, including the documentation of unpaid claims and the distribution of proceeds, and the establishment and maintenance of a data base to contain information relevant to claimants and documents and historical information. The department shall work to recover information and records that will strengthen the claims of California residents.

(3) The department shall employ insurance archaeologists, economists, attorneys, accountants, and other specialists, in this country and in Europe, to implement this section. The department shall work jointly with the National Association of Insurance Commissioners and other organizations for this purpose. The department's cooperation with other states shall be

for the purpose of advancing survivors' claims while avoiding duplication of efforts, and shall be dependent upon contributions by other states.

(4) In order to assure that Holocaust survivors receive the most aggressive and independent representation possible in pursuit of their historic claims, in contracting with accounting firms, law firms, economists, or others to implement this section, the department shall, to the maximum extent possible, avoid any potential or actual conflict of interest by doing the following:

(A) Seek and give preference to firms that are entirely free of any associations with firms representing insurers and nations from which Holocaust survivors are seeking just treatment of their claims.

(B) If the department finds that *it* is necessary to contract with a firm or firms that have conflicts or potential conflicts of interest, those conflicts or potential conflicts of interest shall be disclosed to the commissioner, and the following requirements shall apply:

(i) The contract shall contain a provision that expresses a formal commitment on the part of the firm to aggressively pursue a maximum just settlement for Holocaust survivors and their families without regard to any adverse impacts on insurers, affiliates of insurers, nations, or others that may have employed the firm or affiliates of the firm that is contracting with the commissioner to assist in carrying out the commissioner's responsibilities under this section.

(ii) If any conflict or potential conflict exists between the firm, or an affiliate of the firm, and an insurer, an affiliate of an insurer, a nation or others directly or indirectly involving Holocaust claims, the firm shall disclose both the fact of the conflict or potential conflict, and all relevant information describing the nature of the conflict or potential conflict.

(iii) If a conflict or potential conflict exists between the firm, or an affiliate of the firm, and an insurer, an affiliate of an insurer, a nation, or others that does not directly or indirectly involve Holocaust claims, the firm

shall disclose the fact of the conflict or potential conflict and identify the source of the conflict or potential conflict, but need not describe the particular circumstances or facts that create the conflict or potential conflict.

(C) The department may take whatever special measures it deems necessary to avoid either the appearance or the reality of conflicts that may undermine public confidence in the integrity of the effort to secure justice for Holocaust survivors.

(b) The funding of the activities provided for by this section for the 1998–99 fiscal year shall be from funds transferred pursuant to subdivision (b) of Section 1523 of the Code of Civil Procedure, which funds are hereby appropriated to the commissioner for that purpose. The commissioner shall seek reimbursement of those funds as provided in subdivision (c).

Funding for subsequent fiscal years shall be subject to the Budget Act and based on a plan submitted by the commissioner to the Legislature outlining the plan for reimbursement of expenses of the department by affected insurers.

Funds made available to implement this section shall be used to develop and implement a coordinated approach to gather, review, and analyze the archives of affected insurance groups, and other archives and records, using onsite teams and the oversight committee. These funds shall also be used to fund the necessary expenses of the Holocaust Era Insurance Claims Oversight Committee established in subdivision (d). The information compiled shall be placed in a centralized data base for the retention of policy and claimant data, and that data shall be used by the department to implement this section.

(c) (1) Any funds recovered by the department for the purpose of reimbursing the state for costs associated with investigation and enforcement actions under this section shall not be deposited in the Insurance Fund, but instead shall be delivered to the Controller for deposit into the General Fund.

(2) To the maximum extent possible, the department shall seek reimbursement for its costs incurred in implementing this section, including funds transferred pursuant to subdivision (b) of Section 1523 of the Code of Civil Procedure, from any settlements reached with affected insurers.

(d) (1) There is established a seven-member Holocaust Era Insurance Claims Oversight Committee, that shall be known as the oversight committee, and whose members shall be appointed as follows:

(A) Four members shall be appointed by the Governor.

(B) One member shall be appointed by the President pro Tempore of the Senate.

(C) One member shall be appointed by the Speaker of the Assembly.

(D) One member shall be appointed by the Commissioner of Insurance.

(2) The Governor shall designate one of his or her appointees as the chairperson of the committee.

(3) Each member of the committee shall serve at the pleasure of the authority that appointed him or her to serve on the committee.

(4) The oversight committee shall be composed of qualified individuals with experience in Holocaust claims cases, similar investigations, archival research, and international law. The oversight committee shall also include Holocaust survivors. No member of the oversight committee shall have a potential or actual conflict of interest, or shall be employed by a person who has a potential or actual conflict of interest.

(5) The appointments shall be expedited because of the urgency due to survivors' needs.

(6) The oversight committee shall have the following authority and shall do all of the following:

(A) Review and make recommendations concerning any insurance settlement negotiation or offer relating to a Holocaust era insurance claim in which the department is involved.

(B) Review and make recommendations to the commissioner on the priorities for expenditure of funds and use of resources by the department for Holocaust era insurance claims related activities.

(C) Recommend whether a proposed settlement of a Holocaust era insurance claim submitted to the committee pursuant to paragraph (7) is equitable before the department finalizes the settlement agreement.

(7) The commissioner, in the event of a proposed settlement of any policy or group of policies relating to Holocaust era insurance claims, shall confer with the committee prior to the department finalizing the settlement agreement. The department may not finalize a proposed settlement of a Holocaust era insurance claim unless the committee, pursuant to subparagraph (C) of paragraph (6), recommends that the proposed settlement is equitable.

(e) The department shall report its progress in implementing this section and its participation in the identification and resolution of insurance claims of Holocaust survivors and their beneficiaries and heirs. The report shall also include an overview of current and anticipated expenditures in implementing this section. The department shall make this report biannually to the insurance and budget committees of the Legislature.

SEC. 123. Section 1174.5 of the Labor Code is amended to read:

1174.5. ~~(a)~~ Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 , or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500).

SEC. 124. Section 1777.5 of the Labor Code is amended to read:

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (2) the rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval or denial of the apprenticeship program shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that ~~the~~ program. ''Apprenticeable craft or trade,'' as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the

California Apprenticeship Council. As used in this section, ‘‘contractor’’ includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a

journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(*l*) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. At the end of each fiscal year the California Apprenticeship Council shall make grants to each apprenticeship program in proportion to the number of hours of training provided by the program for which the program did not receive contributions, weighted by the regular rate of contribution for the program. These grants shall be made from funds collected by the California

Apprenticeship Council during the fiscal year pursuant to this subdivision from contractors that employed registered apprentices but did not contribute to an approved apprenticeship program. All these funds received during the fiscal year shall be distributed as grants.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000) or 20 working days.

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

SEC. 125. Section 1777.7 of the Labor Code is amended to read:

1777.7. (a) A contractor or subcontractor that knowingly violates Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty shall be based on consideration whether the violation was a good faith mistake due to inadvertence. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(b) (1) In the event a contractor or subcontractor is determined by the Administrator of Apprenticeship to have knowingly violated any provision of Section 1777.5, the Administrator shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on or receive any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship.

(2) An affected contractor or subcontractor may obtain a review of the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the order of debarment or civil penalty. If the Administrator receives no request for review within 30 days after service, the order of debarment or civil penalty shall become final for the period authorized.

(3) Within 20 days of the timely receipt of a request for hearing, the Administrator shall provide the contractor or subcontractor the opportunity to review any evidence the Administrator may offer at the hearing. The Administrator shall also promptly disclose to the contractor or subcontractor any nonprivileged documents obtained after the 20-day time limit.

(4) Within 90 days of the timely receipt of the ~~a~~ request for hearing, a hearing shall be commenced before an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to Section 11502 of the Government Code. The contractor or subcontractor shall have the burden of showing compliance with Section 1777.5. The decision to debar shall be reviewed by a hearing officer or court only for abuse of discretion.

(5) Within 45 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the debarment or civil penalty. The decision shall contain a notice of findings, findings,

and an order. This decision shall be deemed the final decision of the Administrator and shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Administrator. Within 15 days of issuance of the decision, the hearing officer may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(6) An affected contractor or subcontractor may obtain review of the final decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision to debar or to assess a civil penalty. If no petition for a writ of mandate is filed within 45 days after service of the final decision, the order shall become final. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.

(7) The Administrator may file a certified copy of a final order with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business.

(c) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not

limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(d) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first-time violation and with the concurrence of the apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

SEC. 126. Section 3762 of the Labor Code is amended to read:

3762. (a) Except as provided in subdivisions (b) and (c), the insurer shall discuss all elements of the claim file that affect the employer's premium with the employer, and shall supply copies of the documents that affect the premium at the employer's expense during reasonable business hours.

(b) The right provided by this section shall not extend to any document that the insurer is prohibited from

disclosing to the employer under the attorney-client privilege, any other applicable privilege, or statutory prohibition upon disclosure, or under Section 1877.4 of the Insurance Code.

(c) An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or causing to be disclosed to an employer, any medical information, as defined in ~~subdivision (b) of~~ Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows:

(1) If the diagnosis of the injury for which workers' compensation is claimed would affect the employer's premium, then an insurer may disclose that diagnosis pursuant to subdivision (a).

(2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties.

SEC. 127. Section 6394.5 of the Labor Code is amended to read:

6394.5. (a) The department shall adopt an electronic format for the electronic filing of an MSDS with the department and shall implement a system, by January 1, 2002, enabling electronic MSDS filings for purposes of complying with this section using the form. The department shall evaluate the use and effectiveness of the electronic format on relevant parties, including, but not limited to, the preparer of an MSDS, affected employers, and affected employees. The system shall employ electronic MSDS format, transmission, protocol, and authentication techniques that are, in the estimation of the department, compatible with those techniques developed and demonstrated by the Secretary for Environmental Protection pursuant to Part 2

(commencing with Section 71050) of Division 34 of the Public Resources Code.

(b) This section may not be implemented, and no information technology-related preparatory work may be undertaken in connection with this act, before July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99.

(c) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 128. Section 6429 of the Labor Code is amended to read:

6429. *(a)* Any employer who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, may be assessed a civil penalty of not more than seventy thousand dollars ($70,000) for each violation, but in no case less than five thousand dollars ($5,000) for each willful violation.

(b) Any employer who repeatedly violates any occupational safety or health standard, order, or special order, or ~~of~~ Section 25910 of the Health and Safety Code, shall not receive any adjustment of a penalty assessed pursuant to this section on the basis of the regulations promulgated pursuant to subdivision (c) of Section 6319 pertaining to the good faith of the employer or the history of previous violations of the employer.

(c) The division shall preserve and maintain records of its investigations and inspections and citations for a period of not less than seven years.

SEC. 129. Section 6434 of the Labor Code is amended to read:

6434. (a) Any civil or administrative penalty assessed pursuant to this chapter against a school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions shall be

deposited with the Workplace Health and Safety Revolving Fund established pursuant to Section 78.

(b) Any school district, county board of education, county superintendent of schools ~~or~~, charter school, community college district, California State University, University of California, or joint powers agency performing education functions may apply for a refund of their civil penalty, with interest, if all conditions previously cited have been abated, they have abated any other outstanding citation, and if they have not been cited by the division for a serious violation at the same school within two years of the date of the original violation. Funds not applied for within two years and six months of the time of the original violation shall be expended as provided for in Section 78 to assist schools in establishing effective occupational injury and illness prevention programs.

SEC. 130. Section 6650 of the Labor Code is amended to read:

6650. (a) After the expiration of the period during which a penalty may be appealed, no appeal having been filed, the department may file with the clerk of the superior court in any county a certified copy of the citation and notice of civil penalty, the certification by the department that the penalty remains unpaid, and the division's proof of service on the employer of the items filed with the clerk of the court.

(b) After the exhaustion of the review procedures provided for in Chapter 7 (commencing with Section 6600), an appeal having been filed, the department may file with the clerk of the superior court in any county a certified copy of the citation and notice of civil penalty, a certified copy of the order, findings or decision of the appeals board, the certification of the department that the penalty remains unpaid, and proof of service on the employer at the employer's address as shown on the official address record by the appeals board.

(c) The clerk, immediately upon the filing of a notice of civil penalty by the department pursuant to subdivision (a) or (b), shall enter judgment for the state

against the person assessed the civil penalty in the amount of the penalty, plus interest due for each day from the date of issuance of the notice of civil penalty that the penalty remains unpaid.

(d) The department shall serve the notice of entry of judgment provided by Section ~~554.6~~ *664.5* of the Code of Civil Procedure on the employer.

(e) A judgment entered pursuant to this section shall bear the same rate of interest, have the same effect as other judgments, and be given the same preference allowed by law on other judgments rendered for claims for taxes pursuant to Section 7170 of the Government Code. ~~No~~

(f) No fees shall be charged by the clerk of any court for the performance of any official service required by this chapter.

SEC. 131. Section 273.84 of the Penal Code is amended to read:

273.84. ~~Subject to the provisions of Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2, each~~ *Each* district attorney's or city attorney's office establishing a spousal abuser prosecution unit and receiving state support under this chapter shall adopt and pursue the following policies for spousal abuser cases:

(a) All reasonable prosecutorial efforts shall be made to resist the pretrial release of a charged defendant meeting spousal abuser selection criteria.

(b) All reasonable prosecutorial efforts shall be made to persuade the court to impose the most severe authorized sentence upon a person convicted after prosecution as a spousal abuser. In the prosecution of an intrafamily sexual abuse case, discretion may be exercised as to the type and nature of sentence recommended to the court.

(c) All reasonable prosecutorial efforts shall be made to reduce the time between arrest and disposition of charge against an individual meeting spousal abuser criteria.

SEC. 132. Section 296.1 of the Penal Code is amended to read:

296.1. (a) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is granted probation, or serves his or her entire term of confinement in a county jail, or is not sentenced to a term of confinement in a state prison facility, or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections, shall, as soon as administratively practicable, but in any case, prior to physical release from custody, be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as set forth in subdivision (a) of Section 296, at a county jail facility or other state, local, or private facility designated for the collection of these specimens, samples, and print impressions, in accordance with subdivision (f) of Section 295.

If the person subject to this chapter is not incarcerated at the time of sentencing, the court shall order the person to report within five calendar days to a county jail facility or other state, local, or private facility designated for the collection of specimens, samples, and print impressions to provide these specimens, samples, and print impressions in accordance with subdivision (f) of Section 295.

(b) If a person who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296 is sentenced to serve a term of imprisonment in a state correctional institution, the Director of Corrections shall collect the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter from the person during the intake process at the reception center designated by the director, or as soon as administratively practicable thereafter at a receiving penal institution.

(c) Any person, including, but not limited to, any juvenile and any person convicted and sentenced to death, life without the possibility of parole, or any life or indeterminate term, who is imprisoned or confined in a state correctional institution, a county jail, a facility within the jurisdiction of the Department of the Youth Authority, or any other state, local, or private facility after

a conviction of any crime, or disposition rendered in the case of a juvenile, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide two specimens of blood, a saliva sample, and thumb and palm print impressions pursuant to this chapter, as soon as administratively practicable once it has been determined that both of the following apply:

(1) The person has been convicted in California of a qualifying offense described in subdivision (a) of Section 296 or of a similar crime under the laws of the United States or any other state that would constitute an offense described in subdivision (a) of Section 296.

(2) The person's blood specimens, saliva samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory as part of the DNA data bank program.

This subdivision applies regardless of when the person was convicted of the qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state, or when disposition was rendered in the case of a juvenile who is adjudged a ward of the court for commission of a qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state.

(d) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is on probation or parole, shall be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as required pursuant to this chapter, if it is determined that the person has not previously provided these specimens, samples, and print impressions to law enforcement, or if it is determined that these specimens, samples, and print impressions are not in the possession of the Department of Justice. The person shall have the specimens, samples, and print impressions collected within five calendar days of being notified by a law enforcement agency or other agency authorized by

the Department of Justice. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295 at a county jail facility or other state, local, or private facility designated for this collection.

This subdivision shall apply regardless of when the crime committed became a qualifying offense pursuant to this chapter.

(e) When an offender from another state is accepted into this state under any of the interstate compacts described in Article 3 (commencing with Section 11175) or Article 4 (commencing with Section ~~1189~~ *11189*) of Chapter 2 of Title 1 of Part 4 of this code, or Chapter 4 (commencing with Section 1300) of Part 1 of Division 2 of the Welfare and Institutions Code, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing blood specimens, saliva samples, and palm and thumb print impressions pursuant to this chapter, if the offender was convicted of an offense ~~which~~ *that* would qualify as a crime described in subdivision (a) of Section 296, or if the person was convicted of a similar crime under the laws of the United States or any other state.

If the person is not confined, the specimens, samples, and print impressions required by this chapter must be provided within five calendar days after the offender reports to the supervising agent or within five calendar days of notice to the offender, whichever occurs first. The person shall report to a county jail facility in the county where he or she resides or temporarily is located to have the specimens, samples, and print impressions collected pursuant to this chapter. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

If the person is confined, he or she shall provide the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter as soon as

practicable after his or her receipt in a state, county, local, private, or other facility.

(f) Subject to the approval of the Director of the Federal Bureau of Investigation, persons confined or incarcerated in a federal prison or federal institution located in California who are convicted of a qualifying offense described in subdivision (a) of Section 296 or of a similar crime under the laws of the United States or any other state that would constitute an offense described in subdivision (a) of Section 296, are subject to this chapter and shall provide blood specimens, saliva samples, and thumb and palm print impressions pursuant to this chapter if any of the following apply:

(1) The person committed a qualifying offense in California.

(2) The person was a resident of California at the time of the qualifying offense.

(3) The person has any record of a California conviction for a sex or violent offense described in subdivision (a) of Section 296, regardless of when the crime was committed.

(4) The person will be released in California.

Once a federal data bank is established and accessible to the Department of Justice, the Department of Justice DNA Laboratory shall, upon the request of the United States Department of Justice, forward the samples taken pursuant to this chapter to the United States Department of Justice DNA data bank laboratory. The samples and impressions required by this chapter shall be taken in accordance with the procedures set forth in subdivision (f) of Section 295.

(g) If a person who is released on parole, furlough, or other release, is returned to a state correctional institution for a violation of a condition of his or her parole, furlough, or other release, and is serving or at any time has served a term of imprisonment for committing an offense described in subdivision (a) of Section 296, and he or she did not provide specimens, samples, and print impressions pursuant to the state's DNA data bank program, the person shall submit to collection of blood

specimens, saliva samples, and thumb and palm print impressions at a state correctional institution.

This subdivision applies regardless of the crime or Penal Code violation for which a person is returned to a state correctional institution and regardless of the date the qualifying offense was committed.

SEC. 133. Section 487c of the Penal Code is amended to read:

487c. Every person who converts real estate of the value of less than one hundred dollars ($100) into personal property by severance from the realty of another, and with felonious intent to do so steals, takes, and carries away such property is guilty of ~~petit~~ *petty* theft and is punishable by imprisonment in the county jail for not more than one year, or by a fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment.

SEC. 134. Section 666 of the Penal Code is amended to read:

666. Every person who, having been convicted of ~~petit~~ *petty* theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of ~~petit~~ *petty* theft, then the person convicted of that subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

SEC. 135. Section 830.32 of the Penal Code is amended to read:

830.32. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry

firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Members of a California Community College police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the police officer is the enforcement of the law as prescribed in Section 72330 of the Education Code.

(b) Persons employed as members of a police department of a school district pursuant to Section ~~39670~~ *38000* of the Education Code, if the primary duty of the police officer is the enforcement of the law as prescribed in Section ~~39670~~ *38000* of the Education Code.

(c) Any peace officer employed by a K-12 public school district or California Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer.

SEC. 136. Section 1463 of the Penal Code is amended to read:

1463. All fines and forfeitures imposed and collected for crimes shall be distributed in accordance with Section 1463.001.

The following definitions shall apply to terms used in this chapter:

(a) ‘‘Arrest’’ means any law enforcement action, including issuance of a notice to appear or notice of violation, which results in a criminal charge.

(b) ‘‘City’’ includes any city, city and county, district, including any enterprise special district, community service district, or community service area engaged in police protection activities as reported to the Controller for inclusion in the 1989–90 edition of the Financial Transactions Report Concerning Special Districts under the heading of Police Protection and Public Safety, authority, or other local agency (other than a county) which employs persons authorized to make arrests or to issue notices to appear or notices of violation which may be filed in court.

(c) ‘‘City arrest’’ means an arrest by an employee of a city, or by a California Highway Patrol officer within the limits of a city.

(d) ‘‘County’’ means the county in which the arrest took place.

(e) ‘‘County arrest’’ means an arrest by a California Highway Patrol officer outside the limits of a city, or any arrest by a county officer or by any other state officer.

(f) ‘‘Court’’ means the superior or municipal court or a juvenile forum established under Section 257 of the Welfare and Institutions Code, in which the case arising from the arrest is filed.

(g) ‘‘Division of moneys’’ means an allocation of base fine proceeds between agencies as required by statute including, but not limited to, Sections 1463.003, 1463.9, 1463.23, 1463.26, and Sections 13001, 13002, and 13003 of the Fish and Game Code, and Section 11502 of the Health and Safety Code.

(h) ‘‘Offense’’ means any infraction, misdemeanor, or felony, and any act by a juvenile leading to an order to pay a financial sanction by reason of the act being defined as an infraction, misdemeanor, or felony, whether defined in this or any other code, except any parking offense as defined in subdivision (i).

(i) ‘‘Parking offense’’ means any offense charged pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, including registration and equipment offenses included on a notice of parking violation.

(j) ‘‘Penalty allocation’’ means the deposit of a specified part of moneys to offset designated processing costs, as provided by Section 1463.16 and by Section 68090.8 of the Government Code.

(k) ‘‘Total parking penalty’’ means the total sum to be collected for a parking offense, whether as fine, forfeiture of bail, or payment of penalty to the Department of Motor Vehicles. It may include the following components:

(1) The base parking penalty as established pursuant to Section 40203.5 of the Vehicle Code.

(2) The Department of Motor Vehicles (DMV) fees added upon the placement of a hold pursuant to Section 40220 of the Vehicle Code.

(3) The surcharges required by Section 76000 of the Government Code.

(4) The notice penalty added to the base parking penalty when a notice of delinquent parking violations is given.

(*l*) ‘‘Total fine or forfeiture’’ means the total sum to be collected upon a conviction, or the total amount of bail forfeited or deposited as cash bail subject to forfeiture. It may include, but is not limited to, the following components as specified for the particular offense:

(1) The ‘‘base fine’’ upon which the state penalty and additional county penalty is calculated.

(2) The ‘‘county penalty’’ required by Section 76000 of the Government Code.

(3) The ‘‘service charge’’ permitted by Section 853.7 of the Penal Code and ~~Sections 40508.5 and 41103.5~~ *Section 40508.5* of the Vehicle Code.

(4) The ‘‘special penalty’’ dedicated for blood alcohol analysis, alcohol program services, traumatic brain injury research, and similar purposes.

(5) The ‘‘state penalty’’ required by Section 1464.

SEC. 137. Section 2962 of the Penal Code is amended to read:

2962. As a condition of parole, a prisoner who meets the following criteria shall be required to be treated by the State Department of Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

(a) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment.

The term ‘‘severe mental disorder’’ means an illness or disease or condition that substantially impairs the person’s thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of

treatment, is unlikely. The term ‘‘severe mental disorder’’ as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

The term ‘‘remission’’ means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person ‘‘cannot be kept in remission without treatment’’ if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner’s parole or release.

(d) (1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections has certified to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner’s criminal behavior,

that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

(2) If the professionals doing the evaluation pursuant to paragraph (1) do not concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is not in remission or cannot be kept in remission without treatment, or (C) that the severe mental disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) Only if both independent professionals who evaluate the prisoner pursuant to paragraph (2) concur with the chief psychiatrist's certification of the issues described in paragraph (2), shall this subdivision be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand that information.

(e) The crime referred to in subdivision (b) meets both of the following criteria:

(1) The defendant received a determinate sentence pursuant to Section 1170 for the crime.

(2) The crime is one of the following:

(A) Voluntary manslaughter.

(B) Mayhem.

(C) Kidnapping in violation of Section 207.

(D) Any robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of the carjacking.

(F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(G) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(H) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(I) Lewd acts on a child under the age of 14 years in violation of Section 288.

(J) Continuous sexual abuse in violation of Section 288.5.

(K) The offense described in subdivision (a) of Section 289 where the act was accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(L) Arson in violation of subdivision (a) of Section 451, or arson in violation of any other provision of Section 451 or in violation of Section 455 where the act posed a substantial danger of physical harm to others.

(M) Any felony in which the defendant used a firearm which use was charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.

(N) A violation of Section 12308.

(O) Attempted murder.

(P) A crime not enumerated in ~~subparagraph~~ *subparagraphs* (A) to (O), inclusive, in which the

prisoner used force or violence, or caused serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243.

(Q) A crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used. For purposes of this subparagraph, substantial physical harm shall not require proof that the threatened act was likely to cause great or serious bodily injury.

(f) As used in this chapter, ‘‘substantial danger of physical harm’’ does not require proof of a recent overt act.

SEC. 138. Section 6129 of the Penal Code is amended to read:

6129. (a) (1) For purposes of this section, ‘‘employee’’ means any person employed by the Youth and Adult Correctional Agency, the Department of Corrections, the Department of the Youth Authority, the Board of Corrections, the Board of Prison Terms, the Youthful Offender Parole Board, or the Inspector General.

(2) For purposes of this section, ‘‘retaliation’’ means intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee who has done either of the following:

(A) Has disclosed or is disclosing to any employee at a supervisory or managerial level, what the employee, in good faith, believes to be improper governmental activities.

~~(2)~~

(B) Has cooperated or is cooperating with any investigation of improper governmental activities.

(b) (1) Upon receiving a complaint of retaliation from an employee, the Inspector General shall commence an investigation within 30 days of receiving the complaint. All investigations conducted pursuant to this section shall be performed, where applicable, in accordance with the requirements of Chapter 9.7

(commencing with Section 3300) of Title 1 of Division 4 of the Government Code.

(2) When investigating a complaint, in determining whether retaliation has occurred, the Inspector General shall consider, among other things, whether any of the following either actually occurred or were threatened:

(A) Unwarranted or unjustified staff changes.

(B) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.

(C) Unwarranted or unjustified formal or informal investigations.

(D) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are unprofessional,~~,~~ or foster a hostile work environment.

(E) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are contrary to the rules, regulations, or policies of the workplace.

(3) Upon authorization of the complainant employee, the Inspector General may release the findings of the investigation of alleged retaliation to the State Personnel Board for appropriate action.

(c) Any employee at any rank and file, supervisory, or managerial level, who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee, pursuant to paragraph (2) of subdivision (a), shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is taken, the State Personnel Board shall invoke adverse action proceedings as provided in Section 19583.5 of the Government Code.

(d) (1) In addition to all other penalties provided by law, including Section 8547.8 of the Government Code or any other penalties that the sanctioning authority may determine to be appropriate, any state employee at any rank and file, supervisory, or managerial level found by the State Personnel Board to have intentionally engaged in acts of reprisal, retaliation, threats, or coercion shall be suspended for not less than 30 days without pay, and shall be liable in an action for damages brought against him or

her by the injured party. If the State Personnel Board determines that a lesser period of suspension is warranted, the reasons for that determination must be justified in writing in the decision.

(2) Punitive damages may be awarded by the court if the acts of the offending party are proven to be malicious. If liability has been established, the injured party also shall be entitled to reasonable attorney's fees as provided by law.

(e) Nothing in this section shall prohibit the employing entity from exercising its authority to terminate, suspend, or discipline an employee who engages in conduct prohibited by this section.

(f) The Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms shall refer matters involving criminal conduct to the proper law enforcement authorities in the appropriate jurisdiction for further action. The entity making a referral to the local district attorney shall also notify the Attorney General of the action. If the local district attorney refuses to accept the case, he or she shall notify the referring entity who shall subsequently refer the matter to the Attorney General. If the local district attorney has not acted on the matter, the referring entity shall notify the Attorney General. It is the intent of the Legislature that the Department of Justice avoid any conflict of interest in representing the State of California in any civil litigation that may arise in a case in which an investigation has been or is currently being conducted by the Bureau of Investigation by contracting when necessary for private counsel.

SEC. 139. Section 11166.3 of the Penal Code is amended to read:

11166.3. (a) The Legislature intends that in each county the law enforcement agencies and the county welfare or social services department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the

investigation of suspected child abuse cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or social services department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, in accordance with the requirements of subdivision (c) of Section 288, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or social services department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in ~~Sections~~ *Section* 859~~ and 1430~~. The child protective agency shall send a copy of its investigative report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of Section 1502 or in Section 1596.750 or 1596.76 of the Health and Safety Code and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

SEC. 140. Section 11170.6 of the Penal Code is amended to read:

11170.6. (a) Notwithstanding paragraph (3) of subdivision (b) of Section 11170, the Department of Justice shall make available to the City of San Diego for purposes of evaluating employees for the ~~"6-to-6"~~ *"6 to 6"*

program information regarding a known or suspected child abuser maintained in the child abuse index pursuant to subdivision (a) of Section 11170 concerning any person who has submitted an application for employment in the ~~"6-to-6"~~ *"6 to 6"* program.

(b) The City of San Diego, to whom disclosure of any information pursuant to subdivision (a) is authorized, is responsible for obtaining the original investigative report from the reporting agency and for drawing independent conclusions regarding the quality of the evidence disclosed and the sufficiency of the evidence for making decisions when evaluating employees for the ~~"6-to-6"~~ *"6 to 6"* program.

(c) The disclosure pursuant to this section of the presence of an applicant's name on the index is provided solely for purposes of investigating the individual's background by identifying the original investigative report from the reporting agency. The presence of an individual's name on the index may not itself be used as evidence adverse to an applicant for employment in the ~~"6-to-6"~~ *"6 to 6"* program. An investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. Employment may not be denied based on a report from the Child Abuse Central Index, unless the child abuse is substantiated.

(d) (1) Whenever information contained in the Department of Justice files is furnished as the result of a request for information pursuant to subdivision (a), the Department of Justice may charge the requestor a fee. The fee may not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. The fee may not exceed fifteen dollars ($15).

(2) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for

expenditures by the department to offset costs incurred for processing child abuse central index requests.

SEC. 141. Section 12000 of the Penal Code is amended to read:

12000. This chapter shall be known and may be cited as ''The Dangerous ~~Weapons'~~ *Weapons* Control Law.''

SEC. 142. Section 13510 of the Penal Code is amended to read:

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, or housing authority police departments.

The commission also shall adopt, and may from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency

established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section ~~830.1~~ *830.31*, and housing authority police departments.

These rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter and shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability. Job-related standards ~~which~~ *that* are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. These standards also shall apply to consolidated dispatch centers operated by an independent public joint powers agency established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code when providing dispatch services to the law enforcement personnel listed in subdivision (a).

Those rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, ‘‘primary responsibility’’ refers to the performance of law enforcement dispatching duties for a minimum of 50 percent of the time worked within a pay period.

(d) Nothing in this section shall prohibit a local agency from establishing selection and training standards ~~which~~ *that* exceed the minimum standards established by the commission.

SEC. 143. Section 2357 of the Probate Code is amended to read:

2357. (a) As used in this section:

(1) ‘‘Guardian or conservator’’ includes a temporary guardian of the person or a temporary conservator of the person.

(2) ‘‘Ward or conservatee’’ includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to such medical treatment, the guardian or conservator may petition the court under this section for an order authorizing such medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to such medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment.

(2) The recommended course of medical treatment which is considered to be medically appropriate.

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of treatment.

(5) The medically available alternatives, if any, to the course of treatment recommended.

(6) The efforts made to obtain an informed consent from the ward or conservatee.

(7) The name and addresses, so far as they are known to the petitioner, of the persons specified in subdivision (c) of Section 1510 in a guardianship proceeding or subdivision (b) of Section 1821 in a conservatorship proceeding.

(d) Upon the filing of the petition, unless an attorney is already appointed the court shall appoint the public defender or private counsel under Section 1471, to consult with and represent the ward or conservatee at the hearing on the petition and, if that appointment is made, Section 1472 applies.

(e) Notice of the Petition shall be given as follows:

(1) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be personally served on the ward, if 12 years of age or older, or the conservatee, and on the attorney for the ward or conservatee.

(2) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be mailed to the following persons:

(A) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(B) The relatives named in the petition at their addresses stated in the petition.

(f) For good cause, the court may shorten or waive notice of the hearing as provided by this section. In determining the period of notice to be required, the court shall take ~~to~~ *into* account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to

the petition or in a medical affidavit presented to the court.

(2) The desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 144. Section 12102 of the Public Contract Code is amended to read:

12102. The Department of Information Technology and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of electronic data processing and telecommunications goods and services.

(a) Acquisition of electronic data processing and telecommunications goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of electronic data processing and telecommunications goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for procurement of electronic data processing and telecommunications services, including systems integration, shall provide for the selection of a vendor on an objective basis not limited to cost alone.

(1) The Department of General Services shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including but not

limited to consideration of comprehensive statements in the request for proposals of the business needs and governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to procurements, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a single *proposal* rather than multiple proposals.

(2) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the procurement shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official procurement file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.

(c) The acquisition of hardware purchased independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.

(d) The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(e) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for electronic data processing and telecommunications goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so

requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(f) Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.

(g) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

Further, it is the intent of the Legislature that, if a state electronic data processing advisory committee or a state telecommunications advisory committee is established by the Governor, the Director of Information Technology, or the Director of General Services, the policies and procedures developed by the Director of Information Technology and the Director of General Services in accordance with this chapter shall be submitted to that committee, including vendor representatives, for review and comment, and that the comment be considered by both departments prior to the adoption of any policy or procedure. It is also the intent of the Legislature that this section shall apply to the Department of General Services Information Technology Customer Council.

(h) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and

decide on initial protests. A decision regarding an initial protest shall be final. If prior to the last day to protest, any vendor who has submitted an offer files a protest with the department against the awarding of the contract or purchase order on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract or purchase order shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting vendor shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(i) Electronic data processing and telecommunications goods which have been determined to be surplus to state needs shall be disposed of in a manner which will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(j) A vendor may be excluded from bid processes if the vendor's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any vendor excluded in accordance with this section shall be reinstated as a qualified vendor at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the vendor's exclusion have been corrected.

SEC. 145. Section 2715.5 of the Public Resources Code is amended to read:

2715.5. (a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, until December 31, 2003, shall be considered to be a functional equivalent of a

reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan, and the standards specified in that plan governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.

(b) For purposes of this section, the board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall prepare and file the annual report required to be prepared pursuant to Section 2207.

(c) Nothing in this section precludes an enforcement action by the board or the department brought pursuant to this chapter or Section 2207 if the lead agency or the director determines that a surface mining operator, acting under the authority of the Cache Creek Resource Management Plan, is not in compliance with the requirements of this chapter or Section 2207.

(d) ‘‘Site specific plan,’’ for the purposes of this section, means an individual project plan approved by the lead agency that is consistent with the Cache Creek Resource Management Plan. Site specific plans prepared in conformance with the Cache Creek Resource Management Plan shall, at a minimum, include the information required pursuant to subdivision (c) of Section 2772, shall comply with the requirements of Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Title 14 of the California Code of Regulations and shall be provided along with a financial assurance estimate to the department for review and comment pursuant to Section 2774. Notwithstanding the number of days authorized by paragraph (1) of subdivision (d) of Section 2774, the department shall review the site specific plan and the financial assurance

estimate and prepare any written comments within 15 days from the date of receipt of the plan and the estimate.

(e) Prior to engaging in an excavation activity in conformance with the Cache Creek Resource Management Plan, a surface mining operation shall be required to obtain financial assurances that meet the requirements of Section 2773.1.

(f) This section shall remain in effect only until December 31, 2003, and as of that date is repealed, unless a later enacted statute~~,~~ that is enacted before December 31, 2003, deletes or extends that date.

SEC. 146. Section 31164 of the Public Resources Code is amended to read:

31164. (a) The San Francisco Bay Area Conservancy Program Account is hereby created in the State Coastal Conservancy Fund, for the purpose of depositing and disbursing funds for the administration and implementation of the San Francisco Bay Area Conservancy Program.

(b) (1) The money in the account created pursuant to subdivision (a) shall be segregated into two subaccounts, as follows:

(A) The first subaccount shall contain funds that are appropriated by the Legislature for the purposes of this chapter. Any interest that accrues on the funds in this subaccount shall be transferred to, and deposited into, the General Fund. The conservancy shall account for all deposits or reimbursements of funds in this subaccount that are derived from funds that were appropriated by the Legislature for the purposes of this chapter.

(B) The second subaccount shall contain funds that are derived from all other sources, exclusive of federal funds, for the purposes of this chapter, including, but not limited to, private donations, fees and penalties, and local government contributions. Any interest that accrues on the funds in this subaccount shall be retained in the subaccount and shall be available for expenditure by the conservancy for the purposes of this chapter. Not more than 3 percent of the funds that are deposited in this subaccount shall be utilized by the conservancy for

general administration and planning purposes. No funds shall be expended from this subaccount for any activity that would legally require a commitment of state funds in the future. Notwithstanding Section ~~1334~~ *13340* of the Government Code, the funds in this subaccount are continuously appropriated, without regard to fiscal year, to the conservancy for expenditures for the purposes of this chapter.

(2) All reimbursements, proceeds of sale, or other money received by the conservancy for the purposes of this chapter that are not expended on projects under the San Francisco Bay Area Conservancy Program shall be redeposited in the appropriate subaccount of the account.

(c) The conservancy shall not be required to undertake any activities pursuant to this chapter until such time that funds from new sources of funding that are not currently available to the conservancy for those purposes are appropriated by the Legislature or otherwise deposited in the account, and until such time that any administrative or general planning funds expended by the conservancy for the purposes of this chapter prior to any such appropriations or deposits being available for expenditure by the conservancy are reimbursed to the State Coastal Conservancy Fund.

SEC. 147. Section 42923 of the Public Resources Code is amended to read:

42923. (a) The board may grant one or more single or multiyear time extensions from the requirements of subdivision (a) of Section 42921 to any state agency or large state facility if all of the following conditions are met:

(1) Any multiyear extension that is granted does not exceed three years, and a state agency or a large state facility is not granted extensions that exceed a total of five years.

(2) No extension is granted for any period after January 1, 2006, and no extension is effective after January 1, 2006.

(3) The board considers the extent to which a state agency or a large state facility complied with its plan of correction before considering another extension.

(4) The board adopts written findings, based upon substantial evidence in the record, as follows:

(A) The state agency or the large state facility is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 before the time extension expires, ~~includes~~ *including* the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

(b) (1) When considering a request for an extension, the board may make specific recommendations for the implementation of the alternative plans.

(2) Nothing in this section shall preclude the board from disapproving any request for an extension.

(3) If the board disapproves a request for an extension, the board shall specify its reasons for the disapproval.

(c) (1) In determining whether to grant the request by a state agency or a large state facility for the time extension authorized by subdivision (a), the board shall consider information provided by the state agency or the large state facility that describes relevant circumstances that contributed to the request for extension, such as a lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed by agency.

(2) The state agency or the large state facility may provide the board with any additional information that

the state agency or the large state facility determines to be necessary to demonstrate to the board the need for the extension.

(d) If the board grants a time extension pursuant to subdivision (a), the state agency may request technical assistance from the board to assist it in meeting the diversion requirements of subdivision (a) of Section 42921 during the extension period. If requested by the state agency or the large state facility, the board shall assist the state agency or the large state facility with identifying model policies and plans implemented by other agencies.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 148. Section 237 of the Revenue and Taxation Code is amended to read:

237. (a) Property owned and operated by a federally designated Indian tribe or its tribally designated housing entity is not subject to taxation under this part if the property and entity meet the following requirements:

(1) The property is used exclusively and solely for the charitable purpose of providing rental housing and related facilities for tenants who are persons of low income (as defined in Section 50093 of the Health and Safety Code).

(2) The housing entity is nonprofit.

(3) No part of the net earnings of the housing entity inure to the benefit of any private shareholder or individual.

(b) In lieu of the tax imposed by this part, a tribe or tribally designated housing entity may agree to make payments to a county, city, city and county, or political subdivision of the state for ~~providing~~ services, improvements, or facilities *provided* by that entity for the benefit of a low-income housing project owned and operated by the tribe or tribally designated housing entity. Any payments in lieu of tax may not exceed the estimated cost to the city, county, city and county, or

political subdivision of the state of the services, improvements, or facilities to be provided.

(c) A tribe or tribally designated housing entity applying for an exemption under this section shall provide the following documents to the assessor:

(1) Documents establishing that the designating tribe is federally recognized.

(2) Documents establishing that the housing entity has been ~~designed~~ *designated* by the tribe.

(3) Documents establishing that there is a deed restriction, agreement, or other legally binding document restricting the property's use to low-income housing and that provides that the property's housing units are continuously available to or occupied by persons who are low income, as defined by Section 50093 of the Health and Safety Code, at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflict with that section, rents that do not exceed those prescribed by the terms of the financing agreements or financial assistance agreements.

SEC. 149. Section 2512 of the Revenue and Taxation Code is amended to read:

2512. If a remittance to cover a payment required by law to be made to a taxing agency prior to a specified date and hour is (a) deposited in the United States mail in a sealed envelope, properly addressed with the required postage prepaid, or (b) deposited for shipment with an independent delivery service that is an Internal Revenue Service designated delivery service or has been approved by the tax collector, in a sealed envelope or package, properly addressed with the required fee prepaid, delivery of which shall not be later than 5 p.m. on the next business day after the effective delinquent date, the remittance shall be deemed received on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance, or the independent delivery service shipment date shown on the packing slip or air bill attached to the outside of the envelope or

package containing the remittance, or on the date it was mailed if proof satisfactory to the tax collector establishes that the mailing occurred on an earlier date. The taxing agency is not required to accept ~~such~~ a payment actually received in the mail if it is received more than 30 days after the date and time set by law for the payment. This section shall not, for purposes of applying subdivision (a) of Section 3707, apply to a remittance sent by mail or by independent delivery service for the redemption of tax-defaulted property.

SEC. 150. Section 2613 of the Revenue and Taxation Code is amended to read:

2613. All taxes on the secured roll shall be paid at the tax collector's office unless the board of supervisors, upon recommendation of the tax collector and on or before the day when payments may be made, orders that taxes be collected in any other or additional location ~~with~~ *within* the county.

SEC. 151. Section 6471 of the Revenue and Taxation Code is amended to read:

6471. (a) Upon written notification by the board, any person whose estimated measure of tax liability under this part averages seventeen thousand dollars ($17,000) or more per month, as determined by the board, shall, without regard to the measure of tax in any one month, make prepayments as prescribed in this section.

(1) In the first, third, and fourth calendar quarters, the person shall prepay not less than 90 percent of the amount of state and local tax liability for each of the first two monthly periods of each quarterly period.

(2) In the second calendar quarter, the person shall ~~prepay~~ *make* a first prepayment of 90 percent of the amount of state and local tax liability for the first monthly period of ~~each~~ *the* quarterly period and a second prepayment of either of the following:

(A) Ninety percent of the amount of state and local tax liability for the second monthly period of the quarterly period, plus 90 percent of the amount of state and local tax liability for the first 15 days of the third monthly period of the quarterly period.

(B) Ninety percent of the amount of state and local tax liability for the second monthly period of the quarterly period, plus 50 percent of 90 percent of the amount of ~~the~~ *state and local tax* liability for the second monthly period of the quarterly period.

(b) Persons engaged in their present business during all of the corresponding quarterly period of the preceding year, or persons who are successors to a business that was in operation during all of that quarterly period, may satisfy the above monthly prepayment requirements for the first, third, and fourth calendar quarters by payment of an amount equal to one-third of the measure of tax liability reported on the return or returns filed for that quarterly period of the preceding year multiplied by the state and local tax rate in effect during the month for which the prepayment is made.

~~The~~

These persons may satisfy their prepayment requirements for the second calendar quarter by making a first prepayment of an amount equal to one-third of the measure of tax liability reported, and a second prepayment of an amount equal to one-half of the measure of tax liability reported, on the return or returns filed for that quarterly period of the preceding year multiplied by the state and local tax rate in effect during the month for which the prepayment is made.

Prepayments shall be made during the quarterly periods designated by the board and during each succeeding quarterly period until further notified in writing by the board.

SEC. 152. Section 6472 of the Revenue and Taxation Code is amended to read:

6472. Except in the case of persons required to remit amounts due in accordance with Article 1.2 (commencing with Section 6479.3), for purposes of Section 6471, *a* prepayment shall be accompanied by a report of the amount of the prepayment in a form prescribed by the board and shall be made to the board as follows:

(a) In the first, third, and fourth calendar quarters, on or before the 24th day next following the end of each of the first two monthly periods of each quarterly period.

(b) In the second calendar quarter, as follows:

(1) The first prepayment on or before the 24th day next following the end of the first monthly period of ~~each~~ *the* quarterly period.

(2) The second prepayment on or before the 24th day of the third monthly period of ~~each~~ *the* quarterly period for the second monthly period and the first 15 days of the third monthly period of ~~each~~ *the* quarterly period.

SEC. 153. Section 426 of the Vehicle Code is amended to read:

426. ‘‘New motor vehicle dealer’’ is a dealer, as defined in Section 285, who, in addition to the requirements of that section, either acquires for resale new and unregistered motor vehicles from manufacturers or distributors of those motor vehicles or acquires for resale new and unregistered off-highway motorcycles from manufacturers or distributors of the vehicles. No distinction shall be made, nor any different construction be given to the definition of ‘‘new motor vehicle dealer’’ and ‘‘dealer’’ except for the application of the provisions of Chapter 6 (commencing with Section 3000) of Division 2 and Section 11704.5 ~~or 11704.6~~. The provisions of Sections 3001 and 3003 shall not, however, apply to a dealer who deals exclusively in motorcycles.

SEC. 154. Section 1666 of the Vehicle Code is amended to read:

1666. The department shall do all of the following:

(a) Include at least one question in each test of an applicant’s knowledge and understanding of the provisions of this code, as administered pursuant to Section ~~12804~~ *12804.9* or 12814, to verify that the applicant has read and understands the table of blood alcohol concentration published in the Driver’s Handbook made available pursuant to subdivision (b) of Section 1656. In order to minimize costs, the question or questions shall be initially included at the earliest opportunity when the test is otherwise revised or reprinted.

(b) Include with each driver's license or certificate of renewal and each vehicle registration renewal mailed by the department, information which shows with reasonable certainty the amount of alcohol consumption necessary for a person to reach a 0.08 percent blood alcohol concentration by weight.

SEC. 155. Section 5204 of the Vehicle Code is amended to read:

5204. (a) Except as provided by subdivisions (b) and (c), a tab shall indicate the year of expiration and a tab shall indicate the month of expiration. Current month and year tabs shall be attached to the rear license plate assigned to the vehicle for the last preceding registration year in which license plates were issued, and, when so attached, the license plate with the tabs shall, for the purposes of this code, be deemed to be the license plate, except that truck tractors, and commercial motor vehicles having an unladen weight of 10,000 pounds or more, shall display the current month and year tabs upon the front license plate assigned to the truck tractor or commercial motor vehicle. Vehicles that fail to display current month and year tabs or display expired tabs are in violation of this section.

(b) The requirement of subdivision (a) that the tabs indicate the year and the month of expiration does not apply to fleet vehicles subject to Article 9.5 (commencing with Section ~~5300)~~ *5301)*.

(c) Subdivision (a) does not apply when proper application for registration has been made pursuant to Section 4602 and the new indicia of current registration have not been received from the department.

(d) This section is enforceable against any motor vehicle that is driven, moved, or left standing upon a highway, or in an offstreet public parking facility, in the same manner as provided in subdivision (a) of Section 4000.

SEC. 156. Section 9980 of the Vehicle Code is amended to read:

9980. If the manufacturer of the engine of a new motor vehicle~~ specified in Section 9983~~ is different from

the manufacturer of the vehicle, the vehicle shall be labeled as required by Section 9981.

For purposes of this chapter, the manufacturer of a motor vehicle engine is different from the vehicle manufacturer if a majority of parts, or most of the work of assembly, of the engine is provided by a person other than the vehicle manufacturer or a subsidiary or affiliate of the vehicle manufacturer. For purposes of this chapter, an ‘‘affiliate’’ is an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the manufacturer of the vehicle.

SEC. 157. Section 12808 of the Vehicle Code is amended to read:

12808. (a) The department shall, before issuing or renewing any license, check the record of the applicant for conviction of traffic violations and traffic accidents.

(b) The department shall, before issuing or renewing any license, check the record of the applicant for notices of failure to appear in court filed with it and shall withhold or shall not issue a license to any applicant who has violated his *or her* written promise to appear in court unless the department has received a certificate issued by the magistrate or clerk of the court hearing the case in which the promise was given showing that the case has been adjudicated or unless the applicant’s record is cleared as provided in Chapter 6 (commencing with Section 41500) of Division 17. In lieu of the certificate of adjudication, a notice from the court stating that the original records have been lost or destroyed shall permit the department to issue a license.

(c) (1) Any notice received by the department pursuant to Section 40509, 40509.1, or 40509.5, except subdivision (c) of Section 40509.5, that has been on file five years *or more* may be removed from the department records and destroyed at the discretion of the department.

(2) Any notice received by the department under subdivision (c) of Section 40509.5 that has been on file 10 years *or more* may be removed from the department

records and destroyed at the discretion of the department.

SEC. 158. Section 12815 of the Vehicle Code is amended to read:

12815. (a) If a driver's license issued under this code is lost, destroyed or mutilated, or a new true, full name is acquired, the person to whom it was issued shall obtain a duplicate upon furnishing to the department ~~(a)~~ *(1)* satisfactory proof of that loss, destruction, or mutilation and ~~(b)~~ *(2)* if the licensee is a minor, evidence of permission to obtain a duplicate secured from the parents, guardian, or person having custody of the minor. Any person who loses a driver's license and who, after obtaining a duplicate, finds the original license shall immediately destroy the original license.

(b) A person in possession of a valid driver's license who has been informed either by the department or by a law enforcement agency that the document is mutilated shall surrender the license to the department not later than 10 days after that notification.

(c) For purposes of this section, a mutilated license is one that has been damaged sufficiently to render any or all of the elements of identity set forth in Sections 12800.5 and 12811 unreadable or unidentifiable through visual, mechanical, or electronic means.

SEC. 159. Section 13377 of the Vehicle Code is amended to read:

13377. (a) The department shall not issue or renew, or shall revoke, the tow truck driver certificate of an applicant or holder for any of the following causes:

(1) The tow truck driver certificate applicant or holder has been convicted of a violation of Section 220 of the Penal Code.

(2) The tow truck driver certificate applicant or holder has been convicted of a violation of paragraph (1), (2), (3), or (4) of subdivision (a) of Section 261 of the Penal Code.

(3) The tow truck driver certificate applicant or holder has been convicted of a violation of Section 264.1, 267, 288, or 289 of the Penal Code.

(4) The tow truck driver certificate applicant or holder has been convicted of any felony or three misdemeanors which are crimes of violence, as defined in subdivision (i) of Section 11105.3 of the Penal Code.

(5) The tow truck driver certificate applicant's or holder's driving privilege has been suspended or revoked in accordance with any provisions of this code.

(b) For purposes of this section, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. For purposes of this section, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, is conclusive evidence of the conviction.

(c) Whenever the department receives information from the Department of Justice, or the Federal Bureau of Investigation, that a tow truck driver has been convicted of an offense specified in paragraph (1), (2), (3), or (4) of subdivision (a), the department shall immediately notify the employer and the Department of the California Highway Patrol.

(d) An applicant or holder of a tow truck driver certificate, whose certificate was denied or revoked, may reapply for a certificate whenever the applicable felony or misdemeanor conviction is reversed or dismissed. If the cause for the denial or revocation was based on the suspension or revocation of the applicant's or holder's driving privilege, he or she may reapply for a certificate upon restoration of his or her driving privilege. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to ~~1203.4(a)~~ *1203.4a* of the Penal Code is not a dismissal for purposes of this section.

SEC. 160. Section 16020.1 of the Vehicle Code is amended to read:

16020.1. (a) On and after January 1, 2004, Section 4000.37 does not apply in the County of Los Angeles.

(b) On and after January 1, 2004, ~~subdivision~~ *subdivisions* (a) and (b) of Section 16028 do not apply to

a person who drives a motor vehicle upon a highway in the County of Los Angeles.

SEC. 161. Section 21051 of the Vehicle Code is amended to read:

21051. The following sections apply to trolley coaches:

(a) Sections 1800, 4000, 4001, 4002, 4003, 4006, 4009, 4150, 4151, 4152, 4153, 4155, 4156, 4158, 4166, 4300 to 4309, inclusive, 4450 to 4454, inclusive, 4457, 4458, 4459, 4460, 4600 to 4610, inclusive, 4750, 4751, 4850, 4851, 4852, 4853, 5000, 5200 to 5205, inclusive, 5904, 6052, 8801, 9254, and 40001 with respect to 4000, relating to original and renewal of registration.

(b) Sections 9250, 9265, 9400, 9406, 9407, 9408, 9550, 9552, 9553, 9554, 9800 to ~~9809~~ *9808*, inclusive, 14901, 42230 to ~~42234~~ *42233*, inclusive, relating to registration and other fees.

(c) Sections 2800, 10851, 10852, 10853, 20001 to 20009, inclusive, 21052, 21053, 21054, 21450 to 21457, inclusive, 21461, 21650, 21651, 21658, 21659, 21700, 21701, 21702, 21703, 21709, 21712, 21750, 21753, 21754, 21755, 21800, 21801, 21802, 21806, 21950, 21951, 22106, 22107, 22108, 22109, 22350, 22351, 22352, 22400, 22450 to 22453, inclusive, 23103, 23104, 23110, 23152, 23153, 40831, 42002 with respect to 10852 and 10853, and 42004, relating to traffic laws.

(d) Sections 26706, 26707, and 26708, relating to equipment.

(e) Sections 17301, 17302, 17303, 21461, 35000, 35100, 35101, 35105, 35106, 35111, 35550, 35551, 35750, 35751, 35753, 40000.1 to 40000.25, inclusive, 40001, 40003, and 42031, relating to the size, weight, and loading of vehicles.

SEC. 162. Section 22511.56 of the Vehicle Code is amended to read:

22511.56. *(a)* Any person using a distinguishing placard issued pursuant to Section 22511.55 or 22511.59 for parking as permitted by Section 22511.5 shall, upon request of any peace officer or person authorized to enforce parking laws, ordinances, or regulations, present identification and evidence of the issuance of that placard to that person.

(b) Failure to present the requested identification and evidence of the issuance of that placard shall be a rebuttable presumption that the placard is being misused and that the associated vehicle has been parked in violation of the provisions of Section 22507.8.

(c) In addition to any other applicable penalty for the misuse of a placard, the officer or parking enforcement person may confiscate a placard being used for parking purposes that benefit any person other than the person to whom the placard was issued by the Department of Motor Vehicles. A placard lawfully used by a person transporting a disabled person pursuant to subdivision (b) of Section 4461 shall not be confiscated.

SEC. 163. Section 34505.9 of the Vehicle Code is amended to read:

34505.9. (a) An ocean marine terminal that receives and dispatches intermodal chassis may conduct the intermodal roadability inspection program, as described in this section, in lieu of the inspection required by Section 34505.5, if the terminal meets all of the following conditions:

(1) More than 1,000 chassis are based at the ocean marine terminal.

(2) The ocean marine terminal, following the two most recent consecutive inspections required by Section 34501.12, has received satisfactory compliance ratings, and the terminal has received no unsatisfactory compliance ratings as a result of any inspection conducted in the interim between the consecutive inspections conducted under Section 34501.12.

(3) Each intermodal chassis exiting the ocean marine terminal shall have a current decal and supporting documentation in accordance with Section 396.17 of Title 49 of the Code of Federal Regulations.

(4) The ocean marine terminal's intermodal roadability inspection program consists of all of the following:

(A) Each time an intermodal chassis is released from the ocean marine terminal, the chassis shall be inspected. The inspection shall include, but not be limited to, brake

adjustment, brake system components and leaks, suspension systems, tires and wheels, vehicle connecting devices, and lights and electrical system.

(B) Each inspection shall be recorded on a daily roadability inspection report, which shall include, but not be limited to, all of the following:

(i) Positive identification of the intermodal chassis, including company identification number.

(ii) Date and nature of each inspection.

(iii) Signature of the ocean marine terminal operator or an authorized representative.

(C) Records of each inspection conducted pursuant to subparagraph (A) shall be retained for 90 days at the ocean marine terminal at which each chassis is based and shall be made available upon request by any authorized employee of the department.

(D) Defects noted on any intermodal chassis shall be repaired, and the repairs shall be recorded on the intermodal chassis maintenance file, before the intermodal chassis is released from the control of the ocean marine terminal. No vehicle subject to this section shall be operated on the highway other than to a place of repair until all defects listed during the inspection conducted pursuant to subparagraph (A) have been corrected and attested to by the signature of the operator's authorized representative.

(E) Records of maintenance or repairs performed pursuant to the inspection in subparagraph (A) shall be maintained at the ocean marine terminal for two years and shall be made available upon request of the department. Repair records may be retained in a computer system if printouts of those records are provided to the department upon request.

(F) Individuals performing ocean marine terminal roadability inspections pursuant to this section shall be qualified, at a minimum, as set forth in Section 396.19 of Title 49 of the Code of Federal Regulations. Evidence of each inspector's qualification shall be retained by the ocean marine terminal operator for the period during

which the inspector is performing intermodal roadability inspections.

(b) Following a terminal inspection in which the department determines that an operator of an ocean marine terminal utilizing the intermodal roadability inspection program has failed to comply with the requirements of this section, the department shall conduct a reinspection within 120 days as specified in subdivision (h) of Section 34501.12. If the terminal fails the reinspection, the department shall direct the operator to comply with the requirements of Section 34505.5 until eligibility to utilize the inspection program described in this section is reestablished pursuant to subdivision (a). If any inspection results in an unsatisfactory rating due to conditions presenting an imminent danger to the public safety, as described in Section 34505.6 or ~~34506.7~~ *34505.7*, the department immediately shall direct the operator to comply with the requirements of Section 34505.5 until eligibility to utilize the inspection program described in this section is reestablished pursuant to subdivision (a).

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

(1) ‘‘Intermodal chassis’’ means a trailer designed to carry intermodal freight containers.

(2) ‘‘Ocean marine terminal’’ means a terminal, as defined in Section 34515, located at a port facility that engages in the loading and unloading of the cargo of ocean-going vessels.

SEC. 164. Section 35790.1 of the Vehicle Code is amended to read:

35790.1. In addition to the requirements and conditions contained in Section 35790 and notwithstanding any other provision of law, all of the following conditions and specifications shall be complied with to move any manufactured home, as defined in Section 18007 of the Health and Safety Code, that is in excess of 14 feet in total width, but not exceeding 16 feet in total width, exclusive of lights and devices provided for in Sections 35109~~, 35110, and 35112~~ *and 35110*, upon any

highway under the jurisdiction of the entity granting the permit:

(a) For the purposes of width requirements under this code, the overall width of manufactured housing specified in this section shall be the overall width, including roof overhang, eaves, window shades, porch roofs, or any other part of the manufactured house that cannot be removed for the purposes of transporting upon any highway.

(b) Unless otherwise exempted under this code, all combinations of motor vehicles and manufactured housing shall be equipped with service brakes on all wheels. Service brakes required under this subdivision shall be adequate, supplemental to the brakes on the towing vehicle, to enable the combination of vehicles to comply with the stopping distance requirements of Section 26454.

(c) In addition to the requirements contained in Section 26304, the breakaway brake device on any manufactured housing unit equipped with electric brakes shall be powered by a wet cell rechargeable battery that is of the same voltage rating as the brakes and has sufficient charge to hold the brakes applied for not less than 15 minutes.

(d) Notwithstanding any other provision of this code, the weight imposed upon any tire, wheel, axle, drawbar, hitch, or other suspension component on a manufactured housing unit shall not exceed the manufacturer's maximum weight rating for the item or component.

(e) In addition to the requirements in subdivision (d), the maximum allowable weight upon one manufactured housing unit axle shall not exceed 6,000 pounds, and the maximum allowable weight upon one manufactured housing unit wheel shall not exceed 3,000 pounds.

(f) Manufactured housing unit tires shall be free from defects, have at least $^{2}/_{32}$ of an inch tread depth, as determined by tire tread wear indicators, and shall comply with specifications and requirements contained in Section 3280.904(b)(8) of Title 24 of the Code of Federal Regulations.

(g) Manufactured housing unit manufacturers shall provide transporters with a certification of compliance document, certifying the manufactured housing unit complies with the specifications and requirements contained in subdivisions (d), (e), and (f). Each certification of compliance document shall identify, by serial or identification number, the specific manufactured housing unit being transported and shall be signed by a representative of the manufacturer. Each transporter of manufactured housing units shall have in his or her immediate possession a copy of the certification of compliance document and shall make the document available upon request by any member of the Department of the California Highway Patrol, any authorized employee of the Department of Transportation, or any regularly employed and salaried municipal police officer or deputy sheriff.

(h) Manufactured housing unit dealers shall provide transporters with a certification of compliance document, specifying that all modifications, equipment additions, or loading changes by the dealer have not exceeded the gross vehicle weight rating of the manufactured housing unit or the axle and wheel requirements contained in subdivisions (d), (e), and (f). Each certification of compliance document shall identify, by serial or identification number, the specific manufactured housing unit being transported and shall be signed by a representative of the dealer. Each transporter of manufactured housing units shall have in his or her immediate possession a copy of the certification of compliance document and shall make the document available upon request by any member of the Department of the California Highway Patrol, any authorized employee of the Department of Transportation, or any regularly employed and salaried municipal police officer or deputy sheriff.

(i) Transporters of manufactured housing units shall not transport any additional load in, or upon, the manufactured housing unit that has not been certified by the manufactured housing unit's manufacturer or dealer.

(j) Every hitch, coupling device, drawbar, or other connections between the towing unit and the towed manufactured housing unit shall be securely attached and shall comply with Subpart J of Part 3280 of Title 24 of the Code of Federal Regulations.

(k) Manufactured housing units shall be equipped with an identification plate, specifying the manufacturer's name, the manufactured housing unit's serial number, the gross vehicle weight rating of the manufactured housing unit, and the gross weight of the cargo that may be transported in or upon the manufactured housing unit without exceeding the gross vehicle weight rating. The identification plate shall be permanently attached to the manufactured housing unit and shall be positioned adjacent to, and meet the same specifications and requirements applicable to, the certification label required by Subpart A of Part 3280 of Title 24 of the Code of Federal Regulations.

(*l*) Manufactured housing units shall be subject to all lighting requirements contained in Sections 24603, 24607, 24608, and 24951. When transported during darkness, manufactured housing units shall additionally be subject to Sections 24600 and 25100.

(m) Manufactured housing units shall have all open sides covered by plywood, hard board, or other rigid material, or by other suitable plastics or flexible material. Plastic or flexible side coverings shall not billow or flap in excess of six inches in any one place. Units that are opened on both sides may be transported empty with no side coverings.

(n) Transporters of manufactured housing units shall make available all permits, licenses, certificates, forms, and any other relative document required for the transportation of manufactured housing upon request by any member of the Department of the California Highway Patrol, any authorized employee of the Department of Transportation, or any regularly employed and salaried municipal police officer or deputy sheriff.

(o) The Department of Transportation, in cooperation with the Department of the California Highway Patrol, or the local authority, shall require pilot car or special escort services for the movement of any manufactured housing unit pursuant to this section, and may establish additional reasonable permit regulations, including special routing requirements, as necessary in the interest of public safety and consistent with this section.

(p) The Department of Transportation shall not issue a permit to move a manufactured home that is in excess of 14 feet in total width unless that department determines that all of the conditions and specifications set forth in this section have been met.

SEC. 165. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) of this section or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months from the date the child entered foster care, except as otherwise provided in paragraph (3).

(2) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall

not exceed a period of six months from the date the child entered foster care.

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, ‘‘a sibling group’’ shall mean two or more children who are related to each other as full or half-siblings.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1), (2), and (3), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period 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 guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings

pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in paragraph (3), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a

sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the child pursuant to paragraph (3), (5), or (6).

(8) That the child was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child. For the purposes of this paragraph, ''serious danger'' means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, ''willful abandonment'' shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger.

(10) That (A) the ~~court ordered~~ *court-ordered* termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), or (B) the parental rights of a parent or guardian over any sibling or half-sibling of the child had been permanently severed, and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian.

(11) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(12) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(13) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of

services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(14) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, *or* Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the

parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, 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:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents 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 paragraph shall include, but not be limited to, the child’s siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child’s medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or 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, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, ‘‘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.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, 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.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 166. Section 727.3 of the Welfare and Institutions Code is amended to read:

727.3. The purpose of this section is to provide a means to monitor the care of every child in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 to ensure that everything reasonably possible is done to facilitate the safe early return of the child to his or her own home or to establish a permanent plan for the child.

(a) Whenever the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the juvenile court shall order the probation department to ensure the provision of services to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) A child shall be deemed to have entered foster care, for purposes of this section, on the date that is 60 days after the date on which the minor was removed from his or her home.

(c) The status of every child declared a ward and placed in foster care shall be reviewed at the time of the initial placement order and then as determined by the court but no less frequently than once every six months, as calculated from the date the minor entered foster care. If the court so elects, the court may declare the hearing at which the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727 as the first status review hearing. At each status review hearing, the court shall consider the safety of the child and make findings and orders which determine the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the child to the child's home or to

complete whatever steps are necessary to finalize the permanent placement of the child.

(3) The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(4) The likely date by which the child may be returned to and safely maintained in the home or placed for legal guardianship or adoption.

(d) The status review hearings required by subdivision (c) may be heard by an administrative review panel, provided:

(1) The administrative review shall be open to participation by the child and parents or legal guardians and all those persons entitled to notice under Section 727.4.

(2) The child and his or her parents or legal guardians receive proper notice as required in Section 727.4.

(3) The administrative review panel is composed of persons appointed by the presiding judge of the juvenile court, the membership of which shall include at least one person who is not responsible for the case management of, or delivery of services to, the child or the parents who are the subject of the review.

(4) The findings of the administrative review panel shall be submitted to the juvenile court for the court's approval and shall become part of the official court record.

(e) At the status review hearing the court shall order 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 probation department shall have the burden of establishing that detriment. The failure of the child to participate in court-ordered treatment programs shall be prima facie evidence that the return of the child would be detrimental. In making its determination, the court shall review and consider the social study report and

recommendations pursuant to Section 706.5 and the report and recommendations of any child advocate appointed for the child in the case, and shall consider the efforts or progress, or both, demonstrated by the child and family and the extent to which the child availed himself or herself of the services provided.

(f) There shall be a permanency planning hearing within 12 months of the date the child entered foster care and periodically thereafter, but no less frequently than every 12 months during the period of placement. It shall be the duty of the probation officer to prepare a written social study report pursuant to Section 706.5 containing a statement of the responsibilities of the parents or legal guardians, the probation department, the caseworker of the probation department, the foster parents, and the child. The written social study shall also describe the goals for the child's placement and care with the department, including the services provided to achieve the goal that the child shall exhibit lawful and productive behavior, and the appropriate plan for permanence for the child. The report shall be submitted to the court at the permanency planning hearing.

(1) At all permanency planning hearings, the court shall determine the permanent plan for the child that includes a determination of whether the child will be returned to the physical custody of the parent or legal guardian. Upon findings that there is substantial probability that additional services will aid the safe return of the child to the physical custody of his or her parents or legal guardian within six months, the court may order further reunification services to be provided to the child and parent or legal guardian for a period not to exceed six months. For purposes of this section, in order to find a substantial probability, the court shall be required to find the child and his or her parents or guardians to have demonstrated the capacity and ability to complete the objectives of his or her case plan. If the child is not returned to a parent or legal guardian at the permanency hearing, the court shall determine whether or not the child should be referred for adoption proceedings,

referred for legal guardianship pursuant to subdivision (c) of Section 728, or referred to an alternative planned permanent living arrangement, including whether, because of the child's special needs or circumstances, the child should be continued in foster care on a permanent basis. The court shall also determine the extent of progress in achieving the treatment goals of the plan. In the case of a child who has reached 16 years of age, the hearing shall, in addition, determine the services needed to assist the child to make the transition from foster care to independent living.

(2) An ''alternative planned permanent living arrangement'' means a permanent foster care placement with a specific identified foster family on a permanent basis, a facility described in Section 11402, or an independent living arrangement, such as emancipation by marriage, court order, or reaching the age of majority.

(3) When a minor is placed in long-term foster care with a relative, the court may authorize the relative to provide the same legal consent for the minor's medical, surgical, and dental care, and education as the custodial parent of the minor.

(4) If the child has a continuing involvement with his or her parents or legal guardians, the parents or legal guardians shall be involved in the planning for a permanent placement. The court order placing the child in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the parents or legal guardians.

(5) Any change in the placement of a child in permanent foster care or the responsibilities of the foster parents for that child shall be made only by order of the court that ordered the placement pursuant to a petition filed pursuant to Section 778.

(g) Prior to any status or permanency hearing involving a child in the physical custody of a community care facility or foster family agency, the facility or agency shall file with the court a report containing its recommendations. Prior to any status or permanency hearing involving the physical custody of a foster parent,

relative caregiver, preadoptive parent, or legal guardian, that person may present to the court a report containing his or her recommendations. The court shall consider all reports and recommendations, filed pursuant to this subdivision.

(h) If the minor is not returned to the custody of a parent or legal guardian at the permanency hearing, the court shall do one of the following:

(1) Continue the case for up to six months for a permanency reviewing hearing, provided that the hearing shall occur within 18 months of the date the minor 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 minor 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 guardian.

The court shall inform the parent or legal guardian that if the minor cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 727.31 may be instituted. The court shall not order that a hearing pursuant to Section 727.31 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 the minor 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 727.31 is not in the best interest of the minor because the minor 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 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 minor shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the minor and shall not preclude a different recommendation at a later date if the minor's circumstances change.

(3) Order that the hearing be held within 120 days, pursuant to Section 727.31, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

(i) Notwithstanding subdivision (h), the court shall not order a hearing pursuant to Section 727.31 if the probation department has documented a compelling reason for determining that the termination of parental rights would not be in the minor's best interests. A compelling reason is either of the following:

(1) A determination made by the probation officer that any of the following applies:

(A) The parent or legal guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) The permanent plan is for the minor to return to his or her own home.

(C) A child 12 years of age or older objects to termination of parental rights.

(D) The minor is placed in *a* residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the minor a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(2) A determination by 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 that the minor is unlikely to be adopted and the child is living with a relative who is unable or unwilling to adopt the child

because exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the minor but who is willing and capable of providing the minor with a stable and permanent home environment, and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the minor's emotional well-being.

(j) Whenever the court orders that a hearing pursuant to Section 727.31 shall be held, it shall direct the agency supervising the minor 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 all of the following:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount and nature of any contact between the minor and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each minor shall be reviewed on *a* case-by-case basis, ''extended family'' for the purpose of the paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or 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 minor'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, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation of seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(7) Whenever a court orders a hearing pursuant to Section 727.31, it shall order that 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 the licensed county adoption agency has exclusive responsibility for determining the adoptive placement and making all adoption-related decisions.

(k) Nothing in this section shall be construed to limit the ability of a parent to voluntarily relinquish his or her child to 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 to a licensed county adoption agency at any time while the minor is a ward of the juvenile court if the department agency is willing to accept the relinquishment.

SEC. 167. Section 727.31 of the Welfare and Institutions Code is amended to read:

727.31. (a) This section applies to all minors placed in out-of-home care pursuant to Section 727.3 and for whom the juvenile court orders a hearing to consider permanently terminating parental rights to free the minor for adoption.

Except for subdivision (i) of Section 366.26, the procedures for permanently terminating parental rights for minors described by this section shall proceed exclusively pursuant to Section 366.26.

At the beginning of any proceeding pursuant to this section, if the minor is not being represented by previously retained or appointed counsel, the court shall

appoint counsel to represent the minor, and the minor shall be present in court unless the minor or the minor's counsel so requests and the court so orders. If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and the parent. Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses as specified in subdivision (f) of paragraph (3) ~~in~~ *of* Section 366.26.

(b) If the court, by order of judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to 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 a licensed county adoption agency for adoptive placement by the agency. The order shall state that responsibility for custody of the minor shall be held jointly by the probation department and 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 the licensed county adoption agency. The order shall also state that 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 the licensed county adoption agency has exclusive responsibility for determining the adoptive placement and for making all adoption-related decisions. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted.

(c) The notice procedures for terminating parental rights for minors described by this section shall proceed exclusively pursuant to Section 366.23.

SEC. 168. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) 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 community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) 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 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 that 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 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 Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical~~,~~ or emotional well-being of

another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (J), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to

any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: ''Unlawful Dissemination Of This Information Is A Misdemeanor.'' Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until

the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a ''juvenile case file'' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 169. Section 1788 of the Welfare and Institutions Code is amended to read:

1788. Each Runaway Youth and Families in Crisis Project established under this ~~chapter~~ *article* shall provide services which shall include, but not be limited to, all of the following:

(a) Temporary shelter and related services to runaway youth. The services shall include:

(1) Food and access to overnight shelter for no more than 14 days.

(2) Counseling and referrals to services which address immediate emotional needs or problems.

(3) Screening for basic health needs and referral to public and private health providers for health care. Shelters that are not equipped to house a youth with substance abuse problems shall refer that youth to an appropriate clinic or facility. The shelter shall monitor the youth's progress and assist the youth with services upon his or her release from the substance abuse facility.

(4) Long-term planning so that the youth may be returned to the home of the parent or guardian under conditions which favor long-term reunification with the family, or so the youth can be suitably placed in a situation outside of the parental or guardian home when such reunification is not possible.

(5) Outreach services and activities to locate runaway youth and to link them with project services.

(b) Family crisis resolution services to runaway and nonrunaway youth and their families which shall include:

(1) Parent training.

(2) Family counseling.

(3) Services designed to reunify youth and their families.

(4) Referral to other services offered in the community by public and private agencies.

(5) Long-term planning so that the youth may be returned to the home of the parent or guardian under conditions which favor long-term reunification with the family, or so the youth can be suitably placed in a situation outside of the parental or guardian home when such reunification is not possible.

(6) Followup services to ensure that the return to the parent or guardian or the placement outside of the parental or guardian home is stable.

(7) Outreach services and activities to locate runaway and nonrunaway youth and to link them with project services.

(c) Transitional living services shall include:

(1) Long-term shelter.

(2) Independent living skill services.

(3) Preemployment and employment skills training.

(4) Home responsibilities training.

(d) Where appropriate and necessary, some of the services identified under this section must also be provided in the local community and in the home of project clients. Projects shall notify parents that their children are staying at a project site consistent with state and federal parent notification requirements.

SEC. 170. Section 1789.5 of the Welfare and Institutions Code is amended to read:

1789.5 The Office of Criminal Justice Planning shall monitor and evaluate the projects established under this ~~chapter~~ *article*, and shall report to the Legislature after the first and third year of the program's operation the results of its evaluation. In addition, each project shall be responsible for evaluating the effectiveness of its programs and services.

SEC. 171. Section 9564 of the Welfare and Institutions Code is amended to read:

9564. Nothing in this chapter shall preclude expansion of Multipurpose Senior Services Program services if cost effectiveness is demonstrated. The expansion shall be accomplished by establishing new sites, *by* increasing numbers of clients served in existing sites, or *by* expanding the number of sites to include additional geographic regions of the state.

SEC. 172. Section 14105.26 of the Welfare and Institutions Code is amended to read:

14105.26. (a) Each eligible facility, as described in paragraph 2 of subdivision (b), may, in addition to the rate of payment that the facility would otherwise receive for skilled nursing services, receive supplemental Medi-Cal reimbursement to the extent provided in this section.

(b) (1) Projects eligible for supplemental reimbursement shall include any new capital projects for which final plans have been submitted to the appropriate review agency after January 1, 2000, and before July 1, 2001. For purposes of this section, ''capital project'' means the construction, expansion, replacement, remodeling, or renovation of an eligible facility, including buildings and fixed equipment. A ''capital project'' does not include the

provision of furnishings or of equipment that is not fixed equipment.

(2) A facility shall be eligible only if the submitting entity had all of the following additional characteristics during the 1998 calendar year:

(A) Provided services to Medi-Cal beneficiaries.

(B) Was a distinct part of an acute care hospital providing skilled nursing care and supportive care to patients whose primary need is for the availability of skilled nursing care on an extended basis. For the purposes of this section, ‘‘acute care hospital’’ means the facilities defined in subdivisions (a) or (b), or both, of Section 1250 of the Health and Safety Code.

(C) Had not less than 300 licensed skilled nursing beds.

(D) Had an average skilled nursing Medi-Cal patient census of not less than 80 percent of the total skilled nursing patient days.

(E) Was owned by a county or city and county.

(c) (1) An eligible facility seeking to qualify for supplemental reimbursement shall submit documentation to the department regarding debt service on revenue bonds or other financing instruments used for financing the capital project.

(2) The department shall confirm in writing project eligibility under this section.

(d) (1) Capital projects receiving funding shall include only the upgrading or construction of buildings and equipment to a level required by currently accepted medical practice standards, including projects designed to correct Joint Commission on Accreditation of Hospitals and Health Systems, fire and life safety, seismic, or other related regulatory standards.

(2) Capital projects receiving funding may expand service capacity as needed to maintain current or reasonably foreseeable necessary bed capacity to meet the needs of Medi-Cal beneficiaries after giving consideration to bed capacity needed for other patients, including unsponsored patients.

(3) Supplemental reimbursement shall only be made for capital projects, or for that portion of capital projects

that provide skilled nursing services, and that are available and accessible to patients eligible for services under this chapter.

(e) An eligible facility's supplemental reimbursement for a capital project qualifying pursuant to this section shall be calculated and paid as follows:

(1) For any fiscal year for which the facility is eligible to receive supplemental reimbursement, the facility shall report to the department the amount of debt service on the revenue bonds or other financing instruments issued to finance the capital project.

(2) For each fiscal year in which an eligible facility requests reimbursement, the department shall establish the ratio of skilled nursing Medi-Cal days of care provided by the eligible facility to total skilled nursing patient days of care provided by the eligible facility. The ratio shall be established using data obtained from audits performed by the department, and shall be applied to the corresponding fiscal year of debt service on the revenue bonds or other financing instruments issued to finance the capital project.

(3) The amount of debt service that will be submitted to the federal Health Care Financing Administration for the purpose of claiming reimbursement for each fiscal year shall equal the amount determined annually in paragraph (1) multiplied by the percentage figure determined in paragraph (2).

(4) The supplemental reimbursement to an eligible facility shall be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to paragraph (2) of subdivision (j).

(5) In no instance shall the total amount of supplemental reimbursement received under this section combined with that received from all other sources dedicated exclusively to debt service exceed 100 percent of the debt service for the capital project over the life of the loan, revenue bond, or other financing mechanism.

(6) A facility qualifying for and receiving supplemental reimbursement pursuant to this section

shall continue to receive reimbursement until the qualifying loan, revenue bond, or other financing mechanism is paid off, and as long as the facility meets the requirements of paragraph (3) of subdivision (d).

(7) The supplemental Medi-Cal reimbursement provided by this section shall be distributed under a payment methodology based on skilled nursing services provided to Medi-Cal patients at the eligible facility, either on a per diem basis, a per discharge basis, or any other federally permissible basis. The department shall seek approval from the federal Health Care Financing Administration for the payment methodology to be utilized, and shall not make any payment pursuant to this section prior to obtaining that approval.

(8) The supplemental reimbursement provided by this section shall not commence prior to the date upon which the hospital submits to the department a copy of the certificate of occupancy for the capital project.

(f) (1) It is the Legislature's intent in enacting this section to provide a funding source for a portion of the construction costs of eligible facilities without any expenditure from the state General Fund.

(2) The state share of the amount of the debt service submitted to the federal Health Care Financing Administration for purposes of supplemental reimbursement shall be paid with county-only funds and certified to the state as provided in subdivision (g). Any amount of the costs of the capital project that are not reimbursed by federal funds shall be borne solely by the eligible facility.

(3) Prior to receiving any funding through this section, an eligible facility shall demonstrate its ability to cover all of the anticipated costs of construction, including those not reimbursed through federal funding.

(g) The county or city and county, on behalf of any eligible facility, shall do all of the following:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for the capital project are eligible for federal financial participation.

(2) Provide evidence supporting the certification as specified by the department.

(3) Submit data, as specified by the department, to determine the appropriate amounts to claim as expenditures qualifying for financial participation.

(4) Keep, maintain, and have readily retrievable, ~~such~~ *those* records as specified by the department in order to fully disclose reimbursement amounts to which the eligible facility is entitled, and any other records required by the federal Health Care Financing Administration.

(h) The department may require that any county or city and county seeking supplemental reimbursement under this section enter into an interagency agreement with the department for the purpose of implementing this section.

(i) All payments received by an eligible facility pursuant to this section shall be placed in a special account, the funds of which shall be used exclusively for the payment of expenses related to the eligible capital project.

(j) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section. If necessary to obtain federal approval, the department may, for federal purposes, limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code). If federal approval is not obtained for implementation of this section, this section shall become inoperative.

(2) The department shall submit claims for federal financial participation for the expenditures for debt service that are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(k) Supplemental reimbursement paid under this section shall not duplicate any reimbursement received by an eligible facility pursuant to this chapter for construction costs that would otherwise be eligible for reimbursement under this section. In no event shall the total Medi-Cal reimbursement pursuant to this chapter to a facility eligible under this section be less than what would have been paid had this section not existed.

(*l*) In the event there is a final judicial determination by any court of appellate jurisdiction or a final determination by the administrator of the federal Health Care Financing Administration that the supplemental reimbursement provided in this section must be made to any facility not described therein, this section shall become immediately inoperative.

(m) Any and all funds expended pursuant to this section shall be subject to review and audit by the department.

SEC. 173. Section 25002 of the Welfare and Institutions Code is amended to read:

25002. To develop the options for achieving universal health care coverage described in Section 25001, the secretary shall establish a process by which these options are developed. The process shall at a minimum include the following:

(a) The examination and utilization of research results from the study performed by the University of California with regard to methods of financing, delivering and defining universal health coverage, done pursuant to the criteria in Senate Concurrent Resolution 100 of the 1997–1998 Regular Session of the Legislature.

(b) The examination and utilization of other data and information, as requested by the secretary or provided to the secretary, with regard to methods of financing, delivering, or defining universal health coverage.

(c) Developing a process by which representatives of health care consumers, providers, insurers, health care workers, advocates, counties, and all other interested parties are engaged in discussion and debate of the issues faced by the state in providing universal health coverage.

The secretary shall develop the methods by which this discussion occurs, provided that it is broadly inclusive of all groups with an interest in universal health coverage.

(d) Interagency participation including, but not limited to, the State Department of Health Services, the State Department of Mental Health, the Department of Finance, the Managed Risk Medical Insurance Board, the Department of Consumer Affairs, the Public Employees' Retirement System, the State Department of Social Services, the Department of Corporations, the Department of Insurance, and any other appropriate agencies which the secretary determines can contribute to the effort to provide universal health coverage.

(e) Obtaining information from the United States Health Care Financing Administration regarding whether federal waivers or other forms of federal participation ~~if~~ *are* necessary.

SEC. 174. Section 1 of Chapter 868 of the Statutes of 1998, as amended by Section 1 of Chapter 153 of the Statutes of 1999, is amended to read:

Section 1. (a) Commencing with the 1999–2000 school year, the area of Eastview as delineated in subdivision (c) is an optional attendance area. Parents and legal guardians residing in the area of Eastview may make an election for each pupil as to whether that pupil will attend schools in the Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District. For the 1999–2000 school year, the parents or legal guardians of all pupils who reside in the area of Eastview may make an election by March 1, 1999, as to the school district their child or children will attend. For the 2000–01 school year and each subsequent school year, the parents or legal guardians residing in the area of Eastview shall make their initial election as to the school district their child or children will attend by March 1 of the school year in which the pupil first enters elementary school, and shall make a second election by March 1 of the school year in which the pupil enters middle school. Parents and legal guardians residing in the area of Eastview may elect, for each of their children, whether to attend schools in the

Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District twice during the time that their child attends school. This election may be made once during any time the child attends kindergarten or any of grades 1 to 8, inclusive, and be made once during the time the child attends any of grades 9 to 12, inclusive. Parents or legal guardians who newly move into the area of Eastview shall make their initial election as to the school district their child or children will attend when the parents or legal guardians first enroll their child or children in public school. This section is applicable to all pupils who reside within the area of Eastview of Los Angeles County regardless of whether the pupil previously attended a private school.

(b) Any school facility belonging to the Los Angeles Unified School District that is located in the area delineated in subdivision (c) shall remain the property of the Los Angeles Unified School District. The status of an employee as an employee of the Los Angeles Unified School District shall not be affected by this act.

(c) For the purposes of this section, the following are the boundaries of the area in Eastview in Los Angeles County: begin at the southeast corner of Tract #19028 as shown on map filed in book 587, pages 83 and 84, of maps in the office of the Recorder of the County of Los Angeles, said corner being angle point in the boundary of the City of Rancho Palos Verdes as same existed on November 1, 1978; thence northerly along the boundary of the City of Rolling Hills Estates as same existed on said date to its first intersection with the boundary of the City of Lomita as same existed on said date; thence easterly along said less mentioned boundary and following the same in all its various courses to the intersection of the northerly line of Lot 1 of Tract #3192 as shown on map filed in book 44, pages 91 to 94, inclusive, of said maps and the centerline of Western Avenue as shown on map filed in book 77, page 88, of record of surveys, in the office of said recorder; thence southerly along said centerline and continuing southerly along the centerline of Western Avenue as shown on map of Tract #24436 filed in book 653, pages 96

to 100, inclusive, of said maps to the centerline of Westmont Drive as shown on map of parcel map #5375 filed in book 63, pages 92 and 93, of parcel maps in the office of said recorder; thence continuing southerly along the centerline of Western Avenue as shown on said last mentioned map a distance of 67 feet; thence easterly at right angles from said last mentioned centerline a distance of 50 feet to the northerly ~~terminus~~ *terminus* of that certain course having a bearing and length of N1343 feet 42 inches East along that certain 27 foot radius curve in said last mentioned boundary of the City of Rancho Palos Verdes, thence northerly along said last mentioned boundary to the point of beginning.

SEC. 175. Section 7 of Chapter 84 of the Statutes of 1999, as amended by Section 7 of Chapter 86 of the Statutes of 1999, is amended to read:

Sec. 7. For purposes of allocating one-half of the moneys appropriated by Item 9210-118-0001 of the Budget Act of 1999, all of the following apply:

(a) A county is prohibited from receiving any portion of the moneys unless the county complies with all of the following:

(1) No later than October 1, 1999, the county auditor reports to the Controller and the Director of Finance the total amount of ad valorem property tax revenue allocated from the county's Educational Revenue Augmentation Fund to school districts, community college districts, and county superintendents of schools for the 1998–99 fiscal year.

(2) The county board of supervisors adopts an ordinance or resolution that specifies each amount of ad valorem property tax revenue shifted from a local agency within the county to the county's Educational Revenue Augmentation Fund for the 1998–99 fiscal year, and the chairperson of the county board of supervisors reports those revenue shift amounts to the Controller and the Director of Finance in a manner that identifies the revenue shift amount for each local agency in the county.

(3) The county board of supervisors adopts an ordinance or resolution pursuant to which the county agrees to both of the following:

(A) The county will allocate its share of the appropriated moneys subject to this section in accordance with subdivision (c).

(B) The county will not, in connection with either paragraphs (1) or (2) of this subdivision or subdivision (c), make any claim for reimbursement of state-mandated local costs.

No later than December 1, 1999, the county board of supervisors shall transmit the ordinance or resolution adopted pursuant to this paragraph to the Director of Finance. The Controller shall promulgate guidelines for the making of reports as required by this subdivision.

(b) For each county that complies with all of the conditions set forth in subdivision (a), the Controller shall do both of the following:

(1) Perform the following calculations:

(A) Divide the amount reported by the county auditor in accordance with paragraph (1) of subdivision (a) by the total of all of the amounts reported by ~~counties~~ *all county auditors* in accordance with paragraph (1) of subdivision (a).

(B) Divide the amount appropriated by Item 9210-118-0001 of the Budget Act of 1999 by two.

(C) Multiply the amount determined in accordance with subparagraph (A) by the amount determined in accordance with subparagraph (B).

For purposes of performing these calculations, the Controller shall review the information submitted by the county. If, consistent with information available from any other reliable source, the Controller determines that the information may be inaccurate, the Controller may request the Director of Finance to review the amount reported by the county in accordance with paragraph (1) of subdivision (a). The Director of Finance may direct the Controller to adjust the amount reported to the Controller by the county in accordance with paragraph

(1) of subdivision (a). The Controller shall inform the county of any adjustment that is so made.

(2) No later than February 1, 2000, the Controller shall, from the appropriated revenues subject to this section, allocate to the county the amount determined for that county pursuant to paragraph (1).

(c) In each county that receives revenue in accordance with subdivision (b), the county auditor shall allocate that revenue to those local agencies among the county, and cities and special districts in the county, that contributed a positive amount to the county's Educational Revenue Augmentation Fund for the 1998–99 fiscal year. The allocation share for each recipient local agency shall be determined pursuant to the following calculations:

(1) Divide the amount of revenue shifted for the 1998–99 fiscal year from the local agency to the county's Educational Revenue Augmentation Fund by the total amount of revenue shifted for the 1998–99 fiscal year to the county's Educational Revenue Augmentation Fund by all local agencies in the county contributing a positive amount to that fund.

(2) Multiply the ratio determined pursuant to paragraph (1) by the amount of revenues allocated to the county pursuant to paragraph (2) of subdivision (b).

SEC. 176. Any section of any act enacted by the Legislature during the 2000 calendar year that takes effect on or before January 1, 2001, 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 2000 calendar year and takes effect on or before January 1, 2001, amends, amends and

1 renumbers, adds, repeals and adds, or repeals any section
2 contained in that article, chapter, part, title, or division.

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